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Punishment and Ethical Self-cultivation in Confucius and Aristotle

Matthew D. Walker

Abstract, Confucius and Aristotle both put a primacy on the task of ethical self-cultivation. Unlike Aristotle, who emphasizes the instrumental value of legal punishment for cultivation's sake, Confucius raises worries about the practice of punishment. Punishment, and the threat of punishment, Confucius suggests, actually threatens to warp human motivation and impede our ethical development. In this paper, I examine Confucius' worries about legal punishment, and consider how a dialogue on punishment between Confucius and Aristotle might proceed. I explore how far apart these thinkers actually stand, and examine the possibilities for a rapprochement between them. Doing so brings to light the self-cultivation perspective's range of resources for thinking about punishment's justification.

Keywords, Confucius; Aristotle; punishment; virtue; ethical self-cultivation

A wide range of classical Greek and Chinese thinkers put a primacy on the task of ethical self-cultivation. They highlight the imperative of becoming virtuous people with well-ordered, harmonious characters. The task of ethical cultivation is, in part, personal, and requires our own efforts. But these thinkers are also attuned to the political dimensions of self-cultivation, and to the ways in which the enforced prescriptions of rulers and legislators can promote or impede our ethical development. Hence, Confucius (551–479 BCE) raises worries about the practice of punishment. This practice, Confucius suggests, threatens to warp human motivation and impede our full development. Aristotle (384–322 BCE), by contrast, explicitly emphasizes the important (instrumental) value of punishment for cultivation's sake.

Confucius and Aristotle, then, take up a shared perspective from which to assess punishment, namely the perspective of self-cultivation and ethical development. This perspective, as situated within broader virtue–ethical traditions of normative theory, differs strikingly from the more common deontological or consequentialist perspectives from which contemporary legal philosophers usually

approach punishment.¹ Given the many similarities that we can find between Confucius and Aristotle, however, what should we make of their apparent differences? This is the overarching question that I examine in this paper. In what follows, I focus on the views of Confucius and Aristotle, and bring these thinkers into a conversation. I proceed as follows. In Part I, I spell out Confucius' and Aristotle's respective conceptions of self-cultivation, with an eye on their broadly aesthetic dimensions. In Part II, I examine how these views inform Confucius' skepticism toward, and Aristotle's endorsement of, punishment. In Part III, I explore the extent to which a rapprochement between Confucius and Aristotle on the topic of punishment is possible. In Part IV, I consider Confucius' positive alternative to reliance on punishment, namely a gentleman ruler's reliance on guidance by virtue and regulation by ritual, and examine how Aristotle might assess Confucius' view.

By bringing Confucius and Aristotle into dialogue and exploring their views on punishment, my paper contributes to a growing body of studies on Confucius and Aristotle in the comparative history of philosophy – only with an eye on their respective views in legal theory.² In doing so, my paper also aims to bring to light the self-cultivation perspective's range of resources for thinking about punishment's justification.

1. SELF-CULTIVATION IN CONFUCIUS AND ARISTOTLE

I first set the stage by briefly outlining Confucius' and Aristotle's respective views on self-cultivation, which provide the background against which these thinkers assess punishment.

Confucius describes the task of self-cultivation in quasi-artistic terms, as a matter of working, and imposing a beautiful order, on oneself. In *Analects* 1.15, Confucius considers the view that self-cultivation would be a matter of one's simply *controlling* one's dispositions (say, one's tendencies toward obsequiousness if one were poor, or one's tendencies toward arrogance if one were rich). Such a model of self-cultivation, Confucius insists, is insufficient. Instead, self-cultivation consists not in constricting, but in *balancing*, our dispositions. Hence, self-cultivation would consist in attaining joyfulness if one were poor, or a love of ritual if one were rich. In response, Confucius' friend, Zigong, cites a line from the *Book of Odes*, "As if cut, as if polished/As if carved, as if ground." Confucius agrees that the *Odes* express his meaning.³

