

KATÀ MÉTRON: A JURISPRUDENTIAL CRITIQUE OF UMBERTO GALIMBERTI'S 'PASSER-BY ETHICS'

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*Pursuant to the aims and scope of this Special Issue, this invited contribution engages in the academic debate on the international standing of the Italian cultural tradition by critically assessing the proposal for a 'passer-by ethics' (etica del viandante) set forth by the internationally renowned Italian philosopher and psychoanalyst Umberto Galimberti. In *L'Etica del Viandante*, his new, and final, work, Galimberti calls for an ethics centred on Aristotelian *phrónēsis* (practical wisdom, prudence, or practical rationality) that, in his view, might be capable of counteracting present-day society's instrumentalist, technology-led, and dehumanising working logic. The article assesses the theoretical soundness and practical feasibility of Galimberti's proposal. It does so through a critical contextualisation of its key elements from the perspective of that area of human activities where Aristotelian *phrónēsis* plays a defining role – ie, law. Setting out what Aristotelian *phrónēsis* is and how it works in the field of law, it argues that insightful and fascinating though his proposal is, Galimberti's passer-by ethics is affected by a substantial inconsistency which, ultimately, undermines its very foundations and renders it incapable of achieving its purpose.*

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Iuris prudentia est divinarum atque humanarum rerum notitia, iusti atque iniusti scientia
DIG., 1.1.10.2

νόμος ... λόγος ὃν ἀπό τινος φρονήσεως καὶ νοῦ
NICOMACHEAN ETHICS, 1180^a21-22

I. INTRODUCTION

The Special Issue this invited contribution is part of is titled 'The Italian Legal Culture and Tradition: Looking Inside from Outside'. It celebrates *The Italian Law Journal* on its landmark 10th Anniversary by collecting essays that discuss whether the Italian cultural tradition has influenced intellectual developments overseas – and if so, why, how, and to what extent. The aim is both appropriate and timely, for as the call for papers aptly states, now as ten years ago, 'Italy remains on the periphery' not only of macro-regulatory developments but also, of scholarly discussions on the formation, interaction, diffusion, transition, and alteration of legal cultures.

Pursuant to the aims and scope of this Special Issue, this invited contribution engages in the academic debate on the international standing of the Italian cultural tradition by critically assessing the work of one of Italy's leading, most translated, and well-received philosophers and psychoanalysts worldwide – Umberto Galimberti. In *L'Etica del Viandante* ('*The Passer-by Ethics*';¹ hereinafter, 'EdV'), his new, and final,² work,³ Galimberti calls for an ethics centred on Aristotelian *phrónēsis* that, in his view, might be capable of countering present-day society's instrumentalist, technology-led, and dehumanising working logic.

Embracing the critical *ēthos* animating this Special Issue,⁴ this article assesses the theoretical soundness and practical feasibility of Galimberti's proposal. It does so through a critical contextualisation of its key elements from the perspective of that area of human activities where Aristotelian *phrónēsis* plays a defining role – ie, law. There is a clear reason for using law as a case study to evaluate Galimberti's ethical programme – namely, the fact that some of Galimberti's aims are to expose and condemn the fallacies of law as both a regulatory apparatus and phenomenon, void the domain of the legal of its authoritarian prerogatives, and replace juridical conceptualisations and relations of order with a (com-)measured and (com-)measuring mode of ethical living of which Aristotelian *phrónēsis* is the driving

¹ All translations are mine.

² Galimberti himself affirms thus in a recent interview, available at <https://tinyurl.com/24tzd9uw> (last visited 30 May 2025).

³ U. Galimberti, *L'Etica del Viandante* (Milano: Feltrinelli, 2023).

⁴ As the Anniversary call states, '(t)here is still an Italian difference to be transmitted and criticized, within an infinite and plural process of knowledge production ... Criticism is the method to build transnational legal scholarly networks'.

force. However, as we shall see in what follows, if there is one thing that Western law – or more generally, Western jurisprudential consciousness and related modes of ordering, as the quote from the *Digest*⁵ which opens this article clearly indicates – revolve around is precisely the (com-)measured and (com-)measuring normative approach to and disposition of life epitomised by Aristotle's *phrónēsis*.⁶ The fact that Galimberti advocates transcending and replacing law with one of its definitory elements calls, then, for serious scrutiny.

Setting out what Aristotelian *phrónēsis* is and how it works in the field of law, this article argues that insightful and fascinating though his critical account is, Galimberti's passer-by ethics is neither theoretically sound nor practically feasible, for it is affected by a substantial (more philosophically, we could say *ontological*) inconsistency which, ultimately, undermines its very foundations and renders it incapable of achieving its purpose.

The article is structured as follows. Section II outlines the basic thrust of Galimberti's passer-by ethics. Section III critically engages with Galimberti's ethical by setting out Aristotle's conception of *phrónēsis* and the role it plays in law. Concluding remarks follow.

II. UMBERTO GALIMBERTI'S PASSER-BY ETHICS

1. *EdV and the Western Tradition to Date*

Umberto Galimberti is one of Italy's leading psychoanalysts and philosophers. A student of the late Emanuele Severino, the greatest Italian philosopher of the twentieth and early twenty-first centuries, Galimberti is not only a prolific writer whose works have attracted widespread interest and have been translated into several languages worldwide; he also is a public figure who regularly takes part in TV shows, podcasts, and mainstream events.⁷ *EdV*, published in 2023 by Galimberti's longstanding publisher, Feltrinelli, is his new, and final, work. Acting as a sort of *summa* of Galimberti's thought, it draws from various continental and analytical philosophers, sociologists, and scientists to pursue a two-fold aim: first, it seeks to lay out the ground for a collective exercise in self-examination capable of exposing

⁵ It would be superfluous to provide scholarly references to attest to the significance of the *Digest* in Western legal culture. However, the spirit of this Special Issue prompts me to cite at least the authoritative work of an internationally renowned Italian legal historian which has recently been made available in English: A. Padoa Schioppa, *A History of Law in Europe: From the Early Middle Ages to the Twentieth Century*, trans C. Fitzgerald (Cambridge: Cambridge University Press, (2006) 2017), 7 et seq.

