

Short Symposium on the Punishment

The Therapeutic Function of Punishment in Aristotle

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Abstract

In the *Nicomachean Ethics* Aristotle describes punishment as a sort of cure. However, a well-defined and complex theory of punishment is nowhere to be found in Aristotle's works: all mentions of punishment occur in works significantly different in focus and the argumentative contexts also vary. Despite these difficulties, as Aristotle states that punishment is a cure, the possibility to ascribe to Aristotle a reformatory theory of punishment will be taken into account. The aim of this paper is thus twofold: on one side, I will argue that while a theory of punishment is indeed to be found, punishment itself is not to be reduced to one simple function. I will further argue that, while Aristotle is skeptical about the possibility of changing one's character, the possibility of a reformatory theory of punishment is consistent with his claims about the 'almost' impossibility of moral reform.

I. Introduction

In the *Nicomachean Ethics* (NE) Aristotle describes punishment as a kind of cure,¹ which – like all cures – works through opposites. Just as virtues – Aristotle argues – are concerned with actions and passions, and as passions are accompanied by pleasure and pain, punishment, in the case of character, is effective by means of pains and pleasures. Nonetheless, Aristotle neither develops nor offers a well-defined and coherent account of punishment. A theory of punishment is nowhere to be found in Aristotle's works and an account of the functions punishment can be said to accomplish is missing. Unlike Plato, who explicitly addresses punishment in book IX of the *Laws*, Aristotle is not committing himself to a complex theory of punishment. We can ask, then, whether it is possible at all to ascribe a theory of punishment to Aristotle. Besides these initial points, another difficulty must be considered. All mentions of punishment appear in Aristotle's practical works, namely the *Rhetoric*, *Politics* and *Ethics*, but these texts are significantly different in focus; hence, the argumentative contexts in which punishment is mentioned also vary considerably.

The aim of this paper, then, is twofold. Firstly, despite the lack of a complex account of punishment, I will consider whether it is still possible to reconstruct

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¹ NE II 3, 1104b16-18.

a theory of punishment: on the basis of several passages, the different functions ascribed to punishment will be taken into account. Therefore, in the first section, an overview of the different functions of punishment in Aristotle's works will be provided. I will argue that while a theory of punishment is indeed to be found, punishment itself is not to be reduced to one simple function. I will further argue that Aristotle approaches the subject from an ethical rather than merely instrumental perspective.

Secondly, as several *NE* passages state that character is difficult to change, the question arises as to whether punishment can rightfully be said to have a therapeutic function, as an effective instrument to bring about a change in the agent's habits. Consequently, the consistency between the idea of punishment as a cure and Aristotle's ethical views on character will be evaluated.

II. Theories of Punishment

Generally speaking, punishment is the deliberate infliction of pain or loss on an individual by the state or a community. At the same time, punishment is the instrument through which laws exercise their coercive power.

When Aristotle speaks of punishment in the *Politics* (Pol. IV 14, 1298a5), he is referring specifically to practices such as exiling, the death sentence, property confiscation, fines and other penalties. All of the aforementioned practices are concrete means of punishment, but they can serve different purposes.

In ancient Greece and Athens, orators and philosophers developed three fundamental theories of punishment: the corrective, the deterrent, and the reformative. They attempted either to justify these theories or to develop new accounts and alternatives to their opponents' arguments.² None of the aforementioned theory can be said to lie outside Aristotle's consideration. Nevertheless, the absence of another theory of punishment is remarkable: the cleansing theory.

Tragic examples of the cleansing function of punishment can be found in Oedipus and in the Erinyes and Orestes episode. There, punishment is seen as a form of purification of the soul of the wrongdoer. Still, the presence of the Prytaneion, a tribunal in charge of judging inanimate objects and animals, provides specific evidence of the purifying function of punishment. Objects and animals found guilty of homicide were cast outside the city borders in order to prevent them from spreading diseases. Athenians considered all unnatural death to be a

² An overview of the different theories of punishment in Classical Athens can be found in two papers by D. Cohen: D. Cohen, 'Crime, Punishment, and the Rule of Law in Classical Athens', in M. Gagarin and D. Cohen eds, *The Cambridge Companion to Ancient Greek Law* (New York: Cambridge University Press, 2005), 211-235; D. Cohen, 'Theories of Punishment', in M. Gagarin and D. Cohen eds, *The Cambridge Companion to Ancient Greek Law* (New York: Cambridge University Press, 2005), 170-190.