Self-cultivation for Confucius, then, consists in one's taking one's raw material – which Confucius does not specify, but which presumably at least includes one's various natural dispositions – and giving this material a balanced, proper form. "Only when culture and native substance are perfectly mixed and balanced do you have a gentleman" (*Analects* 6.18). As Confucius' artisanal metaphors – his

references to cutting, polishing, carving, and grinding aspects of oneself – suggest, the cultivated Confucian gentleman, the *junzi*, seamlessly integrates various aspects of himself into an orderly, aesthetic unity. Thus, at *Analects* 6.29, Confucius describes the *junzi*'s virtue as an intermediate condition that avoids vices of extremes: “Acquiring virtue (*de*) by applying the mean (*zhong*) – is this not best?” (cf. *Analects* 17.8). Displaying such virtue, the *junzi* is, in the words of *Analects* 13.21, “a person of perfectly balanced conduct.”⁴ A self so cultivated, then, displays integrity (as opposed to discordance); its dispositions harmonize, rather than conflict. Such a self, as Confucius attests, gleams with a certain manifest attractiveness: “If one is wealthy, one’s rooms will be beautiful. If one is virtuous, one’s self will [be] beautiful” (*The Great Learning* 6.4).⁵

For his part, Aristotle identifies the cultivated, virtuous person as one who exercises the human function of rational activity, and exercises it well, that is, according to virtue (*aretê*) (*Nicomachean Ethics* [EN] I.7, 1098a16–18). The human function – activity of soul having a rational principle – has two elements, (1) reason in the authoritative sense (i.e. rational thought as such) and (2) reason in the extended sense (i.e. various modes of reason-responsive desire) (1098a4–5). In the virtuous person’s soul, rational thought functions well by grasping the human good and by reasoning well about what benefits the agent in all domains of life. Non-rational desire functions well, in turn, by showing suitable responsiveness to the prescriptions of rational thought, to which non-rational desire listens as a child listens to a father (EN I.13, 1102b13–14; 1103a2–3). Accordingly, in the soul of the virtuous person, unlike in the soul of the merely self-controlled person, still less than in the uncontrolled or vicious person, reason and reason-responsive desire harmonize (EN III.12, 1119b15-16).

Like Confucius’ gentlemanly *junzi*, Aristotle’s virtuous person – the *kalos kagathos* – displays a great deal of balanced order. Like the Chinese *junzi*, the Greek *kalos kagathos* is usually translated “gentleman”; his virtue, a second-order composite of the various individual virtues, is *kalokagathia*, “gentlemanliness.”⁶ Yet these Greek terms, which include *kalos* (beautiful, noble, or fine), have distinct aesthetic connotations.⁷ Indeed, the *kalos kagathos*’ soul manifests integrated unity and is free from internal conflict and disharmony: “For his opinions are harmonious, and he desires the same things with all his soul” (EN IX.4, 1166a13-14).⁸

Aristotle strongly emphasizes reason and desire per se as those aspects of our personalities that we are to harmonize. Confucius, as I indicated, is less specific. Showing his characteristic reticence, noted by his student Zigong, to discuss human nature explicitly (*Analects* 5.13), Confucius brackets the issue of precisely what elements of himself the *junzi* successfully harmonizes. Moreover, some scholars insist that Confucius has no conceptual space for Aristotle’s focus on rationality as human nature’s authoritative element – that is, the element to

which, in Aristotle's view, the other elements of our nature are subordinated and with which they are to harmonize.⁹ Nevertheless, it is striking that Aristotle, like Confucius, identifies ethically virtuous dispositions as well-calibrated dispositions. For Aristotle, the ethical virtues lie in a mean (*meson*) between extremes, a mean relative to us (*EN* II.6, 1106b7–8). Like the ethically virtuous person's soul, and like the products of art (or *technê*), the cultivated person's actions are neither excessive nor deficient. In a good work of art, so too in the behavior of the virtuous, "it is not possible either to take away or to add anything," since excess and deficiency ruin what is well wrought (*EN* II.6, 1106b9–12).¹⁰

