

**Good men aren't enough**  
**The dialectics<sup>1</sup> between the law and the practical virtue in the**  
**Aristotelian thought: the philosophy between normative and**  
**critical approaches**

Marcella Furtado de Magalhães Gomes<sup>2</sup>

**Abstract:** The discussion between these two great streams of the Western political thought, normative and critical philosophies, can't forget its political-philosophical Greek root in the Aristotelian thought. His philosophy defends a path that doesn't adhere to extremes, but focuses on allying logically the ontic purpose and the unforeseeability of the results, which are only likely.

In this paper, we address the dialectical movement between the ethical awareness of the individual and the political and legal organization of the excellent *polis*, in the thought of Aristotle. The man can only fulfill his end as a human being by internalising the heteronomous good expressed in the ethically constituted *nomos* and by the conscious exteriorization of the good in his own *praxis*. In short, the man may only become complete while an ethical being as he lives in an ethical community, i.e., a politically and legally organized community.

**Keywords:** Ethical and Political Philosophy – Aristotle – State, Law and Ethical Virtue.

## 1. INTRODUCTION

The Aristotelian ethical and political thought, even though finalistic and thus liable to be characterized as normative for the contemporary philosophy, has the peculiarity of recognizing its boundaries and limits, as it will be discussed below. According to this author, life in the righteous *polis* is the only possible way to carry out their essences and therefore to be what they should be.

However, the life path that the inductive observation of human behavior points out is only a probable path. It is not a necessary and progressive process that historically reveals itself to reason and because of reason. It is not a necessary path, because there is no absolute guarantee that the consciousness of virtue is formed in the free ethical subject, because man is always tensioned between desire and reason. Even though not a necessary path, this path is the most probable way

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<sup>1</sup>In this article we mean by dialectical the way of explaining the becoming, the process of being what it is in essence of the human being, but without finding a causal or necessary link between the stages because this is the field of practical reason. We state that in the Aristotelian thought the fulfillment of the purpose of the human beings is a dialectical process of interaction between the law – the objective and social reason – and the virtue – the individual conscience. In this movement, there are continually exteriorization of social standards that contain abstract concepts of order and freedom and a progressive conscious and individual interiorization of these standards that allows each one of us to criticize them and improve them.

<sup>2</sup> Professor of Philosophy of Law in the Faculty of Law of the Universidade Federal de Minas Gerais.

to create virtue, and thus, the most probable mean for men to become precisely what men already are in essence and the most probable mean to live a good life both individually and collectively.

We can conclude that Aristotle is not isolated inside a normative castle. He does not lose sight of the reality that unfolds beyond it, even though he points out the guidelines that can lead to self-realization of men in their existences. His thought keeps a critical perspective regarding ethical-political human societies, to the extent that it argues that the guidelines of those societies are not in themselves necessary, as they can't guarantee the occurrence of the result so desired, the *eudaimonia*.

We, therefore, believe that a discussion that counteracts these two great streams of Western political thought, the normative and critical philosophies, can't forget its political-philosophical Greek root in the Aristotelian thought. His philosophy defends a path that doesn't adhere to extremes, but focuses on aligning logically the ontic purpose and the unforeseeability of the results, which are only likely.

In this paper, we address the dialectical movement between the ethical awareness of the individual and the political and legal organization of the excellent *polis*, in the thought of Aristotle. The man can only fulfill his end as a human being by internalising the heteronomous good expressed in the ethically constituted *nomos* and by the conscious exteriorization of the good in his own *praxis*. In short, men may only become complete while ethical beings as they live in ethical communities, i.e., in politically and legally organized communities. In Aristotle's thought, there's no doubt that reason is capable to grasp and to express this movement. On the other hand, reason knows it has boundaries when effectively intends to determine the choice to the ethical purposes it identifies.

## 2. ETHICS, POLITICS AND LAW

To Aristotle, human existence has as its end the actualization of the specific work that defines us as human beings. The peculiar function of man is rationality. To live is to be in motion and our work is the activity according to reason. We must add that as the flute player, we can simply perform our work or we can exercise it well. The excellence of the rational activity is the purpose and the *ratio essendi* of every human being (*Nicomachean Ethics*, I, 1, 1094 a 1-16; I, 2, 1094 a 18-22; I, 2, 1094b, 7-10).