matter of extreme gravity³ and had a mainly religious view of homicide. Vengeance, on the one hand, and cleansing, on the other, were not optional. As death was a pollution, the polluter, whether it be a person or an object, was to be banished to preventing the spread of the disease. Aristotle mentions this practice only once, in Pol. 1262a32. Referring to Plato's *Republic*, Aristotle foresees the impossibility of applying punishment as cleansing in a state where family connections are disregarded. Punishment as cleansing was primarily (albeit not exclusively) concerned with familicide. Aristotle's objection goes as follows: if, in Plato's *Republic*, parents are unknown to their children and vice-versa, it will be impossible to know the identity of the family member killed and of the killer and, consequently, their relation, and thus to proceed with the cleansing. Since punishment as cleansing is merely used as a dialectical means to criticize Plato's views on the family and the state, Aristotle can be said to be largely unconcerned with the practice itself.⁴

As already stated, it is not easy to find a complete and well-defined theory of punishment in Aristotle. Punishment seems to serve different functions in different argumentative contexts. Aristotle's skepticism about the possibility of changing people's character only seems to complicate matters. If it is true that Aristotle is skeptical about the possibility of moral reform, we might conclude that the reformatory theory is nothing more than an opinion shared by some of his contemporaries, with no further implications for Aristotle's ethical philosophy. It would be nothing but *endoxa*, a view which Aristotle himself does not share. We will return to this point in the next section of the paper. The corrective and the deterrent theories (ie restoring the broken balance and deterring people from committing a crime), however, seem to be more coherent with Aristotle's views as expressed in the *Nicomachean Ethics*.

In NE V 4, 1132a6-19, Aristotle states that the judge has the duty to restore balance and to re-establish equality in a community. Indeed, whenever an injustice between two parties is committed, one has more than its fair share and the other less:

Therefore, this kind of injustice being an inequality, the judge tries to equalize it; for in the case also in which one has received and the other has inflicted a wound, or one has slain and the other been slain, the suffering and the action have been unequally distributed; but the judge tries to equalize things by means of the penalty, (10) taking away from the gain of the assailant (NE V 4, 1132a6-10).

The primary function of corrective justice is thus to restore a lost balance.

³ W.T. Loomis, 'The Nature of Premeditation in Athenian Homicide Law' *Journal of Hellenic Studies*, 92, 95 (1972).

⁴ R. Sorabji, *Necessity, Cause and Blame, Perspectives on Aristotle's Theory* (Ithaca-NY: Cornell University Press, 1980), 289.

In the presence of a crime, whether in commercial transactions or in other matters, one of the parties has taken more than its fair share and more than it deserved: in this case, one party has experienced a gain and the other, conversely, a loss. Corrective justice is thus concerned with private transactions. They are to be distinguished into two kinds: voluntary and involuntary.⁵ Voluntary transactions (such as selling, buying, etc) are mainly contracts between individuals, while involuntary transactions (theft, assault, murder) are liabilities for the payment of compensation to another citizen. In both cases, justice and punishment readdress the balance between individuals: in voluntary transactions, however, the balance is restored by redressing the breach of an agreement (eg by means of a fine); in involuntary transactions, penalties must be inflicted on the wrongdoer.

Aristotle acknowledges that speaking of gain and loss can be misleading and not always appropriate in relation to the crime committed. If we are dealing with measurable goods (as in voluntary transactions), it is easy to see if there is a disequilibrium that corrective justice has to restore by means of a fine. This is the case, for instance, with the breaching of a contract. But what happens in a murder case? It would seem rather odd to speak of gain and loss in this case or of a balance to be restored. Aristotle nonetheless states that, even in this case, it is still possible to speak of gain and loss in a derivative and analogical way.⁶ Here too corrective justice can and should restore the balance and the proportion lost. The judge therefore restores and re-establishes the balance in all cases of injustice.

Aristotle is dealing here with a mathematical proportion. If one of the two parties, let it be called A, had to get four but got two, and the other party, let it be called B, consequently got six, the equilibrium will be re-established by means of a mathematical average. A lacks two and B exceeds by two. As a consequence, A shall have the two it is lacking and the judge will restore the balance, understood as the mean between an excess and a defect.

By this, then, we shall recognize both what we must subtract from that which has more, and what we must add to that which has less; we must add to the latter that by which the intermediate exceeds it and subtract from the greatest that by which it exceeds the intermediate (NE V 4, 1132b2-5).

Corrective justice, however, is not equivalent to reciprocation. Punishment is not a revised kind of *lex talionis*, whereby someone who has deprived someone else of something has to suffer the same privation he or she has caused.

Now reciprocity fits neither distributive nor rectificatory justice (...); eg if an official has inflicted a wound, he should not be wounded in return, and if someone has wounded an official, he ought not to be wounded only but punished in addition. Further, there is a great difference between a

⁵ NE V 2, 1131a2-9.