⁶ It is worth noting that Dante, referring to the *Digest*, lauded law ('*ius*') for being a '*realis et personalis hominis ad hominem proportio*' ('relation among humans concerning things and persons'). *Monarchia*, II.5.1. My translation.

⁷ A short biography is available at <https://www.feltrinellieditore.it/autori/galimberti-umberto/>.

the dehumanising working logic of our socio-political condition (or what, following Marting Heidegger, might be termed 'our *'dealings' in the world and with entities within-the-world'*);⁸ secondly, and relatedly, it aims to set forth an ethical programme of human and natural renovation and fulfilment capable of countering our existential demise.

EdV is divided into five thematic parts, each characterised by its own analytical focus and methodological trajectory. The first part (titled '*Le Vicissitudini dell'Etica nella Storia dell'Occidente*'), expounds the origins and development of ethical conceptions of socio-political and legal order in the Western tradition, from Ancient Greek thought to Max Weber. The second part (titled '*La Tecnica e il Grande Capovolgimento*'), describes why and how technical conceptions of socio-political and legal interaction superseded the original, ethical ones described in the first part. In so doing, it draws from such thinkers as Johann Gottfried von Herder, Karl Jaspers, Günter Anders, Hans Jonas, Arnold Gehlen to explain why and how, due to their biological and anthropological constraints, human beings are *naturally* bound to resort to technological means of societal interaction and development. The third part, titled '*La Risoluzione del Mondo-della-Vita nel Mondo della Tecnica*', holds that due to the processes accounted for in the book's second part, our whole socio-political, economic, and legal existence has ended up revolving around, and thus being subjugated to, the imperatives of what, on the wave of various continental thinkers, Galimberti terms 'technical rationality'⁹ and related modes ('*apparati*') of order.¹⁰ In unfolding this (regrettable and dreadful, according to Galimberti) phenomenon, this part also sets out the main facets and declensions of the instrumentalist and dehumanising type of rationality that technology fulfils and that pervades our societal condition. The fourth part, titled '*La Fine del Mondo e delle Grandi Ideazioni*', holds that as part of the societal shift from ethics to technology, the Western tradition has also witnessed the demise of modern economic, political, and religious ideologies for the benefit of what Galimberti labels 'post-modern rationality'.¹¹ Having set the level of analysis in the first four parts of the book, the fifth, final and longest part, titled '*Dallo Spaesamento all'Etica del Viandante*', sets out Galimberti's proposal for a passer-by ethics centred on Aristotelian *phrónēsis* that, in his view, might be capable of countering present-day society's instrumentalist, technology-led, and dehumanising working logic.

A journal article cannot possibly offer a detailed appraisal of Galimberti's dense and inter-disciplinary analysis and argument. Accordingly, I will limit myself to

⁸ M. Heidegger, *Being and Time* (New York, NY: Harper Collins, (1927) 2008), 95. Emphases in original.

⁹ U. Galimberti, n 3 above, 116.

¹⁰ For a different view, see E. Cassirer, *The Myth of the State* (New Haven, CT: Princeton University Press, 1946), 3: 'Scientific knowledge and technical mastery of nature daily win new and unprecedented victories. But in man's practical and social life the defeat of rational thought seems to be complete and irrevocable.'

¹¹ U. Galimberti, n 3 above, 211 et seq.

drawing the reader's attention to those elements of EdV which are worth considering for the purposes of this essay. To begin with, it is worth noting that those who are familiar with Galimberti's thought and work will find in EdV all the views and arguments he already set forth in some of his most popular works from the late 1970s to date.¹² Thus, we read that the advent of Christianity brought about a structural (ie, ontological) change of various socio-political and ethical categories of thought and modes of conduct the repercussions of which are profound and continue to both influence and direct present-day modes of societal interaction. More particularly, while Ancient Greek socio-political and ethical thought prioritised collectivist conceptions and experiences of orders over individualist ones, the Christian theological doctrine of salvation, originating with St Paul's preachings,¹³ favours the latter over the former. In this sense, it should be noted that Ancient Greece's preference for the community over the individual was, ultimately, due to historical contingencies. For as set out by Josiah Ober, in Ancient Greek

social and political history, ... city-state politics were characterized by intermittent civil conflict and by incessant social negotiations between an elite few who sought to gain a monopoly over political affairs and a much larger class of sub-elite adult males who sought to retain the privileges of citizenship or to gain that coveted status.¹⁴

Arguably, the best example one may give to show the extent in which the Greek ethical mind and spirit were community-oriented is Aristotle's conception of justice, which regrettably, Galimberti neither discusses nor mentions despite advocating a form of ethics inspired by Aristotle's thought. I am particularly referring to the fact that Aristotle's ethics makes no room for *contractual* – that is, strictly legal or juridical – justice as such; rather, for Aristotle, there is only 'political justice'¹⁵ understood as 'political good',¹⁶ the attainment of which requires 'just laws'.¹⁷ The fact that, for Aristotle, justice is *political* simply means that it is 'irreducible to the promotion of individual interests'.¹⁸ Aristotle's views on ethics and justice not

¹² Such as *Il Tramonto dell'Occidente nella Lettura di Heidegger e Jasper*, *Gli Equivoci dell'Anima*, and *Il Corpo*, all published by Feltrinelli.

¹³ cf L. Siedentop, *Inventing the Individual: The Origins of Western Liberalism* (London: Penguin Books, 2014); J. Neoh, *Law, Love and Freedom: From the Sacred to the Secular* (Cambridge: Cambridge University Press, 2019).

¹⁴ J. Ober, *Political Dissent in Democratic Athens: Intellectual Critics of Popular Rule* (Princeton, NJ: Princeton University Press, 1998), 4.

¹⁵ G. Duke, *Aristotle and Law: The Politics of Nomos* (Cambridge: Cambridge University Press, 2019), 97.

¹⁶ *ibid* 85, 97.

¹⁷ *ibid* 93. See further, L. Siliquini-Cinelli, 'Aristotle, Contract Law, and Justice in Transactions' 5 *Amicus Curiae – The Journal of the Society for Advanced Legal Studies*, 41–63 (2023).