2. CONFUCIUS AND ARISTOTLE ON PUNISHMENT: SKEPTICISM AND ENDORSEMENT

Thus far, I have sketched the respective models of ethical cultivation that Confucius and Aristotle present to us. I now consider how these thinkers view law – or more specifically, punishment – in relation to these accounts of cultivation. I begin with Confucius, who casts a dim eye on punishment. His skepticism is perhaps most explicit in *Analects* 2.3:

If you try to guide the common people with coercive regulations (*zheng*) and keep them in line with punishments (*xing*), the common people will become evasive and will have no sense of shame (*chi*). If, however, you guide them with virtue (*de*), and keep them in line by means of ritual, the people will have a sense of shame and will rectify themselves.

Here, Confucius addresses rulers who institute punishments to prevent wrongdoing and promote order. Such punishments are quite formidable: they include tattooing, amputation, castration, and the like. One might think that these punishments, if any, could steer offenders away from wrongdoing and toward virtue. Further, one might think that these punishments could develop a sense of shame in the offender, given the public embarrassment to which they subject him.¹¹

Yet, for Confucius, such punishments have distorting effects on ethical self-cultivation. Likewise, from the perspective of governance, these means of instilling order have unintentionally disorderly results. For according to Confucius, they motivate people to perform otherwise virtuous actions for the wrong reasons, namely just to avoid punishment. Instead of pursuing virtuous deeds for themselves, people simply evade the pain that punishment promises to inflict, and thereby evade any chance of getting caught. Punishment thus fails to encourage people to "rectify themselves" – that is, to correct their own ethical

shortcomings. On the contrary, punishment ultimately incentivizes people to pursue vicious deeds out of view and without any sense of shame (*chi*).¹² The shame that self-cultivated agents should possess, on this view, is not a merely conventional sort, say, the sort of embarrassment one might feel when one's failure to conform to generally accepted norms is publicly revealed. It is, rather, what Bryan Van Norden calls "ethical shame," and what Justin Tiwald identifies as a kind of "autonomous shame" – in short, the sort of shame that an agent feels for failing to live up to ethical standards that he himself endorses.¹³ Such shame, I take it, consists in a feeling that performing base deeds is beneath one.

Punishments, then, do not encourage people to develop ethically, with a positive appreciation for virtue and its choiceworthiness for its own sake. Instead, punishment, at best, would seemingly stand to foster the development of the so-called "village worthy" (*xiangyuan*), "the thief of virtue" who performs otherwise virtuous deeds for merely instrumental reasons (*Analects* 17.13), and who lacks any commitment to ethical cultivation for its own sake.

Given Confucius' worries, Aristotle's views on punishment's ethical benefits stand in initially striking contrast. In *Nicomachean Ethics* X.9, Aristotle insists that the artful legislator, possessing knowledge, enacts laws that will improve citizens (1180b24–29). Such legislators, Aristotle says, "make the citizens good by forming habits in them, and this is the wish of every legislator; and those who do not effect it miss their mark" (*EN* II.1, 1103b3–5). Good legislation consists in creating good laws; and among such laws are those that promote the ethical development of the citizens.

In order to understand how law accomplishes this task, consider Aristotle's views on how we become good. Key to Aristotle's account, as 1103b3–5 indicates, is the role of habituation, which is as important in ethical development as it is in learning the various arts. Thus, just as we become builders by building and cithara-players by playing citharas, so we become temperate by performing temperate actions, courageous by performing courageous actions, and so forth (*EN* II.2, 1103a32–b1). Through such ethical habituation, we are in a position to attend to the intrinsically good and pleasant aspects of virtuous action, and thereby come to enjoy virtuous action for these aspects.¹⁴ "Now for most men their pleasures are in conflict with one another because these are not by nature pleasant," Aristotle says, "but the lovers of the *kalon* find pleasant the things that are by nature pleasant" (*EN* I.8, 1099a13–15; cf. X.9, 1179b24–26). The good person and the bad person, then, take pleasure in different things; and their different tastes reveal their underlying differences in character: "We must take as a sign of state the pleasure or pain that supervenes on acts; for the man who abstains from bodily pleasures and delights in this very fact is temperate, while the man who is annoyed at it is self-indulgent." The same holds for the other virtues and vices, such as courage, cowardice, and rashness (*EN* II.3, 1104b3–13).