⁶ NE V 4, 1132a10-14.

voluntary and an involuntary act (NE V 5, 1132b24-30).

Punishment is not exclusively defined by reciprocity, as one may be led to think. So the proportionality principle should not take only the disproportion between the parties into account but also the agent's attitude. What makes a difference is whether the agent has committed an injustice voluntarily or involuntarily.⁷

Aristotle recognizes that punishments should be more or less severe depending on the agent's attitude at the moment of committing the crime. If an agent strikes someone and this results in bodily injuries, the agent who has struck the victim might be punished more or less harshly, depending on whether he or she could have foreseen the negative effects of his or her own actions. The judges, then, will consider whether the ultimate results of the wrongdoer's actions can be classified as an error, a misfortune or an act of injustice. Punishment will be more or less harshly settled, proportionally to the error committed.

And it must make us distinguish between wrongdoings on the one hand, and mistakes, or misfortunes, on the other (Reth. I 13, 1374b5-7).

The distinction that Aristotle draws between errors, misfortunes and wrongdoings constitutes a significant contribution to Athenian legal theory. Although precedents of the aforementioned distinction can be found in Greek laws about the classification of wrongdoings (eg the distinction between murder and manslaughter), no distinction between premeditated homicide and voluntary homicide is to be found in Greek laws. Athenian laws distinguished between three cases of homicide: voluntary, involuntary, and justifiable.

The distinction also implies that the various cases will be settled by different courts. Generally, cases of deliberate homicide (*ek pronoias* or *hekousios*) were held at the Aeropagus, cases of involuntary homicide at the Palladion, and cases of justifiable homicide at the Delphinion. No distinction was drawn, therefore, between homicide *ek pronoias*, ie premeditated homicide, and voluntary homicide. In *Against Aristocrates* Demosthenes reports that according to law in case of legitimate defense, the person defending herself from an assaulter can kill the wrongdoer and escape punishment exclusively if the homicide is carried out without premeditation. Otherwise, the homicide will fall under the category of *hekousios* homicide. The absence of deliberation is thus a feature of legitimate defense but in no case is it considered to be an aggravating

⁷ Evidently, the description of the agent's disposition as voluntary or involuntary can apply to both voluntary and involuntary transactions. The distinction between voluntary and involuntary transactions is therefore a difference established not on the basis of the agent's disposition but rather on the kind of transaction. Voluntary transactions are transactions where the two parties usually reach an agreement voluntarily while in involuntary transactions, such as theft, one of the two parties is involuntarily, ie unwillingly, deprived of something.

circumstance.⁸

Aristotle, on the contrary, primarily distinguishes between premeditated and non-premeditated actions (NE V 8, 1135b8-11); secondly, in relation to the latter category, he distinguishes between voluntary and involuntary actions.

In order to be just, punishment must take these differences into account, as they reflect different dispositions. An agent who commits a crime with premeditation acts from bad character states or, generally speaking, because she is evil or vile. Therefore, she will be punished more harshly than an agent who committed an error she could not have reasonably foreseen at the time of the action itself. Even more significantly, an agent who could have foreseen the negative effects of her actions (but failed to do so because of negligence) will be punished more harshly than one who could not have reasonably foreseen them.

Proportionality, then, is not merely settled *ex parte objecti*, meaning with regard to the victim or the crime itself and the misbalance the act has caused. Rather, it is also established *ex parte subjecti*, ie by considering the agent's disposition, which led to the occurrence of the crime.

Aristotle further addresses the issue of the deterrent function of punishment.

Witness seems to be borne to this both by individuals in their private capacity and by legislators themselves; for these punish and take vengeance on those who do wicked acts (unless they have acted under compulsion or as a result of ignorance for which they are not themselves responsible), while they honour those who do noble acts, as though they meant to encourage the latter and deter the former (NE III 5, 1113b22-25).

Hence, punishment has the function of both repressing and deterring the person who has committed a crime, in order to discourage the repetition of the same crime by the same agent, once she has been punished. The fear of new punishments plays a crucial role in the accomplishment of that function.

However, deterrence does not only work in relation to the already convicted person. It also serves as a warning and a reminder to all citizens. The punishment inflicted upon a single agent can speak to all members of the community. The goal, then, is not only to discourage bad and unlawful behaviors in the individual but also to discourage all other members of the community from engaging in the same behaviors. The same holds for public honors, whose function is not just to lavish praise on the person who deserves them but to encourage other citizens to engage in honorable actions or behaviors.