¹⁸ G. Duke, n 15 above, 97. Granted, some (Galimberti included, as we shall see below) might be of the view that we, modern or post-modern subjects, are ultimately incapable of fully appreciating the public *ethos* informing Ancient Greek socio-political thinking and practice. Consider eg Werner Jaeger's remark that '(n)owadays we must find it difficult to imagine how entirely public was the

only corroborate the insight that the whole of Ancient Greece's understanding of, and approach to, ethics was public; they also support the related argument, put forward by Galimberti, that the Greeks assigned to ethical concerns a *primary* role in human affairs. According to Galimberti, the public *êthos* characterising Ancient Greek ethical thinking and practices is clearly evidence by such works as Plato's *Statesman*, *First Alcibiades*, and *Protagoras*¹⁹ – all of which indicate that politics *qua* '*politikè sophía*'²⁰ (and, thus, ethics) is '*basilikè téchne*',²¹ ie, above all other disciplines and subjects.

With the inception of modernity, Galimberti further argues, a cultural change of the first order occurred – namely, the primacy of ethics was replaced by the primacy of an instrumentalist, technology-led (and ultimately, dehumanising, when compared to Ancient Greek thinking)²² conception of human existence and societal relations. This macro-historical shift was prompted by new socio-political, economic, and regulatory sensibilities, drives, and practices, all of which are best epitomised by the new *objectifying*²³ idea of, and approach to, nature and science underpinning Humanistic and Renaissance consciousness, which the Scientific Revolution crystallised. To corroborate his argument on these cultural developments, Galimberti spends considerable efforts on such thinkers as Francis Bacon,²⁴ René Descartes,²⁵ and Immanuel Kant.²⁶

Four things should be noted at this point. First, faithful to its diachronic spirit, Galimberti's macro-historical narrative hinges the move from the Ancient to the modern world and consciousness on the occurrence of a whole series of intermediary, yet crucial, events which on his view profoundly influenced later developments. The inception of Christianity – with its theological (and thus, political) emphasis on the individual over all else – and its medieval reception and elaboration by such figures as St Augustine and St Thomas are prominent (if unoriginal) cases in point.²⁷

Secondly, Galimberti is of the view that despite some noticeable differences,²⁸ the seeds of the Western tradition's modern experience had already been planted

conscience of a Greek'. In *Paideia: The Ideals of Greek Culture, Volume I. Archaic Greece: The Mind of Athens*, trans G. Highet (Oxford: Oxford University Press, (1939, 1945, 1967) 1965), 9. More generally on Ancient Greek ethics, see M. Vegetti, *L'Etica degli Antichi* (Rome-Bari: Editori Laterza, 2023).

¹⁹ U. Galimberti, n 3 above, 64, 110. The order of citation follows Galimberti's. The chronological division of Plato's works is far from being settled. A few parameters are, however, commonly accepted. For a recent and thorough account, see R. Waterfield, *Plato of Athens: A Life in Philosophy* (Oxford: Oxford University Press, 2023), 86 et seq.

²⁰ U. Galimberti, n 3 above, 110, citing *Protagoras*, 321^a–322^a.

²¹ *ibid* 65.

²² See eg *ibid* 254–255.

²³ See eg *ibid* 197 et seq, 288 et seq.

²⁴ *ibid* 22, 149, 158, 182, 201–202.

²⁵ One of Galimberti's favourite quotes is Descartes' '*Nous rendre comme*) *maîtres et possesseurs de la nature*': *ibid* 17, 129, 139, 196.

²⁶ *ibid* 81 et seq.

²⁷ See eg *ibid* 67 et seq, 255–257, 393 et seq.

²⁸ See eg *ibid* 212.

in Ancient Greece with the inception of philosophical speculation and particularly, with the thought of Plato and Aristotle.²⁹

Thirdly, a key-component of the structural shift (from public consciousness to ‘absolute individualism’,³⁰ from ethics to instrumentality, etc) which has characterised the Western tradition’s transition from Ancient to modern times is the ontological transformation underwent by the notion of *tékhnē* (*tecnica* in Italian). The latter is the most important term in EdV and features consistently throughout Galimberti’s work more generally. It is usually rendered in English as ‘art’, ‘skill’, or ‘craft’.³¹ Following Severino and other prominent philosophers such as Friedrich Nietzsche, Weber, and Heidegger,³² Galimberti holds that whereas in Ancient Greek thinking and practices, *tékhnē* was conceived and operationalised as a means to an end with clear operational (ie, epistemic-ontological) limitations,³³ the modern subject has made of technical rationality an end in itself,³⁴ the augmentation of which is the sole (although not easily detectable) purpose characterising its employment in all human endeavours and disciplines, from science to politics, from economics to law.

Lastly, because of this ontological transformation, the Western mind and spirit have ended up replacing *ideological* conceptions of natural, religious, historical, and socio-political order with a *post-ideological* mode of living characterised by ethical indifference, calculating thinking (*rechnende Denken*),³⁵ and technological instrumentality.³⁶ The latter passage signals, amongst other things, the movement from modernity to post-modernity: a dehumanised and technology-led era of ethically meaningless societal existence subjugated to a functionalist logic of usability and exploitation of which technical rationality’s own augmentation is the sole beneficiary.³⁷

2. Galimberti’s Ethical Vision

The developments narrated by Galimberti are, arguably, best epitomised by

²⁹ See eg *ibid* 147 et seq, 157 et seq, 177 et seq, 198 et seq, 391 et seq.

³⁰ *ibid* 21. See also *ibid* 207.

³¹ See eg R. Parry, ‘Episteme and Techne’ *Stanford Encyclopedia of Philosophy*, <https://plato.stanford.edu/entries/episteme-techne/>.

³² All four thinkers are prominent points of reference throughout EdV. The same can be said of other popular works by Galimberti, such as *Il Tramonto dell’Occidente* and *Gli Equivoci dell’Anima*, mentioned above, or *Psiche e Techne: L’Uomo nell’Età della Tecnica*, and *Heidegger e il Nuovo Inizio: Il Pensiero al Tramonto dell’Occidente*, both published by Feltrinelli.