Good laws habituate us, in Aristotle's view, by steering us away from vicious actions and toward virtuous ones. As Aristotle explains in *Nicomachean Ethics* V.1:

[T]he law bids us do both the acts of a brave man (e.g. not to desert our post or take to flight or throw away our arms), and those of a temperate man (e.g. not to commit adultery or outrage), and those of a good-tempered man (e.g. not to strike another or speak evil), and similarly with regard to the other virtues and forms of wickedness, commanding some acts and forbidding others (1129b19–24).

We might well desire to flee the battle-lines, or to indulge in adulterous sex, or to assault others. But the law “bids us practice every virtue and forbids us to practice any vice” (*EN* V.2, 1130b23–24). And behind the law, Aristotle recognizes, stands the threat of punishment. Thus, for the sake of citizens' ethical development, Aristotle affirms, legislators should avail themselves of punishment as a means of *enforcing* the law: “Punishments and penalties should be imposed on those who disobey and are of inferior nature” (*EN* X.9 1180a8–9). Such punishments inflict pain on those who disobey the law's prescriptions.

Two aspects about Aristotle's view deserve comment. A first aspect: as 1180a8–9 suggests, Aristotle thinks that punishment applies principally to those of “inferior nature” (*aphuesterois*). For Aristotle, most of us are of such a nature: the many (*hoi polloi*) are not good (*EN* I.5, 1095b16, b19–20). The many live by their passions and lack any sense of, or appreciation for, virtue for its own sake (*EN* X.9, 1179b13–15). Aristotle contrasts the many with the “generous minded among the young” (*tôn neôn tous eleutherious*), who also are subject to passions, but who have been well raised and who have already come to take some appreciation in ethically virtuous action for its own sake (1179b7–10). Unlike the many, the generous minded have the real potential for *kalokagathia* given their love of the *kalon* (1179b10); and unlike the many, they are prone to shame (1179b11–13). As a first stab, Aristotle identifies shame as a passion, in particular, a certain fear of disrepute (*EN* IV.9, 1128b10–12).¹⁵ This account is broad enough to encompass a simple embarrassment in the eyes of others; but Aristotle, I take it, principally has in mind a certain disrepute in one's own eyes – a sense of disrepute akin to the “ethical” or “autonomous” shame discussed earlier in relation to Confucius. Shame, for Aristotle, is not virtuous strictly speaking: for the truly virtuous person, who commits no vicious deeds, has no need for shame. Still, shame is fitting for the young, who are still developing ethically (1128b15–26). Hence, this passion is, in Myles Burnyeat's felicitous terms, “the semivirtue of the learner.”¹⁶ Proneness to shame enables the generous minded to

learn from teaching and turn toward *kalokagathia*; the many, by contrast, lack shame and require punishment (*EN* X.9, 1179b7–11).

A second aspect: by inflicting pain, or threatening its infliction, punishments affect the ethical development of the punished. At a basic level, punishments simply interfere with one's performing vicious actions. Such simple interference precludes agents from habituating themselves to such action. But more strongly, by inflicting pain for wrongdoing, punishments undermine and counteract those excessive desires for pleasure that lead the many to perform vicious actions. Punishment instills in the souls of the many a strong and opposed passion – namely fear – to disincentivize wrongdoing.¹⁷ Hence, for Aristotle, as for Plato before him, punishment provides an analogue of medical treatment for those afflicted with vice. Punishment is, as Aristotle says, “a kind of cure, and it is the nature of cures to be effected by contraries” (*EN* II.3, 1104b17–18). And so, “a bad man, whose desire is for pleasure, is corrected by pain like a beast of burden” (*EN* X.9, 1180a11–12).¹⁸ In short, for Aristotle, punishment is ethically salutary: it brings us to a stable condition whereby we might make further progress.