But it is surely not enough that when they are young they should get the right nurture and attention; since they must, even when they are grown

⁸ A useful reconstruction of homicide law in Classical Athens is offered by A. Merker, *Le Principe de l'Action Humaine – selon Démosthène et Aristote – Hairesis - Prohairesis* (Paris: Les Belles Lettres, 2016), 331-342.

up, practise and be habituated to them, we shall need laws for this as well, and generally speaking to cover the whole of life; for most people obey necessity rather than argument, and punishments rather than what is noble (NE X 9, 1179b35-1180a5).

People are therefore discouraged from committing unjust and unlawful actions by the fear of punishment.

Insofar as it provides rewards and punishments, then, the law also has a protreptic function, in addition to serving as a deterrent. Both functions can help create suitable social and political conditions in which an agent can be educated. It is not sufficient, in Aristotle's view, to have been taught what is noble, honorable and good as children. As virtue is a habit and is acquired through the constant repetition of acts of the same sort, it is necessary that the laws continue to show both adults and children which behaviors are to be avoided and which are to be pursued. This function of law finds its main expression specifically in punishment and in the coercive power embodied by law.

A counterexample might make the point clearer. Say a child has been educated well: she has pursued the noble, abstained from injustice and has grown into a virtuous agent. If this same agent found herself living in a society where laws encouraged exactly the opposite line of conduct, she would probably engage in behaviors and actions contrary to her own education. It might also be the case that the laws are, generally speaking, good – they promote what is noble and the kind of behavior the child has been educated to embrace – but do not have any coercive power, for they are ineffective in punishing the unjust and in offering rewards to the just. Aristotle seems rather skeptical about the possibility that an agent who is learning to be a good, virtuous person could preserve her habits in a state that exercises its coercive power ineffectively.

However that may be, if (as we have said) the man who is to be good must be well trained and habituated, and go on to spend his time in worthy occupations and (15) neither willingly nor unwillingly do bad actions, and if this can be brought about if men live in accordance with a sort of intellect and right order, provided this has force (NE X 9, 1180a14-18).

Besides, the function of a legal order is also to direct educators and primary parental figures (ie the father in Classical Greek society) toward those things that the child ought to be taught. Generally speaking, Aristotle believes that family education is intrinsically related to the father's knowledge of laws. Family education is considered to be more effective in virtue of the blood tie between father and son. The laws, on their part, must direct citizens towards happiness and the common good, and help them achieve these goals. Fathers and educators, then, must take into consideration what the laws command, in order to offer their children the best possible upbringing.

Now, since politics uses the rest of the sciences, and since, again, it legislates as to what we are to do and what we are to abstain from, the end of this science must include those of the others, so that this end must be the good for man (NE I 2, 1094b4-8).

Laws therefore play a central role with respect to virtue and they are shown to be a privileged instrument for educating citizens, especially because of their coercive force and the power they have to encourage or discourage certain behavior. As a consequence, they are able to forge the citizen body. Punishment, therefore, also acquires an educational function because of its capacity to inflict pain and give pleasure. Education is based on rewards and punishments, because virtue is about pleasure and pain. Virtue consists – among other things – in finding pleasure in good things and noble acts, and pain in bad things and evil actions.

For moral excellence is concerned with pleasures and pains; it is on account of pleasure that we do bad things, and on account of pain that we abstain from noble ones. Hence we ought to have been brought up in a particular way from our very youth, as Plato says, so as both to delight in and to be pained by the things that we ought; for this is the right education. Again, if the excellences are concerned with actions and passions, and every passion and every action is accompanied by pleasure and pain, for this reason also excellence will be concerned with pleasures and pains (NE II 3, 1104b9-15).

As I have tried to show, punishment serves an educational function in relation not only to characters yet to be shaped but also to fully formed ones, as it continues to point people toward what is to be pursued and what is to be avoided. However, a remark is in order here. Moral education⁹ in Aristotle is different from behavioral conditioning. While the latter may be carried out – and indeed often is carried out – for the benefit of the controller or conditioner, the former is carried out in the interests of the learner and for the sake of his or her happiness, *eudaimonia*, and virtue. As it has been seen in NE 1094b4-8, Aristotle thinks of politics and legislation as aiming at the good for man, ie his happiness, defined as the activity of a complete life in accordance with complete virtue.