³³ U. Galimberti, n 3 above, 117, 318.

³⁴ *ibid* 23, 116 et seq.

³⁵ *ibid* 27, 342. The notion is Heidegger’s.

³⁶ Galimberti’s claim that, since the late nineteenth century, we have been living in a post-ideological world may seem puzzling to some. Cf K.D. Bracher, *Il Novecento: Secolo delle Ideologie*, trans. E. Grillo (Rome-Bari: Editori Laterza, (1982) 2023).

³⁷ U. Galimberti, n 3 above, 21, 27–28, 139 et seq, 210, 299 et seq. Cf S. Zuboff, *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power* (London: Profile Books, 2019).

Severino's remark, quoted in a key-passage of EdV, that the overriding principle informing technical rationality's unconstrained reach and meaningless disposition of the world is that 'we *ought* to do all that we *can* do'.³⁸ Galimberti employs Severino's remark to stress that despite what might be first thought, technical rationality too is animated by an ethical drive – namely, the drive to pursue its own qualitative and quantitative augmentation. For, Galimberti holds following Severino's decades-long scholarship on the subject, whatever socio-political, economic, medical, or juridical end it may appear to be pursuing at any given time, the *ultimate* purpose of any technological advancement is the enhancement of technical rationality's capabilities. In this sense, to the extent that is captivated by and executes its own logic of augmentation, technical rationality's ethical drive turns out to be *essentially* different from that which characterised Ancient Greek culture.³⁹ Severino's remark, then, well encapsulates Galimberti's take on the working logic of our post-ideological and post-modern condition – the exposure and overcoming of which is EdV's primary objective.

Galimberti's proposal for a passer-by ethics takes the whole fifth and final part of EdV, counting over hundred and twenty pages. Its basic thrust is set out in the book's Introduction. It can be summarised as follows. Its premise is two-fold: first, Galimberti shares the view, most lucidly set forth by Jaspers, Anders, Jonas, and Severino, that, due to its augmentative essence, technical rationality supersedes any 'anthropocentric limit'⁴⁰ humankind may set for it;⁴¹ secondly, he believes that the immanent, subjective, and unique complexities characterising each individual's everyday experiences (or the Husserlian '*Lebenswelt*',⁴² in all its fluid, sublime, and ineffable declensions) escape technical rationality's binary, and thus, linear and senseless, logic of world-disposition.⁴³

Starting from these two premises, Galimberti calls for the establishment of an open-ended, unenthralled ethics which, like a passer-by's wandering, is free from the typical constraints of a pre-arranged travel.⁴⁴ What characterises this type of fluid ethics is an *ontological moulding* which enables it to adapt itself to whatever it encounters along the journey. The operational paradigm of this ethical mode of open-ended existence is Aristotle's notion of *phrónēsis* in *Nicomachean Ethics*, 1112^b2-9, which Galimberti quotes in full.⁴⁵

To illustrate the salient features of his ethical vision, Galimberti employs the Ancient Greek phrase '*katà métron*'⁴⁶ – which in English can be rendered as,

³⁸ U. Galimberti, n 3 above, 24, 140. My translation; emphases in original. See also *ibid* 56, 324-25, 436.

³⁹ See eg *ibid* 24, 141.

⁴⁰ *ibid* 35, 89.

⁴¹ *ibid* 25, 32, 35 et seq, 89, 95, 106, 129, 133.

⁴² *ibid* 187, 200, 282. See also *ibid* 393.

⁴³ See especially *ibid* 391 et seq.

⁴⁴ *ibid* 39f, 359 et seq.

⁴⁵ *ibid* 38.

⁴⁶ *ibid* 14. See also *ibid* 63, 74.

‘according to the appropriate measure’. As this phrase suggests and the explicit reference to Aristotelian *phrónēsis* confirms, Galimberti’s passer-by ethics rejects exploitative masterplans of socio-political interaction. Rather, it embodies a *prudent* (and thus, *virtuous*, in the Aristotelian sense of the term)⁴⁷ calling of human and natural renovation and fulfilment which *bypasses* technical rationality’s functionalist appeal and replaces present-day’s society anthropological and cultural egocentrism⁴⁸ with an other-regarding sentiment of care and respect.⁴⁹ Not only history and time, but also language, politics, the environment, and the market (ie, capitalist, if not neo-liberal, modes of production, distribution, etc) would have to be re-thought under this new humanising, ‘cosmopolitan’,⁵⁰ and ‘biocentric’⁵¹ light.

Crucially for the purposes of our discussion, in order to achieve all this, Galimberti’s passer-by ethics explicitly renounces to all the socio-political categories of thought and juridical relations of order which, on his view, underpin our cultural demise and constrain our ethical potential – including the notions of ‘right’⁵² and ‘state’.⁵³ For as Galimberti himself puts it, his passer-by ethics ‘hinges not on law, but on experience’.⁵⁴

III. ARISTOTLE’S *PHRÓNĒSIS*: INSIGHTS FROM LAW

The complexity and radicality of Galimberti’s ethical proposal call for serious scrutiny. Specifically, lawyers should pay close attention to Galimberti’s aim to overcome the domain of the legal as we have come to know and experience it via recourse to an ethical vision of human existence and relations centred around a prudential and circumstantial mode of living which makes of Aristotelian *phrónēsis* its guiding light. For if there is one thing that Western law – or more generally, Western jurisprudential consciousness and related modes of ordering, as the quote from the *Digest* which opens this article clearly indicates – revolves around is precisely the (com-)measured and (com-)measuring normative approach to and disposition of life which Aristotelian *phrónēsis* epitomises.⁵⁵ In this sense, an

⁴⁷ See eg *Nicomachean Ethics*, 1106^b36–1107^a3.

⁴⁸ U. Galimberti, n 3 above, 439.

⁴⁹ *ibid* 345 et seq.

⁵⁰ *ibid* 420 et seq.

⁵¹ *ibid* 338.

See also *ibid* 413 et seq, 438 et seq.

⁵² *ibid* 43, 357 et seq.

⁵³ *ibid* 423 et seq, 439–440.