Rationality operates by capturing the immanent intelligible form in the sensible, contained in the sensation or *phantasy*, which allows us to identify, explain and transform the entities. However, the cognitive performance is only possible when reason curbs appetite. Thus, the apprehension of the intelligible for us also means the possibility to identify, from the apprehension of the surroundings, a course of action that presents consequences more enjoyable or more appropriate to the activity of reason. However, the excellence of reason, according to Aristotle, is not achievable by the individual man.

Our reason is *logos enbuloi*. Its activity can't be and is not separable from the body. It is conditioned by the material world on which it operates and the material world is its limit. The sensitive organs can't simultaneously receive all possible internal and external sensations. The existent is composed of form and matter, and matter is subject to movement, is subject to the continuous updating of its potentiality. Because of that, the material world is in constant state of corruption. Therefore, reason is not able to predict or anticipate all contingencies which govern its activity while attached in the matter, i.e., while in constant transformation. Each singularity lived provides more data to the next experience, but not the wholeness of the information which would enable reason to select the perfect or final option.

Furthermore, reason is also subject to movement, even though not to the same extent and degree that the body is. Our reason is not the same throughout our existence. It matures itself and degenerates itself. It is in itself *apatheia*, but the *logos enbuloi* is affected by the matter, i.e., the reason in itself doesn't corrupt or change, but the compound that acts rationally corrupts itself and transforms itself (*On the Soul*, I, 4, 408 b 18-30). Man becomes by the passing time more fit to reasoning because he exercises its reasoning, because everyday experience increases his database, i.e., increases the amount of sensations and sensitive images stored and from which the intellect draws the intelligible. In addition to that, the reason in this compound seeks the intelligible immanent to the sensible corruption not only of the compound itself, but in the reality itself, i.e., the reason seeks the permanent in change. Thus, even if reason itself does not change, reason in the matter is perfected by its own activity. As Aristotle says: «[...] intellectual excellence in the main owes both its birth and its growth to teaching (for which reason it requires experience and time)» (*Nicomachean Ethics*, II, 1, 1103 a 15).

There is more to consider. The body is the instrument by which reason acts. As composed of matter, the body matures and degenerates. In our childhood we are not capable of the same degree of judgment that we have in our adult lives. Likewise, our memory and understanding are not the same in our old age. In old age, deterioration of the body begins to interfere with our ability to collect the sensitive shape, to reserve it and access it, which undermines the role of reason in the capture of the intelligible.

In our childhood the amount of experiences lived is minimal and thus the possibility of reason to identify and to anticipate a broad scenario of consequences is also reduced. Therefore, our choices do not represent, albeit rationally pointed out, the excellence of the rational activity. In general, we say that children hardly act rationally and, at least in most cases, they act without the full awareness of the consequences of their actions. Owners of a reason so feeble, they seem to succumb to the sensible wishes and move like animals, driven by external forces.

The desire for pleasure is limitless and opposes itself to any form of restriction. Rationality is limit because it's shape, i.e., determination, individualization of matter, of the shapeless, of the indeterminate (*Nicomachean Ethics*, I, 13, 1102 b 23-31). In each individual, a battle between the limited and the boundless, between reason and irrational is waged having as its purpose the supreme end, i.e.,

the self-realization of man. This self-realization is the achievement of what we should be (and are in potentiality) since the beginning: outstanding rational activity. However, if the reason operates over matter and, as such, is 'weakened' by the movement of matter, it fails to place the desire in the right measure. In this case reason requires aid. This aid is provided by the ethical habit formed in the subject by the *paideia*, that is, the rectification of the *appetite* towards the end rationally fixed (*Nicomachean Ethics*, VI, 1142b 15-35; *Magna Moralia*, I, 6, 1185b 38 – 1186 2).

The relationship between rational beings exponentially increases the unique experiences sensitively gathered and rationally interpreted. The sharing between subjects of countless singularities is what allows reason to leap from its former position as a mere servant of bestiality to the place of threshold imposed on the non-limit. Although rationality major duty is the capture of the intelligible form immersed in the matter, in the individual subject it is tied to the ephemerality and to the process of corruption-and-generation of the body and of the material world.