As to the educational function of punishment, therefore, it must not be confused with a mere conditioning practice, as the link with the deterrent function might suggest. A father punishing his child for a bad action could be seen as deterring him or her from engaging in the same action in the future. In this respect, punishment could be understood in merely instrumental terms. However, this is not exactly what Aristotle has in mind. As has been stated, behavioral conditioning primarily serves the controller's interests: the conditioner may punish the conditioned subject in an effort to maintain the existing order. I am not suggesting

⁹ J. Echeñique, *Aristotle's Ethics and Moral Responsibility* (Cambridge: Cambridge University Press, 2012), 37-40.

that Aristotle denies the usefulness of such practices, however this is only half of the story. While acknowledging that it is useful to encourage or discourage certain behaviors by means of punishments and honors, Aristotle also has in mind the idea of moral education as something that is pursued for the learner's sake, for his or her good. The father punishing a child, while discouraging him or her from engaging in a certain action, is also acting for the sake of the child's virtuous upbringing, ie for the sake of the learner's own virtue and happiness.

It is now possible to consider the question whether punishment can also be assigned the third function mentioned above, the reformative. As already noted, Aristotle's skepticism with regard to moral reform and character change is one of the main issues to be dealt with once we start looking for a reformative or therapeutical role of punishment. This will be the focus of the next section.

III. A Reformative Theory of Punishment?

1. Some Difficulties

The general overview just provided ensures a deeper understanding of punishment in Aristotle's works. It appears that Aristotle does not formulate a single theory of punishment, but rather assigns punishment different functions. However, the educational function has been shown to be closely related to virtue and happiness and to be irreducible to an instrumentalist view of punishment. Education has the happiness of the learner and his or her good, ie virtuous, upbringing as its goal. Hence, it is concerned with the moral attitudes of individuals.

Aristotle further argues that punishment plays a role in deterring people from repeatedly engaging in bad actions: a man who has already established and acquired bad habits will at least abstain from engaging in unjust actions not because he wishes to, but out of fear of punishment. This amounts to nothing more than a deterrent function: for the individual in question does not refrain from engaging in bad acts because of his virtuous states of character. While Aristotle does not neglect the deterring function of punishment, we have seen that, in the case of education, this function is embedded within a moral view of punishment.

What we need to ask, then, is whether punishment can also have a therapeutic function: what we should look for in this case is a genuine moral reform, a conversion – so to say – from vice to virtue.

If a commander remains on the battlefield simply because he fears he might otherwise be punished upon returning to his home city, he cannot be considered courageous or virtuous. He will go into battle not because of his courageous habits but out of fear of suffering. So, his actions are not guided by virtuous dispositions, as stated in the *Eudemian Ethics* (EE).

Further, we praise and blame all men with regard to their choice rather

than their acts (though activity is more desirable than excellence), because men may do bad acts under compulsion, but no one chooses them under compulsion. Further, it is only because it is not easy to see the nature of a man's choice that we are forced to judge of his character by his acts. The activity then is more desirable, but the choice is more praiseworthy (EE II 11, 1228a11-18).

In Aristotle's view, actions in themselves are not sufficient for determining whether an agent has acted out of virtue. There can be several motives that could lead to the same outcome or to the same action, as the example of a commander shows. One commander may go into battle out of virtue and another out of fear and this marks a difference between the two. Our cowardly commander, who goes into battle because of fear, has probably only chosen the lesser of two evils: punishment is a more fearful consequence than the possibility of dying on the battlefield. Although the deterrent function may be said to have played a role in maintaining the necessary balance, the commander has not really changed his habits. Roughly speaking, punishment has deterred him from leaving his post, not changed him into a courageous person.

The main difficulty when it comes to the possibility of moral reform is represented by Aristotle's pessimistic views about character change. As Aristotle seems to dismiss the idea of genuine moral reform, the definition of punishment as a cure has been dismissed by many commentators, such as R. Sorabji¹⁰ and G. Di Muzio.¹¹ If a person's character cannot be changed – Sorabji¹² argues – the idea of punishment being a cure must be understood as an *endoxa*, an opinion shared by Aristotle's contemporaries and thus reported by the philosopher, without him actually sharing the view. Di Muzio gives a different account of why the idea of punishment as a cure must be dismissed. The possibility of character change can be upheld by means of persuasion¹³ rather than punishment. However, those who are deemed to be incorrigible or incurable (*akolastoi* and *aniatoi*) cannot be persuaded. In this case, it is only exposure to virtue that can help change a man's character. While the *akolastoi* cannot be changed either by persuasion or by punishment, they could still theoretically change their character, as moral agents never lose the possibility to act against their already established states of character. Therefore, by becoming exposed to virtue, little by little they can engage in virtuous actions as virtuous men would, ie with the right disposition and emotions. Having virtuous friends who are ready to help if needed can be the beginning of a process of moral reform, as the bad moral agent will try to emulate them. So whereas in the case of corrigible

¹⁰ R. Sorabji, *Necessity, Cause and Blame, Perspectives on Aristotle's Theory* (Ithaca-NY: Cornell University Press, 1980).