⁵⁴ *ibid* 43. See also *ibid* 440. This part of Galimberti’s proposal is substantially in line with those which have been put forward by other Italian philosophers in recent years, particularly by Giorgio Agamben. See eg Galimberti’s reference to St Francis’ communitarian and environmentally responsible nomadism; *ibid* 57, 419, 438.

⁵⁵ I discuss this in detail in L. Siliquini-Cinelli, *Scientia Iuris: Knowledge and Experience in Legal Education and Practice from the Late Roman Republic to Artificial Intelligence* (Cham:

analysis of the role played by Aristotelian *phrónēsis* in the legal dimension suggests that Galimberti's passer-by ethics is neither theoretically sound nor practically feasible, for it is affected by a substantial (ie, ontological) inconsistency which, ultimately, undermines its very foundations and renders it incapable of achieving its purpose.

To appreciate why that is the case, let us consider that as showed by the other quote which opens this article, for Aristotle, law (*nomos*) is *lógos* derived from *phrónēsis* and *nous*.⁵⁶ Both *phrónēsis* and *nous* are two pivotal notions in Aristotle's ethical and onto-metaphysical thought. The former can be rendered in English as 'practical wisdom', 'prudence', or to employ terminology more familiar to lawyers, 'practical rationality'; the latter can be translated as 'intellect' or 'insight'. More broadly in Aristotle's philosophy, *nous* refers to noetic, or intellectual,⁵⁷ knowledge – that is to say, to the scientific non-demonstrative knowledge of the premises from which the apodictic syllogism of demonstrative scientific knowledge proceeds.⁵⁸

Aristotle's take on *nous* is notoriously intricate. For the purposes of our discussion, it will suffice to note the following:

(i) noetic knowledge is one of the five intellectual virtues through which the mind achieves truth;⁵⁹

(ii) the other intellectual virtues are *epistēmē* (scientific knowledge as such), *sophía* (theoretical, philosophical wisdom), *phrónēsis*, and *téchhnē*;

(iii) *nous* 'is the state we are in when we know first principles, not the faculty by which we get to know them';⁶⁰

(iv) when combined with *epistēmē*, it is *sophía*;⁶¹

(v) it is 'human intelligence at its most fundamental level of operation',⁶² 'the activity of reason itself';⁶³

(vi) it originates in perception,⁶⁴ 'our lowliest cognitive ability';⁶⁵

(vii) however, and finally, it ought not be confused with *phrónēsis*, 'which is concerned with action',⁶⁶ deals with *both* universals and particulars,⁶⁷ requires

Springer, 2024; 'Ius Gentium: Comparative Perspectives on Law and Justice', 112).

⁵⁶ See also *Politics*, 1287^a32.

⁵⁷ *Post. Anal.*, I 72^b18–25.

⁵⁸ See further, L. Siliquini-Cinelli, n 55 above, Chs 2, 4.

⁵⁹ *Nicomachean Ethics*, 1139^b15–18.

⁶⁰ D. Bronstein, *Aristotle on Knowledge and Learning. The Posterior Analytics* (Oxford: Oxford University Press, 2016), 229. Cf *Nicomachean Ethics*, 1141^a5–7.

⁶¹ *Nicomachean Ethics*, 1141^a19–20, 1141^b3.

⁶² Louis F. Groarke, 'Aristotle: Logic', in *Internet Encyclopedia of Philosophy*, Sect 13, available at <https://www.iep.utm.edu/aris-log/#H12> (last visited 30 May 2025). Cf Duke, n 15 above, 20, 21, and *Post. Anal.*, II 100^b8.

⁶³ *ibid* Sect 13. See eg *Nicomachean Ethics*, 1141^a5–7, 1177^a22–^b4.

⁶⁴ *Post. Anal.*, II 99^b35; *Nicomachean Ethics*, 1098^b1–4. Cf G. Colli, *Filosofia dell'Espressione* (Milan: Adelphi, 1969), 216.

⁶⁵ D. Bronstein, n 60 above, 237. See also *ibid* 8–10, 78–80.

⁶⁶ *Nicomachean Ethics*, 1141^b21.

⁶⁷ *Nicomachean Ethics*, 1141^b7 et seq, 1142^a14, 1143^a34.

experience,⁶⁸ and originates in a different type of perception, ie ‘not the perception of qualities peculiar to the [special sense that *nous* is], but that by which we get that the figure before us is a triangle’.⁶⁹

The specific epistemic-ontological value of noetic knowledge as immediate, perception-based (scientific) knowledge is clear: after years of controversies starting with the pre-Socratic philosophers and in particular, with Parmenides, it finally made it possible to fully merge ‘experience ... (with) reason’,⁷⁰ or the senses with the intellect.⁷¹ To make sense of Aristotle’s conception of law as comprising both *nous* and *phrónēsis* we need to set it against this philosophical background, for it serves to highlight the simultaneous universal and contextual nature of regulatory endeavours. Thus, discussing Aristotle’s definition of law,⁷² George Duke observes that *qua* ‘practical sciences’,⁷³ ‘political and legislative expertise ... feature both a universalist [*nous*] and a particularist [*phrónēsis*] “experience-based knowledge” of how to apply that universalist component’.⁷⁴ Accordingly, Duke concludes, ‘*nomos* is never regarded in complete abstraction from practical considerations’.⁷⁵

The value of Aristotle’s take on *nomos*, then, is that, if correctly analysed,⁷⁶ it enables one to uncover and situate within its proper operational context the double register – ie, theoretical and practical, rational and experiential – through which law operates *qua* an intellectual means for social ordering. Specifically, Aristotle’s conception of *nomos* sheds light on the fact that law normatively interprets (ie, assigns intelligible meaning to) life through a binary epistemic-ontological (de)coding which revolves around such rational-conceptual categories of identity and difference as ‘legal *vs* illegal’, ‘justified *vs* justified’, ‘reasonable *vs* unreasonable’, ‘fair *vs* unfair’, and so forth.⁷⁷ However, for law to run *through* life effectively, it cannot confine itself within the theoretical plane; it must, instead, concretise⁷⁸ its regulatory reach

⁶⁸ *Nicomachean Ethics*, 1142^a15.

⁶⁹ *Nicomachean Ethics*, 1142^a28.