Only in front of another subject who makes the same tasks and communicates his work is reason capable of raising itself to the rank of master of the body. The work communicated is the result of the rational activity of the other subject. It works as a portal which connects us to a myriad of experiences, inductions and generalizations and which allows us to start our own walking now equipped with all that information. Thus, we will recognize objects not seen because they were rationally learned from the experiences of others. We shall be able to anticipate the consequences not experienced by us, but that we memorized from the communication with others.

There is more. The contact with other rational beings can arouse in us the reason that was overshadowed by instinct and necessity. Reason then seeks to act in the achievement of its own goals and realizes that only by controlling the desire it will be able to accomplish its purposes. Thus, that reason which first was an instrument of the instinct becomes a means to itself, i.e., starts to pursue its own activities and accomplishments. Reason is now competing with the *appetite* for the fulfillment of its own goals.

However, appetite is opposed to the rational imposition and obeys it only when conditioned to want what reason determines as correct. The rectification of appetite is the work of the community which guides the individual through education to act according its rules. Thus, *eudaimonia* will only be achieved by men raised by a good community, i.e., a community which has rules in agreement with what is right in accordance to reason (Simpson, 1998, p. 2-3). The acquisition of the virtuous habit requires others, who have the power to convince us, to transmit to us what is good and to constrain us to practice it. To Aristotle, the political community is the one which holds this power and the law is its instrument of persuasion and coercion in the achievement of this goal (*Nicomachean Ethics*, X, 9, 1179a 33 – 1181b 15).

The law is the main instrument of *paideia* insofar as it orders the practice of all virtues and prohibits all vices. So conceived, it is universal justice, i.e., it is the result of the ongoing process of reflection and of collective decision of the reason

about the good. It is what promotes the conscious evaluation of the *ethos* and what universally imposes it, through the apparatus of state power. It pursues social order and harmony, and as such, promotes the formation of the ethical habit in the individuals, which is the essential way to the acquisition of the ethical virtue. This result does not depend on any arbitrary law, but on the righteous law, that law which was drafted by the legitimate rulers of the *polis* in accordance to reason and considering the promotion of the ethical virtue (Simpson, 1998, p. 4-5). A righteous law is the one that distributes the goods of the city among its members in the proportion of their merits, promoting equality between them (*Nicomachean Ethics*, V, 1, 1129 b 26 – 35).

We must add that it is not enough for the law to be fair, but it is necessary the proper application of the law to the relations and disputes of men. When someone breaks the equality established by the distribution of goods, acquiring in the everyday negotiations and exchanges more than he should acquire, intentionally or not, the political apparatus of the community must intervene in this relationship and return the parties to equilibrium, to the *status quo ante*. The good *polis* is the one that applies law fairly. It is up to the rulers, thus, the development of righteous laws and the fair application of the law to the solution of the private conflicts, so that the *polis* is indeed able to provide the conditions for self-realization to its members (Kraut, 2002, p. 378-379).

### 3. DISCRETIONARY POWER AND LAW

However, Aristotle knows that it is possible that the laws do not meet these requirements. First, because the one who creates them can be wrong as to what is the benefit of citizens, even if he is able to create suitable rules for the promotion of the good that he had conceived as good. Second, because those who create the laws, right or wrong about the welfare of men, may be unable to implement in the laws this idea of good. Thus, evaluation of justice in a city should be assessed in relation both to the design of good that it has, and in its ability to perpetuate such ideals in the laws.

Even the righteous are not exempt from mistakes (*Politics*, III, 16, 1287a 30-31). Human reason is not omniscient and can't anticipate all the circumstances in which one act is circumscribed. Besides that, excellence is not achieved in one action, but throughout the whole existence, and during this journey, even the most virtuous of men may give in to the pressure of his own desires. On the other hand, even if the law is based on the work of sentient beings, law itself does not have passions (*Politics*, III, 15, 1286a 19). When the law is not the result of selfish desire as in tyrannies, it is not the result of the will of a single man, but represents the conscious reflection of an entire community about what we should or should not do. In regimes in which law prevails over the egoistic will of the rulers, it is usually the representation of the repeated and rationalized *praxis* of a community. Thus, we believe that for the Stagirite the guarantee of a good *polis*, or of righteous laws and fair application of these laws, can be attained by all legal political regimes, i.e., for

all political systems in which the egoistic will of rulers is submitted to the law.<sup>3</sup> All legal systems are suitable to the formation of the virtue of its citizens, although there is some hierarchy amongst them in the achievement of such purpose.