¹¹ G. Di Muzio, 'Aristotle on improving one's character' *Phronesis*, 45, 205-219 (2000).

¹² R. Sorabji, n 4 above.

¹³ G. Di Muzio, n 11 above, 213.

moral agents the process of moral reform will have an external origin, for persuasion is external to the agent, in the case of the incorrigible man, who is not corrigible by external means (persuasion or punishment), the process of moral reform will have its origin within the agent, as it is still possible for the latter to act against her states of character. As Di Muzio argues,¹⁴ high order desires such as self-loathing can lead the agent to desire to change what is bad within her. In this case, exposure to virtue, together with the realization that virtuous people are immune to such feelings, may trigger the process of character change. While giving very different reasons as to why punishment is not effective as a cure, both Sorabji and Di Muzio dismiss the idea of punishment as an efficacious instrument to bring about a change in an agent's character. According to the former, character is simply not changeable; according to the latter, only persuasion and exposure to virtue can trigger and achieve moral reform – even for those who are deemed *akolastoi*, incorrigibles.

On my alternative account, I will try to defend the notion that punishment can be seen as an effective instrument to bringing about a process of moral reform in Aristotle, while at the same time dismissing the idea that change can have an internal origin. Before going into the details of my proposal, it is necessary to carefully consider Aristotle's pessimistic view about moral reform.

Aristotle's skepticism about the possibility of character change is revealed by several passages in his ethical writings and suggests that whereas the idea of an educational role of punishment is perfectly consistent with the Aristotelian project, that of a reformatory role of punishment should be approached more cautiously. In the case of an agent whose habits are still in the making, eg a child, laws, with the sanctions they impose, constitute a deterrent from engaging in unjust actions. As already noted, they also present themselves as an instrument to direct one toward the good, happiness and virtue. A child can thus develop his habits in conformity with the laws and, if the laws themselves are good, can be educated in such a way as to achieve virtue and happiness. A different situation emerges when we consider an already mature agent. Aristotle thinks that in this case character change and moral reform are rather difficult, if not impossible, to achieve. Once the agent has acquired his habits, he will act (and feel) in accordance to them.

In that case it was then open to him not to be ill, but not now, when he has thrown away his chance, just as when you have let a stone go it is too late to recover it; but yet it was in your power to throw it, since the moving principle was in you. So, too, to the unjust and to the self-indulgent man it was open at the beginning not to become men of this kind, and so they are such voluntarily; but now that they have become so it is not possible for them not to be so (NE III 5, 1114a16-21).

¹⁴ *ibid* 216.

This passage states rather clearly that once an agent has acquired his habits, he cannot cease to be who he has become. A child has the possibility to become a virtuous or bad agent. In this case, as we have seen, the laws contribute to his upbringing by plainly stating which behaviors are to be avoided and which are to be pursued. Indeed, habits are acquired by an agent through the constant repetition of actions of the same sort. An agent will become courageous by acting courageously not just once but constantly and consistently. Conversely, an agent will become cowardly by acting in a cowardly fashion constantly and repetitively. A virtuous agent will find pleasure in acting virtuously and pain in acting poorly. Punishment, inflicting pain, is an educational means, as it helps find pain in bad actions.

But once an agent has already acquired his habits, he will act in accordance with them. A coward will act in a cowardly manner and a brave man will act courageously, just as the sick man will walk as a sick man does on account of his sickness. Once certain habits have been acquired, the possibility of not being that kind of man is no longer open to the agent. The unjust agent had the possibility of not being unjust, when she was still shaping her habits. However, once she has become unjust, it seems she cannot recover from her bad habits, just as it is impossible to take back a stone once it has been thrown. Apparently, the acquisition of character states is considered to be an irreversible process. The parallel is once more with sickness: the sick man had the initial possibility of avoiding sickness but once he has become sick, he cannot cease to be so. The possibility that was admitted at the beginning of the process of habituation, namely to become virtuous or vicious, is no longer available for the agent.

However, Aristotle also argues that this possibility is no longer available to an agent simply through his desire to change.

Yet it does not follow that if he wishes he will cease to be unjust and will be just. For neither does the man who is ill become well on those terms – although he may, perhaps, be ill voluntarily, through living incontinently and disobeying his doctors (NE III 5, 1114a13-16).

It is specifically the clause ‘if he wishes’ that can cast light on the subject. Changing our character is difficult – ceasing to be the persons we are is difficult, almost impossible. However, Aristotle says that the man who has become unjust cannot cease to be unjust only by wishing it.