⁷⁰ E. Severino, *La Filosofia dai Greci al Nostro Tempo. La Filosofia Antica e Medioevale* (Milan: BUR (1996) 2010), 158. See also *ibid* 156. In similar terms, G. Reale, ‘Introduzione’, in Aristotle, *Metafisica* (Firenze-Milano: Giunti Editore-Bompiani, (2000) 2017), XIX. Cf J. Longeway (2005) ‘Medieval Theories of Demonstration’ *Stanford Encyclopedia of Philosophy*, Sect 1, <https://plato.stanford.edu/entries/demonstration-medieval/>: ‘Aristotle does not lay down tight rules for discovering first principles, though he points out that one needs a good deal of experience of the subject, and that if we possess the first principles they will explain why the subject has the attributes it does.’

⁷¹ U. Galimberti, *Gli Equivoci dell’Anima* (Milano: Feltrinelli, 2021), 120–121.

⁷² G. Duke, n 15 above, 10, 146.

⁷³ *ibid* 9.

⁷⁴ *ibid* 9–10.

⁷⁵ *ibid* 6; see also *ibid* 14, 21–26, Ch 2, 67, 111, 146–148. Cf A. MacIntyre, *A Short History of Ethics* (London: Routledge, (1967) 2002), 71.

⁷⁶ L. Siliquini-Cinelli, n 17 above.

⁷⁷ *Dig.*, 1.1.1.1, 1.1.10; *De legibus*, 2.13. In secondary literature, see H. Kelsen, *Pure Theory of Law*, 2nd ed, trans. M. Knight (Berkeley, Los Angeles, CA, and London: University of California Press, (1960) 1967), 4.

⁷⁸ I draw from H. Kelsen, n 76 above, 237, where Kelsen speaks of law’s ‘individualization

by turning itself into a practice. Not incidentally, commenting on this normative process in her capacity as both a scholar and a judge, Jeanne Gaakeer has affirmed that 'theory and practice are the warp and woof of law's fabric and social order or the *ordo ordinans*'.⁷⁹ Accordingly, it is the blending of these two components (the theoretical and the practical, the cognitive and technical, the notional and the performative, 'the general (abstract) (and) the individual (concrete)',⁸⁰ the ethereal and the situational)⁸¹ that renders law's boundaries (or limits) a matter of language (ie, communication and interpretation) and therefore, of both (legal) epistemology and ontology.⁸²

These brief considerations lead to conclude that using, as Galimberti does, Aristotle's conception of *phrónēsis* to advocate a form of ethics capable of, first, voiding the legal domain of its authoritarian prerogatives and secondly, replacing juridical relations of order as we have come to know and experience them is neither theoretically sound nor practically feasible. For *qua* an intellectual means for social ordering, law entirely revolves around, and is dependent upon, the cognition-dependent *prudentia* of legal reasoning and argumentation taught by teachers, learned by students, practised by professionals, and culminating in the contextual pointing of *ius*: *iuris-dictio*.⁸³ By overlooking law's embeddedness with *phrónēsis*, then, Galimberti's proposal finds itself caught in an ontological paradox – namely, that to do away with law, it would also have, inevitably, to do away with the very thing that it takes as its operational paradigm: ie, the prudential type of reasoning which Aristotelian *phrónēsis* epitomises.⁸⁴

and concretization'.

⁷⁹ J. Gaakeer, *Judging from Experience. Law, Praxis, Humanities* (Edinburgh: Edinburgh University Press, 2019), 98.

⁸⁰ H. Kelsen, n 76 above, 237.

⁸¹ Or, to return to Aristotle, the scientific (*tò epistēmōnikón*, to which *epistēmē*, ie, scientific knowledge, is related) and the calculating (*tò logistikón*, to which *phrónēsis*, ie, practical wisdom, prudence, or practical rationality, is related): *Nicomachean Ethics*, 1139^a3 et seq.

⁸² L. Siliquini-Cinelli, n 55 above. See also L. Siliquini-Cinelli, 'What is Legal Reasoning?' *International Journal for the Semiotic of Law / Revue internationale de Sémiotique juridique* (2024) online first <https://doi.org/10.1007/s11196-024-10141-3>.

⁸³ As Émile Benveniste has observed in his semantic analysis of '*ius*': 'What is constitutive of "law" is not doing it, but always pronouncing it'; in *Dictionary of Indo-European Concepts and Society*, trans. E. Palmer (Chicago, IL: HAU Books, (1969) 2019), 398. Emphasis in original. See further *ibid*, 391–404, 412; and M. Cacciari, 'Destino di Dike', in Id and N. Irti eds, *Elogio del Diritto* (Milano: La Nave di Teseo, 2019), 65–111, 67–82: The '*iu-dex*', as *Dikē* did in Ancient Greek culture, shows ('in-dicates') justice (*Thémis*). For ultimately, as Lord Sumption put it, '[a] lawyer's job is to say what the law is'; in *Trials of the State: Law and the Decline of Politics* (London: Profile Books, 2019), IX. Cf *De legibus*, 3.2.

⁸⁴ Galimberti's ethical proposal is also affected by other, and to some extent, more substantial, philosophical shortcomings and inconsistencies, the discussion of which would take us outside the remit of this contribution. Two are, however, worth mentioning briefly. I refer, first, to the educational role that, in Aristotle's ethical-political philosophy, regulatory provisions may exert in the promotion and achievement of human flourishing (which explains why, for Aristotle, there cannot be ethics without politics, as the end of the *Nicomachean Ethics* makes it clear); and, secondly, to the problematic relationship, in Aristotle, between *phrónēsis* and *sophía*, which impinges on the analytical coherence

Even a cursory look at the specialistic literature on the subject corroborates the soundness of these reflections. For instance, in his landmark study of legal reasoning, Giovanni Sartor shows that practical rationality (ie, Aristotelian *phrónēsis*) is an indispensable feature of law's operations. 'Legal reasoning', Sartor affirms in the Introduction to his 800-page work on the subject,

[is] an application of a broader human competence, that is, practical cognition or practical rationality, namely, the ability of processing information in order to come to appropriate determinations'.⁸⁵