3. A CONFUCIAN/ARISTOTELIAN RAPPROCHEMENT ON PUNISHMENT?

Confucius and Aristotle share similar views about ethical cultivation. At the same time, Confucius and Aristotle have, *prima facie*, strongly different assessments of the value of punishments and penalties. Given their similar outlooks on self-cultivation, how deep are Confucius' and Aristotle's apparent disagreements about the value of punishment? Despite their apparently clashing views, is there any potential for a rapprochement?

In order to tackle this question, I begin on the Confucian side. On the one hand, Confucius has deep worries about punishment and its ethical effects on the punished. He is aware, in Tiwald's words, that “consistently foregrounding the threat of punishment” is apt to have deleterious ethical consequences, particularly with respect to people's developing shame.¹⁹ Yet ultimately, while Confucius questions punishment, he is not, for all that, a penal abolitionist. Consider, for instance, *Analects* 13.3, according to which a failure to use names properly will result, among other bad outcomes, in “punishments and penalties” missing the mark.²⁰ So, Confucius apparently does grant some place to punishment, and he thinks that punishments can be fitting.

Van Norden speculates that *Analects* 13.3 might be a later addition to the *Analects* by students of Xunzi, who explicitly highlights the importance of using names correctly (*zhengming*). Moreover, Xunzi came to exercise a strong influence on the Legalist views of Han Feizi, who, in turn, emphasized the need for harsh penalties to secure social order.²¹ Given other evidence that Confucius accepted the importance of correct naming (even if not as a central concern), and

given the arguments of other scholars, however, I am skeptical about this proposal.²² Therefore, I accept that *Analects* 13.3 conveys Confucius' outlook and that Confucius actually does grant punishment a proper place in a ruler's toolkit.

Confucius, I suggest, does not hold that we should avoid punishment at all costs. Instead, he thinks, we should rely on punishment only as a last resort – that is, in Joseph Chan's words, as “something to fall back on only when rituals, education, or mediation fail to regulate people's behavior.”²³ So, when Confucius says that rulers should not guide people with coercive regulations and legal punishments, he denies only that rulers should rely *principally*, or *in great measure*, on punishment to instill order. Even if one were to show that *Analects* 13.3 was a later Xunzian interpolation, the *Analects'* other anti-punishment passages – namely 2.3, 12.19, and 13.11 – are at least still consistent with Confucius' finding *some* qualified role for punishment. Still, this role, I take it, is limited: it consists in bolstering social order, and not in directly promoting ethical cultivation as such.²⁴

Accordingly, I submit, we should read Confucius' anti-punishment remarks as challenging rulers not to rely excessively on punishment to maintain order. Instead, these remarks remind rulers of the principal and most reliable means for this task – means that require rulers, most of all, to consider *their own* self-cultivation and the ways in which *their own* character can set the tone for society. So construed, *Analects* 2.3 exhorts rulers not to neglect themselves (and hence, not to neglect a key responsibility that they possess *as* rulers). When relied on as a last resort, Confucius can say, punishment, while regrettable, need not conduce to evasive shamelessness. For then, the ruler is not using the threat of punishment as the primary incentive to be good.

How might Aristotle respond to this Confucian view? As discussed, Aristotle grants punishment an expansive role in his account of self-cultivation. Nevertheless, for Aristotle, punishment is also something of a second-best measure. Punishment is salutary, but, again, it is salutary primarily *for the many*, who lack a sense of shame and who, under passion's sway, resist rational persuasion. The generous minded, by contrast, are capable of regulating themselves by shame. Accordingly, Aristotle does not recommend punishment for them, but instead rational persuasion.