However, the law is designed and implemented by men and therefore is subject to their vicissitudes. Bad men make bad laws. The law also does not foresee any possible circumstance. The law is general and will always require supplementation in order to be applied to current facts, especially when we consider that the human needs are in constant change (*Politics*, III, 15, 1286a 10 - 13). The finding of the supremacy of the law over the selfish desire of the ruler does not elide the issue. Although the law might be the more reliable parameter of conduct that men provide to themselves –to the extent that stems from the examination and of judgment of the various choices of the various men throughout history and do not stems of a selfish desire of a single man– it does not represent the definitive option for action (*Politics*, III, 16, 1287a 18 – 1287b 20). The law is the product of human deliberation and, as such, can't anticipate all the circumstances which we shall face throughout our lives. Of course its selection of situations covers much more cases than those that a man could live or even imagine. But the law does not cover all possible human concrete experiences and not even those of one man.

The *modus operandi* of reason is the unification of the infinitely diverse and complex things into similar traits, general and simple. When the legislator examines the myriad of human experiences, his rational inquire seeks amongst them similarities that can bring them together and make them an increasingly smaller subject to be understood. Each situation that seems unique to sensitivity becomes, gradually and faced with the reason, common to other facts. The natural human reactions to that same event are compared with each other and in relation to their consequences. After that, one of these actions is chosen as the one that should be taken every time that this event occurs. In this process what was concretely exclusive of this or that situation examined is dropped when setting the fact that unifies them. In concrete, however, the situations we face regain its former uniqueness. The real will always be singular.

One could say that there would be no problem on the illustration described above if the goal of the law was, simply, to list any course of action to men. But if the purpose of the law, as intended by the Stagirite, is to prescribe the best path of conduct possible to citizens, then we can't overlook its generality in relation to the facts.

If the law is, by its own nature, a generalization of concrete situations, its immutability or its strict application to any particular case will not be the best solution, it will not achieve justice, its *raison d'être*. It is necessary that those who

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<sup>3</sup>In this sense, we disagree with the position of Kraut which holds that only the monarchy and aristocracy can lead to human excellence and the republic (*politia*) can, at most, form good citizens (and others regimes not even good citizens). For the arguments of Kraut, check: 2002, p. 383-470. The choice of the regime does have some repercussions, for the Stagirite, in the reaching of the common good and of the individual good, but if the regime is legal, that is, if the will of the rulers submits itself to the rule of the law, the *polis* can provide the formation of the virtue of its members. In this sense, check: MAGALHÃES GOMES, 2010, p. 201-213.

exercise the functions of government in the *polis* can judge the law and change it, because of new unforeseen circumstances, or adapt it, because of the singularities of the case to which the law is being applied. Because of its generality, the fair application of the law depends on the discretion of the rulers, both the legislators and the judges (*Politics*, III, 15, 1286a 20-25).

To what extent the discretionary power of the rulers is legitimate? How can we ensure that the rulers do not go beyond this measure, given that they own the force of the State (*Politics*, III, 15, 1286b 32-33)? The law is the product of human deliberation. And if those who govern us and create the laws are not good men, what will guarantee that the rules established by them are fair?

As regards the discretionary power, we understand that there are limits which the ruler must obey, otherwise his decision is illegitimate. Formally, the highest limit to the discretionary power of the ruler, whether he is the legislator or the judge, is the *politeia*. The decisions of the ruler can't overtake or denature the fundamental principles that characterize the regime of government established by the *politeia*. Otherwise, there is no established order and we are at the mercy of the selfish will of the ruler. Sets the Stagirite:

«A constitution is the arrangement of magistracies in a state, especially of the highest of all. The government is everywhere sovereign in the state, **and the constitution is in fact the government.** [...] (*Política*, III, 6, 1278b 9-11) – grifosnossos».

If the decision of the ruler is in accordance with the underlying principles of that regime of government, it was not arbitrary; otherwise is unlawful and must be reversed (*Politics*, V, 3, 1303rd 21-24; V, 7, 1307b 2-6). The *politeia* is the true nature of a political community and thus the essence of its unit. Thus, for Aristotle, the duty of every citizen is to preserve their *politeia*.