Looking outside Italy or beyond Italian legal scholarship as the call for this Special Issue prompts us to, countless accounts could be cited to show that practical rationality (ie, Aristotelian *phrónēsis*) defines law's operativity in Common law jurisdictions and in the Common legal culture as well. Consider, for instance, A. H. Campbell's opening statement to his 1942 account of the term 'jurisprudence' that '*iuris-prudentia* ... is skill in the law, a branch, as Aristotle would say, of practical and not of theoretical wisdom'.⁸⁶ Alternatively, consider the role that practical rationality plays in the Common law theory of legal reasoning. According to this theory, law can only do its job if it is mediated by the lawyer's learned expertise and prudent judgment. Specifically, this theory identifies the reason of the law with the 'artificial perfection of Reason' acquired by long study, observation, and experience'.⁸⁷ Stated otherwise, the reason of the law (ie, its intelligible meaning, referred to earlier) coincides with and can only be ascertained and applied through the artificial reason which characterises the Common lawyer's intellectual endeavours. What makes the Common lawyer's reason 'artificial' is both its technical, specialistic nature and its skilful (ie knowledgeable, prudent, 'compassionate',⁸⁸

of his ethics. Regrettably, EdV addresses neither aspect. This shortcoming significantly undermines the analytical bearing of Galimberti's proposal. For insightful analyses of these themes, see G. Duke, n 15 above, 26 et seq; M. Vegetti, n 18 above, 194–195, 202 et seq; E. Berti, *In Principio era la Meraviglia: Le Grandi Questioni della Filosofia Antica* (Rome-Bari: Editori Laterza (2008) 2022), 266 et seq.

⁸⁵ G. Sartor, *Legal Reasoning. A Cognitive Approach to the Law*, in E. Pattaro ed, *A Treatise of Legal Philosophy and General Jurisprudence*, 5 (Cham: Springer, (2005) 2007), XXV.

⁸⁶ A.H. Campbell, 'A Note on the Word Jurisprudence' 58 *Law Quarterly Review* 334–339, 334 (1942). More recently, cf R. Bodei, *Dominio e Sottomissione: Schiavi, Animali, Macchine, Intelligenza Artificiale* (Bologna: il Mulino, 2019), 83.

⁸⁷ G.J. Postema, *Bentham and the Common Law Tradition*, 2nd ed (Oxford: Oxford University Press, (1989) 2019), 46, 60. Sir Edward Coke's is a famous statement, regularly quoted in historical accounts of the Common law: see eg D.R. Kelley, *The Human Measure. Social Thought in the Western Legal Tradition* (Cambridge, MA: Harvard University Press, 1990), 181; H.J. Berman, *Law and Revolution II. The Impact of the Protestant Reformations on the Western Legal Tradition* (Cambridge, MA: Belknap Press of Harvard University Press, 2003), 242; M. Lobban, *A History of the Philosophy of Law in The Common Law World, 1600–1900*, in E. Pattaro ed, *A Treatise of Legal Philosophy and General Jurisprudence*, Vol. 8 (Cham: Springer, 2007), 35. Lord Doderidge argued similarly, claiming that the law is in the expert 'mind' of lawyers: see M. Lobban, 'Common Law and Common Sense' 21 *Ratio Juris*, 541–546, 542–543 (2008).

⁸⁸ Lady Rose, 'What Makes a Good Judge?' *The Barnard's Inn Reading*, 16 June 2022, para 37,

and 'creative'⁸⁹) deployment. This is why, ultimately, artificial reason is 'practical reason'⁹⁰ in the Aristotelian sense of the term (*phrónēsis*) as well as why the Common lawyer is better understood as the Aristotelian '*phrónimos*', (that is to say, as) the excellent individual who fully manifests practical reason, has the correct ends and ... employs the correct means for the right reasons'.⁹¹ The Aristotelian substratum of the Common law theory is clearly discernible in the courts' approach to damages in contract and tort, the reasonable measure *par excellence*. Granted, as William Lucy has observed, '(r)easonableness requirements are the principal means by which the law treats those before it as abstract beings rather than as the beings they actually are'.⁹² This is because '[l]ack of interest in the specific capacities of particular individuals is ... the essence of reasonable standards'.⁹³ While Lucy is right about this, it cannot be doubted that reasonable foreseeability (some would say contemplation) and care, two primary epistemic-ontological constructs within juridical analysis, are always ascertained contextually.⁹⁴

IV. CONCLUSION

According to Giorgio Agamben, another internationally renowned Italian philosopher, ethics and morality are intrinsically different and mutually exclusive.⁹⁵ If we agree with Agamben, then it follows that to the extent that it aims to counter our cultural oblivion through an *ethical* calling of renovation and fulfilment, EdV cannot be characterised as a work in *moral* philosophy. Yet, there are good reasons to disagree with Agamben and conclude otherwise. Consider, for instance, the famous 1929 Davos University Conference. Its theme, 'What is a human being?', is said to be the primary (ie most fundamental and always recurring) metaphysical

citing the 'Framework of Judicial Abilities and Qualities', available at <https://tinyurl.com/y7uajew2> (last visited 30 May 2025).

⁸⁹ Lord Reed, 'Time Present and Time Past: Legal Development and Legal Tradition in the Common Law', The Neill Law Lecture 2022, 22, available at <https://tinyurl.com/37jxrpkp> (last visited 30 May 2025).

⁹⁰ G.J. Postema, n 87 above, 32, 35, 68, fn 56. See also Id, *Matthew Hale: On the Law of Nature, Reason, and Common Law. Selected Jurisprudential Writings* (Oxford: Oxford University Press, 2017), xl–xlix.

⁹¹ J. Ober, *The Greeks and the Rational: The Discovery of Practical Reason* (Oakland, CA: University of California Press, 2022), 380.

⁹² W. Lucy, *Law's Judgment* (Oxford: Hart Publishing, 2017), 7. Cf O. Ben-Dor, *Thinking about Law. In Silence with Heidegger* (Oxford: Hart Publishing, 2007), 3, 19.

⁹³ *ibid* 8.

⁹⁴ I discuss this in detail in L. Siliquini-Cinelli, n 55 above, Chs 2, 6.