Moreover, like Confucius, Aristotle crucially denies that punishment is *sufficient* for cultivating virtue. Aristotle denies, in other words, that punishment can bear the sole burden of making people good. For Aristotle is clear: punishment cannot, by itself, generate the sort of motivation that characterizes the *kalos kagathos qua* virtuous. Consider, for instance, Aristotle's distinction in *Nicomachean Ethics* III.8, between the virtue of true courage (on the one hand) and merely political courage (on the other hand). The latter state is “political” in the sense that it is promoted by the laws and penalties, but also the rewards,

that the *polis* offers its citizens. Aristotle describes the politically courageous as follows:

Citizens seem to face dangers because of the penalties imposed by the laws and the reproaches they would otherwise incur, and because of the honours they win by such action One might rank in the same class [as true courage] even those who are compelled by their rulers; but they are inferior, inasmuch as they act not from shame but from fear, and to avoid not what is disgraceful but what is painful; for their masters compel them And those who give them their posts, and beat them if they retreat, do the same, and so do those who draw them up with trenches or something of the sort behind them; all of these apply compulsion. But one ought to be brave not under compulsion but because it is *kalon* to be so (1116a18–19; a29–30; a36–b3).

For Aristotle, those who display political courage act in conformity with virtue, but they do not act as the truly virtuous person acts. Hence, they exhibit a defective imitation of courage.²⁵ Their condition invites comparison with that displayed by Confucius' "village worthy," who acts in conformity with virtue for merely instrumental reasons (including attaining a good reputation). Such people act out of compulsion, simply to avoid punishment. As Aristotle notes, they lack a sense of shame, and seek simply to evade the infliction of pain. They lack a proper appreciation of the *kalon* for its own sake. The truly virtuous, by contrast, act for the right reasons. They choose courageous action because it is *kalon* to act courageously. Elsewhere, Aristotle recognizes that the many who are kept in line by law are deficiently motivated: "These do not by nature obey the sense of shame, but only fear, and do not abstain from bad acts because of their baseness but through fear of punishment" (*EN* X.9, 1179b11–13).

Hence, Aristotle actually *agrees* with Confucius on punishment's limitations. If so, however, then how can he endorse punishment as salutary in the strong terms that he does? How can Aristotle avoid the Confucian conclusion that punishment is apt to warp our ethical development?

In order to address these questions, we must examine precisely how Aristotle explains punishment's role in ethical cultivation. In a passage that I quoted earlier (*EN* V.2, 1130b23–24), Aristotle highlights the negative, constraining role of legal punishment. Laws, in Aristotle's view, primarily forbid (certain kinds of) vicious actions. They compel us *not* to leave the battle; *not* to commit adultery or wanton aggression; *not* to strike or to revile another. (Laws do order one, positively, to stay at one's post, have proper sexual relations, and keep the peace – but only on pain of punishment). If so, Aristotle can say, punishments do not

aim, by themselves, to inculcate the right motivations for acting virtuously. Instead, punishments play a different key role. Punishment, like a medical treatment, cannot ensure the soul's full health and vitality. But punishment, like medicine, can at least eliminate kinds of disease and systemic disorder. Punishment, then, can render us tractable for further development. With their excessive desires for pleasure checked and undermined by their fear of punishment, the punished can again perform, and take steps toward habituating themselves to, virtuous action. In this way, the punished are situated *so as to be able* to grasp the intrinsically good and pleasant aspects of virtuous action, and come to enjoy such action for its own sake, at least so far as possible.

In short, Aristotle can say, if a ruler were to rely *solely or principally* on law to guide citizens, and on punishments (or threats thereof) to keep them in line, then Confucius would be right. In such cases, punishment would undermine the many's capacity to develop shame and regulate themselves. But rulers can rely on such legal remedies as parts of a more comprehensive regimen of ethical cultivation for the many – a regimen that aims to develop in the many a positive appreciation for virtuous action by other means, including by directing them, through habituation, to take positive pleasure in the *kalon* for its own sake.