Materially, the decision must be judged in the light of the common interest. The correct regimes are those in which rulers act in the best interest of all (*Politics*, III, 13, 1283b 36-42). The ruler can't put the interest of certain parts of the city above all others, but should guide their decisions by the achievement of the good of the city as a whole; they must be impartial (Kraut, 2002, p. 389). In each case, the discretionary power of the ruler should be confronted to the common good: if there is the intention to strongly favor the interests of one part of the city at the expense of the good of others, the decision is unlawful and must be reversed; otherwise it can be maintained. Finally, it is necessary to comment that the Stagirite warns that the alteration of laws can't become a habit; otherwise laws will lose their strength (Ross, 1957, p. 365).

#### 4. DIALECTICS BETWEEN LAW AND VIRTUE

Regarding the guarantee of the justice of the laws, the position of the Stagirite is circular. In order to the laws to be good, men should be good. In order to men to be good, laws must be good.

The laws of a city, as long as circumscribed in a legal regime, are a minimum of justice, although its content is not perfectly virtuous. First, because they establish order and security, a way of proceeding in everyday actions which applies to everyone and that is the same under similar circumstances. The prevalence of the law is the realization of some portion of justice, because it guarantees the existence of some impartiality of the lawmakers, or of some consideration for the common good despite their own interests.

Moreover, even the law created by non-virtuous men (but law-abiding men) captures, even if partially, the experiences of his community throughout history. There was, in the preparation of that law, some reflection about the customs of his community, and, therefore, some evaluation from those decisions taken earlier on. So, the choice of one of them as a parameter is made it because that one experience was considered the best to run. Although this reflection and choice may have been misguided –because they didn't identified the true purpose of our actions, or because they didn't identified the best means to achieve it– there was, in this process, examination, judgment and choice about what to do in certain circumstances, which makes this path of conduct better than that instincts impose on us.

More than this, the creation of the law is not a lonely reflection out of a small number of personal experiences about a choice. The whole process of creating the law is a collective one. The experiences that serve as its parameter and that are analyzed and compared by its creators are the customs, the ideals and opinions of a large group of men, contemporaries and ancestors of the legislators. The decision, implementation, execution and subordination to the law are also acts of several men, even if carried out, at a given moment, by just one man.

The law is –when not an exclusive product of a selfish desire– usually, a conscious and collective model of conduct to the individual man. It is the product of the reflection and of the choice of a whole group of men over the best way to conduct them in life; and as such, their goals surpass those who we might establish individually for ourselves. This does not make it perfect, but our best option of action at a given time. This does not make it unchangeable, but a constancy, which guarantees some order and security in this so fickle world.

The relationship between social rules established in a certain community, that informs human behavior, and the concrete actions of the individuals of that society, which reinforce or undermine the prevailing *ethos* and *nomos*, involves different moments. The reiterated *praxis* of the group forms the body of rules, i.e., shapes the rational and collective conditions of the action of those individuals. This diffuse social order, in turn, is evaluated continuously by those who create and enforce the obligatory social rules, the *nomoi*. The laws of a community result from comparative reflection about the various maxims of action, about the customs,



about the ideals, about the opinions of the group and about the laws that already exist. From this analysis there is the choice and the setting of a mandatory parameter of conduct for all the members of that community, which is the objective rationality of this group. The custom is not irrational, but its effect on individual conduct is pervasive and unconscious. Rather, the creation and application of each law result from conscious reflection on the circumstances of the action and of the careful choice of the action parameter to be laid down for all those who live in that community. There is, therefore, an overlapping spiral of the causal circularity of the *ethos*. To the dialectical movement custom-habit, mediated through individual action, overlaps with another circle. In this second circle, there is conscious evaluation of the first and its outcome is the *nomos*, which feeds back the ethical circle. The *nomos* imposes itself on the action and shapes habits that reinforce/modify the *ethos*. Over this second circle a third one arises: the judge evaluates the fact in the light of the *nomos* and of the *ethos* and, then, he decides. His sentence informs individual action and reinforces/modifies the *ethos* and the *nomos*.

But for men to behave in accordance with existing regulations it is necessary that they know it and therefore the *ethos* and the *nomos* must be transmitted to individuals through education. The group reflects on the *ethos* and the *nomos*, even if not yet methodically, and, then, it shapes upon those principles of action a knowledge that enables its transmission and collective representation. At the same time, to the extent that the individuals steadily acquire the habit of performing certain actions, the *ethos* and the *nomos* reassert themselves as a tradition of that people and, then, they effectively exist in the conduct of each of those individuals.