Let’s once again consider the case of the sick man. Say this man is affected by a disease he brought upon himself by living unrestrainedly (eg a chronic disease due to an unhealthy lifestyle). The idea envisaged in the passage seems to be the following: this agent has made himself sick and now he cannot just go back to being healthy simply because he wants to. Indeed, he could not possibly recover without following the doctor’s advice and changing his lifestyle.

Nonetheless, there are two main difficulties to be considered: the first problem

concerns the desire for change and the second the time of change. Aristotle has stated that what an agent wants or desires, the aim of his actions, does not depend on his reasoning but on his habits. The end, the general end, is not chosen but desired. Desire is, on its part, determined by the agent's habits. So, in order to change his character, the agent would need to desire to be a different person than he is, but this is exactly the possibility that seems to be denied once the desire is assumed to be determined by habits. Habits are constant expressions of desire. It is difficult, therefore, to understand how a desire for complete moral reform could arise in the agent. Although Di Muzio argues that we must distinguish desires from higher order desires, such as self-loathing, there is no passage where Aristotle suggests that an agent may regret his whole moral life. When Aristotle mentions feelings such as regret and remorse, it is always in relation to a single occurrence or to a single action. As the general aim, happiness, is variously interpreted and specified according to different dispositions (an agent, Aristotle argues, may have wealth as a general aim or pleasure, instead of *eudaimonia*),¹⁵ it is difficult to see how a moral agent who already has a certain disposition may desire to radically change his life, his disposition and, most importantly, his ultimate goal or general aim. An agent might, at most, regret a single action, but he never questions his (moral) life as a whole.

Secondly, for an agent the process of habituating himself to be different from how he is requires time and perseverance. In order to change his habits, the agent must acquire new habits, acting constantly and repeatedly according to the new disposition or character states he wants to acquire. But Aristotle has already established that habits give rise to actions of the same quality: in other words, an agent will act in accordance with his own habits. How, then, is it possible for a coward to become courageous if he can act only in accordance with cowardice, ie in cowardly fashion? How can an agent act courageously in a constant way and for an extensive period of time in order to change his habits? The agent seems stuck in his own habits: since out of cowardice he will act cowardly, and in order to become courageous he needs to act courageously, he appears to be caught in a vicious circle. It seems difficult, therefore, to uphold a reformatory theory of punishment: possibly, this view should be set aside. However, we can still ask ourselves why the only definition of punishment provided by Aristotle, defines punishment as a kind of cure (*Ret.* 1369b12; *EE* 1214b32; 1220a35; *NE* 1104b16). We are left with an apparent contradiction: on the one hand, character change is so difficult as to be impossible; on the other, punishment is said to be a cure. It seems as though one of the two alternatives must be dismissed.

One option is to consider the mention of punishment as a cure to be one theory among others, whose soundness and credibility, in Aristotle's view, should be questioned. This is R. Sorabji's perspective. Aristotle was not only familiar

¹⁵ *NE* III 5, 1114a31-1114b3.

with the theories on punishment developed by his contemporaries, but also took them into account. Hence, the idea of punishment as a cure could be understood as an *endoxa*. However, it is also true that the notion of punishment being a cure is the only definition of punishment to be found in Aristotle's practical works. We should ask ourselves, then, if there is another way of understanding the definition without dismissing it.

To avoid having to dismiss the second alternative, it would still be possible to try and reassess the first, ie the absolute impossibility of character change. By looking back again at *NE* III, a different interpretation can be provided in order to admit the view that punishment can also serve a reformatory function. This is the aim of section four of the paper.

2. Punishment as a Cure: An Alternative Account

As we have seen, Aristotle is rather skeptical about the possibility of character change. However, nowhere does he argue for the absolute impossibility of the process. On the contrary, he states:

It is hard, if not impossible, to remove by argument the traits that have long since been incorporated in the character; and perhaps we must be content if, when all the influences by which we are thought to become good are present, we get some tincture of excellence (*NE* X 9, 1179b16-20).

Aristotle acknowledges the difficulties implicit in changing an agent's character by means of discourses or arguments, once certain habits have been incorporated. So we must be satisfied if only a shade of virtue is generated.

First, attention is drawn to the description of the task of moral reform as something difficult and almost impossible. However, the fact that it is almost impossible does not imply absolute impossibility. Ultimately, Aristotle admits the possibility of generating a shade of virtue in the agent through all the influences and methods that can be used to achieve this good. In book I of the *Eudemian Ethics*, political correction, ie punishment, is once again compared to a medical treatment: 'political correction — for medicine, no less than whipping, is a correction' (*EE* I 3, 1214b32).