Aristotle and Confucius, then, actually occupy a fair bit of common ground on punishment. Despite his criticisms of punishment's ethically stunting possibilities, Confucius grants it some role in governance. Despite explicitly endorsing punishment, Aristotle grasps its insufficiency for making us *kaloï kagathoi*. But punishment, he thinks, can bring us into a condition whereby we still might become *kaloï kagathoi*. What, then, distinguishes the views of the two thinkers? For Aristotle, this remedial function of punishment makes it valuable for the many. Confucius, by contrast, apparently fears that granting punishment even this qualified role in ethical development is apt to have bad results and to interfere with the common people's developing virtuous motivations. Hence, although Confucius accepts the need for punishment, Confucius appears to view punishment more minimally, as a means to maintain some basic level of social order, and not as an instrument for directly promoting ethical cultivation as such.

4. CONSIDERING CONFUCIUS' NON-PUNITIVE ALTERNATIVES

So far, I have addressed *Analects* 2.3's negative case against relying on punishment to keep people "in line," and have examined how Confucius' views on ethical cultivation inform this case. But *Analects* 2.3, recall, also offers a positive proposal for good governance that Confucius believes is consistent with, and conducive to, the aims of such cultivation. The good ruler, Confucius suggests,

should himself be good. The ruler should “guide” the common people with virtue: he should serve as a virtuous exemplar for his subjects to follow. Further, to regulate the common people, the ruler should rely on social rituals of the sort that the Zhou sage kings instituted. By these means, the ruler will encourage his subjects to feel shame at vicious behavior and to correct themselves. As self-regulating, the people will spontaneously generate a harmonious social order as a matter of course.

Yet how, exactly, does a *junzi*'s guiding the common people with virtue and keeping them in line with ritual conduce to the people's attaining a sense of shame and a tendency to rectify themselves? After all, if the idea is that people will feel public embarrassment at failing to fulfill the interpersonal expectations that rituals establish, then it is not clear that the people will thereby improve in virtue. For their shame will not yet be ethical or autonomous; instead, it will be only conventional or heteronomous.²⁶

In order to deal with this worry, I suggest that when the *junzi* guides the people with virtue and keeps them in line with ritual, Confucius thinks that the *junzi* plays a non-impositional role in the people's internalizing a set of values that make their ethical or autonomous shame possible. First, consider what is involved with the *junzi*'s guiding the people with virtue. Confucius highlights the value of the self-cultivated *junzi* as a model to emulate (cf. *Analects* 4.17; 7.22). Thus, the inspiring ruler, in virtue of his forceful character, becomes *an object of emulation*. By emulating the *junzi*'s magnetic character, the people take on the virtues and values that the *junzi* and his character display.²⁷

Confucius endorses this positive view concerning the *junzi*'s ethical influence throughout the *Analects*. In *Analects* 12.19, for instance, Confucius advises Ji Kangzi to avoid harsh punishment for bringing about social order: “In your governing, Sir, what need is there for executions? If you desire goodness, then the common people will be good. The virtue of a gentleman is like the wind, and the virtue of a petty person is like the grass – when the wind moves over the grass, the grass is sure to bend.” Here, Confucius suggests that if one rules as a virtuous *junzi*, then one sets the proper tone for one's society. Through one's *de* – a virtue that is also a kind of attractive ethical force – one brings about orderly virtuous behavior among one's citizens spontaneously, without primary recourse to legal penalties.

Similarly, at *Analects* 13.11, Confucius rejects capital punishment: “If excellent people managed the state for a hundred years, then certainly they could overcome cruelty and do away with executions’ – how true this saying is!” For if truly virtuous people governed, then the common people would, in Confucius' view, naturally seek to emulate the rulers' virtue – cutting, polishing, carving, and grinding themselves into beautiful and orderly aesthetic unities.