⁹⁵ See eg G. Agamben, *The Highest Poverty: Monastic Rules and Form-of-Life*, trans. A. Kotso (Stanford, CA: Stanford University Press, (2011) 2013); Id, *Opus Dei: An Archaeology of Duty*, trans. A. Kotso (Stanford, CA: Stanford University Press, (2012) 2013); Id, *The Use of Bodies*, trans. A. Kotso (Stanford, CA: Stanford University Press, (2014) 2015); Id, *Pulcinella: Or Entertainment for Children*, 2nd ed, trans. by K. Attell (Chicago, IL: The University of Chicago Press, (2015) 2018).

question. ‘The question’, Wolfram Eilenberger has recently reminded us in his account of the Davos proceedings, ‘was a leitmotif in the philosophy of Immanuel Kant’.⁹⁶ For, he continues, ‘Kant’s entire corpus of thought proceeds from an observation as simple as it is irrefutable: Humans are beings who ask themselves questions that they are ultimately unable to answer’.⁹⁷ The fact that metaphysical questions cannot be answered once and for all ought not be seen as a shortcoming, however. For it turns them into an ever-lasting navigational tool, or *moral* compass:

‘(t)hey guide us in our efforts to bring as much as possible into experience (cognition), to act with as much freedom and determination as possible (ethics), to prove as worthy as possible of possible immortality (religion)’.⁹⁸

It is ‘(i)n this context that’, Eilenberger concludes, ‘Kant speaks of a *regulative* or a leading function of metaphysical inquiry’.⁹⁹

If ‘what is a human being’ is *the* metaphysical interrogative par excellence, and if in attempting to answer it, we embark upon *moral reasoning* as Eilenberger holds, then it follows that Galimberti’s EdV is, *pace* Agambenian conceptualisations, both a metaphysical and moral work. For, as seen, Galimberti’s analysis and ethical proposal are, ultimately, stirred by the question of what human beings are. This much is clear from Galimberti’s focus on our biological and anthropological constraints and the related, existential need to overcome these by resorting to technical rationality’s potential.

The metaphysical and moral nature of Galimberti’s reflections makes it particularly fitting to conclude this essay with a reference to Iris Murdoch’s masterpiece, *Metaphysics as a Guide to Morals* – a work which already in its title points to the moral connotations of metaphysical inquiries. For Murdoch begins her appraisal of metaphysics by noting that ‘philosophers ... intend to persuade us of something’.¹⁰⁰ This attitude, Murdoch goes on, is what makes ‘(p)hilosophy ... to some degree iconoclastic’.¹⁰¹ Galimberti’s critical stance against what, following Murdoch with the due caution, might be termed our ‘present experience’¹⁰² well testifies to the iconoclastic nature of philosophical reflections. For Galimberti does not seek to remedy to our existential demise from within the cultural frame of current categories of thought and modes of conduct; rather, his cure points to a new vision of *ethical groundlessness*. Thus, EdV ought neither be overlooked nor dismissed; in fact, as this article has argued, its iconoclastic *ethos* deserves serious

⁹⁶ W. Eilenberger, *Time of the Magicians: The Great Decade of Philosophy 1919–1929*, trans. by S. Whiteside (London: Penguin Books, (2018) 2022), 12.

⁹⁷ *ibid* 12.

⁹⁸ *ibid* 12.

⁹⁹ *ibid* 12–13. Emphasis in original.

¹⁰⁰ I. Murdoch, *Metaphysics as a Guide to Morals* (London: Vintage, 1992), 2.

¹⁰¹ *ibid* 2.

¹⁰² *ibid* 186.

attention and scrutiny – at least to the extent that it ventures into a traumatic,¹⁰³ perilous journey, that of metaphysical wondering, which ‘resists final resolution’.¹⁰⁴

That Galimberti's thought calls for careful examination is particularly evident if we are to critically assess, as the call for this 10th Anniversary Special Issue encourages us to, the role that the Italian cultural tradition has played and might play in the ‘infinite and plural process of knowledge production’¹⁰⁵ characterising an increasingly contested world which is continuously exposed and subjected to ‘the danger of paranoid relationships with reality and human life’.¹⁰⁶ As seen, for Galimberti, our paranoid relationship with the world takes the form of an instrumentalist, technology-led, meaningless, and ultimately, dehumanising mode of socio-political existence. So ingrained this *draining* form of living is in our post-ideological and post-modern societal consciousness and practices that, Galimberti holds, its ethical overcoming requires a disruptive yet calm gesture of cultural rebellion – namely, a *prudent* effort of human and natural renovation and fulfilment which *bypasses* technical rationality's functionalist appeal and replaces present-day society's anthropological and cultural egocentrism with an other-regarding sentiment of care and respect. In particular, according to Galimberti, moving from solipsistic existentialism to a self-less form of societal existence in which humans only do what is ethically appropriate in each given instance requires the abandonment of all the socio-political categories of thought and juridical relations of order which undergird our cultural oblivion.

Insightful and fascinating though his proposal is, Galimberti's passer-by ethics is neither theoretically sound nor practically feasible – or so this article has argued. For, as seen, despite aiming to dispense of law as both a regulatory apparatus and phenomenon, it is a form of ethics that makes of the very thing which characterises the operativity of Western law and its jurisprudential consciousness – ie, Aristotelian *phrónēsis* – its driving force. As such, it is affected by a substantial (ie, ontological) inconsistency which, ultimately, undermines its very foundations and renders it incapable of achieving its purpose.

¹⁰³ A term I employ in its etymological sense to point to the sublimity and marvellous (*thaumastón*) potency out of which philosophical reflection originated. Cf. *Metaphysics*, 982^b14, 983^a14. In secondary literature, see E. Severino, *Il Giogo. Alle Origini della Ragione: Eschilo* (Milan: Adelphi 1989), 349 ff.

¹⁰⁴ M.-J. Rubenstein, *Strange Wonder: The Closure of Metaphysics and the Opening of Awe* (New York, NY: Columbia University Press, 2008), 24.

¹⁰⁵ Anniversary call.

¹⁰⁶ *ibid*