The aforementioned argument does not mean, however, that the subject becomes virtuous. Individuals can obey the rules only because they fear the consequences of the noncompliance. Nevertheless, the continuity of action in accordance with the rules creates a habit to carry them out and enables the rectifying of the appetite of men. But man isn't an external moldable mass that can be casted without any reflection or self-direction. The rules imposed socially act on a rational being, capable of understanding them and judge them. The individual that at first wanted only what was imposed by desire, now wants what the rule imposes. In this continuous movement of exteriorization of duty, the man, as a rational being, becomes aware of the value of the rule itself and consequently of the value of his actions. The consciousness of the good contained in the rule and practiced by him may cause that the abiding of the rule happens for its own sake, for its virtue. The man practices virtuous actions by themselves, because they are the good towards he moves as a way to achieve his perfection.

The social life of the law allows, in principle, the formation of civic virtue, that is, respect for and defense of the existing order. Citizens come to understand that the existence of the group depends on the permanence of the order that sustains it. Not all the citizens of this political community are excellent men; maybe none of them are. But, at least, they are good citizens, because they understand the importance of their laws and they guarantee, by respecting them,

the continuity of their *polis*. In a second moment, the rational maturing of that political community allows a deeper reflection and evaluation about the law. Yes, the existence of a set of rules is vital for the continuity of the group, but that does not mean that every rule should be kept, whatever the cost. Order and safety are not the only ends of the political community. The ultimate end of the *polis* is the good life of its citizens. The one that fully lives is the one that excellently realizes (makes real in concrete) his work, and, for rational beings, the one that excellently realizes reason. The *polis* should create the conditions for the development of virtue and, to do so, its rules can't prescribe any arbitrary content, but should impose the practice of all the virtues and banish the vices.

The final statement is: the rule of law possibly enables the building of good citizens, and good citizens can possibly create good laws, and good laws possibly enable the building of good men, and good men can possibly create good laws and so on and so forth.<sup>4</sup>

## 5. CONCLUSION

The State is a community of men organized towards a common end. Its existence and its success (the accomplishment of its ultimate end) depend on the building of those men. It means that the State is only possible if its constituent parts (individuals, families, organizations, and so on) want and act towards the realization of the common goal. Those parts should cooperate with each other and each one should realize its specific function.

We can say, nevertheless, that the individuals are the core of this organization, because only they can act towards the ultimate end. They create the rules, they give life to the institutions, they are the ones that should be built in order to want and act towards their own ends which are, by consequence, the end of the *polis*. Therefore, the State can't rely exclusively on familial and social training of its citizens. The State must also be a promoter of the education of its members, so that their will and acts will be according to its purposes. And the law is the appropriate instrument of the State in the building of their citizens.<sup>5</sup>

The process of formation and improvement of laws and men is a virtuous circle, in which the mechanical compliance of the law can become the awareness of the importance of the existence of the law for the community and the consciousness of the importance of the good content of the law for the self-realization of man.

The continuous process of formation of human excellence through the awareness of the virtue of the law will not necessarily make all men good, but it can make all citizens good, and probably most of men good. Of course this is a slow and difficult process, but it is the only possible way.

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<sup>4</sup>Likewise, the absence of the rule of the law can promote a vicious circle (*Politics*, V 8, 1307b 31-39).

<sup>5</sup>In Books VII-VIII of the *Politics*, Aristotle describes the ideal education of the citizens. About the educational and legislative model presented by the Stagirite in *Politics*, check: Irwin, 2002, p. 416-423; Düring, 2005, p. 748-757; Mondolfo, 2003, p. 88-89; Kraut, 2002, p. 197-214; Simpson, 1998, p. 233-283; Hourdakis, 2001. On education by law in the Aristotelian thought, check: Romilly, 2004, p. 159-174.

Reason is capable of apprehending and explicating the diversity of the ethical conduct, as the normative posture of philosophical thinking defends, but it can't guarantee that, even in the presence of the ideal conditions, man will necessarily choose to act in accordance to the ethical end by the reason revealed. The probability and not the certainty of the action is what allows us to recognize some critical traits in the Aristotelian thought.

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