The possibility of moral reform has been shown to be difficult and almost impossible but its possibility cannot be excluded and dismissed *de iure*. In principle, albeit difficult and almost impossible, the possibility of character change must be admitted. The same situation seems to be discussed in the *Categories* (*Cat.*). When Aristotle speaks about the difference between states (*hexeis*) and conditions (*diatheseis*), he argues that states are harder to change than conditions. As virtue is a state — he explains — it is hard to change one's character. However, in chapter 10 he allows the possibility of moral reform, while at the same time recognizing all the difficulties involved in the process.

For the bad man, if led into better ways of living and talking, would progress, if only a little, towards being better. And if he once made even a little progress it is clear that he might either change completely or make really great progress. For however slight the progress he made to begin with, he becomes ever more easily changed towards virtue, so that he is likely to make still more progress; and when this keeps happening it brings him over completely into the contrary state, provided time permits (Cat. 10, 13a24-32).

Besides, when Aristotle is talking about the impossibility for the agent to cease being the man he has become, he is talking about a single individual. In this case, not only does the unjust man want to be unjust but even if we were to admit that this man does not want to be unjust, he could still be unable to change his habits because the quality of his action is determined by his character states. He cannot engage in the process of acting courageously merely by wanting to be courageous. Not only that, but the arising or triggering of the process of moral reform is made difficult by his character states. Hence, it is difficult to see how this man will give rise to the desire for a radical life change and even if we admit the possibility of this desire arising, it would still be very hard for him to act contrary to his habits, for habits determine the quality of one's action. Simply put, the man in question is not used to acting courageously.

However, even if we dismiss the possibility of an internal origin of change (*contra* Di Muzio), this is not at all what is required when we define punishment as a cure. Indeed, punishment leads the individual back into the sphere of the community, for it brings another actor into play: the state, the person or the persons in charge of exercising authority by inflicting punishment, ie pain. The changing process is not all internal to the agent – Aristotle clearly excludes this possibility – but it is guided by an external agent. An autonomous and spontaneous process of moral reform from vice to virtue has to be excluded. Punishment, however, does not presuppose an autonomous process of reform but rather the opposite. Furthermore, the importance of a good upbringing and the role of an external influence in shaping one's character and emending some vices is frequently discussed by Aristotle. Moral reform cannot be accomplished suddenly, as it is matter of replacing old habits with new ones.

An agent, being influenced by others' opinions and judgements, by means of pleasure and pain, could start changing under their guidance. This guidance will use pleasure and pain, punishments and rewards, so as to re-educate the agent, since all cures are effective through opposites. A bad man who finds pleasure in vice shall be punished. And the pain of punishment will be maximally opposed to the pleasure the agent finds in his reprehensible behaviors. Moreover, Aristotle distinguishes between citizens to be banished from the city, and who are deemed incurable, and citizen who can be punished, who can be corrected.

One last remark is in order. The possibility of correcting one's character can be interpreted in two ways. One may deserve punishment if there is something

wrong in one's soul that can be corrected. However, correction can mean the sort of punishment merely understood as a socially useful instrument, as a way of conditioning and controlling one's action in a social community. The correction of an agent so as to make her meet social requirements does not directly promote her well being, her *eudaimonia*. As stated with regard to education, since educating someone can be taken to mean 'controlling' or 'conditioning' or 'educating for the good of the learner', the same distinction can be drawn in a reformatory theory of punishment. Punishment as a cure, as an effective tool to bring about a change and re-educate the agent, can be seen as instrumental or as already – and always – embedded in an ethical prospective.

In the *Rethoric* Aristotle argues that while vengeance is for the sake of the victim (or the victim's family), punishment is for the sake of the wrongdoer:

revenge and punishment are different things. Punishment is inflicted for the sake of the person punished; revenge for that of the punisher, to satisfy his feelings (Rhet. I 10, 1369b 12-15).

Punishment, it seems, is not just a way of making the behavior of bad men acceptable to the community: punishment as a cure is directed toward the good of the person punished. Thus interpreted, the theory of punishment as a cure cannot be reduced to an instrumental account, according to which the main aim of punishment is to condition and control deviant behaviors.

In conclusion, although character is described and presented as stable, it is not an inalienable possession. Despite the few references to a possible moral reform process, considered perhaps to be a rare possibility, character change has to be admitted or, at least, not excluded or completely dismissed. The starting point of this process must lie not inside the agent but outside, in the people who, by presenting themselves as teachers and guides, can finally lead the agent to change and replace old habits with new ones.