Second, consider what is involved with regulating people with ritual. By retrieving and promoting rituals that successfully incorporate, and ritualize people into the development of, the Confucian virtues, the *junzi* provides another means for the common people to internalize the very virtues and values that the *junzi* displays. For instance, by upholding an extended mourning period for one's deceased parents (*Analects* 1.11, 4.20, 14.40, 17.21), one both exemplifies a certain reverent attitude toward one's parents and displays the virtue of filiality (*xiao*). By practicing ritual, then, the common people will come to take on such virtues and values.²⁸

Confucius identifies a related non-punitive way – linked to ritual, but analytically distinct from it – by which people can come to attain a positive appreciation for virtue and cultivate themselves. He designates a key role for *music*. Observing its ability to reconcile, harmonize, and unify discordant (sonic) elements (*Analects* 3.23), Confucius recommends the pursuit of music as a means of ethical self-cultivation alongside ritual throughout the *Analects*.²⁹

For instance, Confucius recommends the study of the *Book of Odes*, odes which were performed with music and which Confucius thinks have an ethically formative effect on the learner (*Analects* 3.20). Such works express a balance of emotion and restraint that the *junzi* himself manifests. Thus, in *Analects* 3.3, Confucius insists: “A man who is not good – what has he to do with ritual? A man who is not good – what has he to do with music?” Similarly, in *Analects* 8.8, he says, “Find inspiration in the *Odes*, take your place through ritual, and achieve perfection with music.” Confucius recognizes music's ethically transformative qualities: after hearing the sublime Shao music, Confucius does not notice the taste of meat (*Analects* 7.14). Such music moderates character by turning the listener's attention (and energies) away from externals that promise to satisfy occurrent desires and refocuses such attention on beauty. Music, then, can lead us to attain well-calibrated emotional responses and sensibilities.

Through the magnetic influence of the virtuous ruler's beautiful character, then, as well as through performing ritual and enjoying the right kind of music, people come to accept proper standards of character and behavior as their own. Should people subsequently fail to reach these standards in their own conduct, Confucius suggests, they will feel (ethical or autonomous) shame for failing to meet standards that they themselves have internalized. Possessing such shame, they are in a position to regulate and correct themselves in ways conducive to their further ethical development.

Aristotle, I take it, could generally agree with Confucius' positive proposals. First, as I have argued, when Confucius recommends that rulers guide people by virtue, Confucius assumes that people will be inclined to imitate the ruler's virtue. In this context, consider Aristotle's account of the origins of poetry in *Poetics*

4. In this chapter, Aristotle holds that imitation, or *mimesis*, is natural to human beings, and is a primary means by which we learn (1448b4–8). Ethical learners engage in *mimesis* most basically when they aim to perform ethically virtuous actions. As discussed earlier, learners become good by performing deeds of the sort that the already good perform. Learners, in other words, imitate models of the virtuous agent. Thus, learners require virtuous exemplars in their communities on whom to model themselves.³⁰

True, Aristotle's favored model of the ideal *polis* in *Politics* VII is not a Zhou sage-king monarchy of the sort that Confucius views as ideal. Aristotle earlier considers what would follow if there were an altogether virtuous king akin to a god among mortals (*Politics* III.13, 1284a3–11). If there *were* such an outstanding figure, Aristotle says, it would be fitting for him to rule. But there is not. Hence, the best possible (practicable) regime is an aristocracy, whose citizens take part in ruling and being ruled in turn (*Politics* VII.14, 1332b23–27; cf. VII.13, 1332a34–35). For either monarchy or aristocracy, however, Aristotle could well grant Confucius' thought that virtuous rulers, whether they be one or a group, are apt to serve as exemplars of virtue whom other citizens can imitate.

Second, Aristotle has little, if anything, to say about ritual as such. But I assume that Aristotle, in principle, could generally accept Confucius' proposal that ritual provides a beneficial means for regulating citizens. For ritual provides a structured pattern for behavior by which people can habituate themselves to acting virtuously. If Aristotle were to meet Confucius, in other words, he would probably find ritual a potentially helpful way for pursuing the task of habituation, which, as already seen, Aristotle believes is necessary for cultivating oneself.³¹

Yet on the role of music in ethical cultivation, Aristotle shows stronger agreement with Confucius. In *Politics* VIII, Aristotle recommends that the young pursue a course of musical education. More specifically, in *Politics* VIII.5, Aristotle articulates a view that he goes on to endorse – namely that “music conduces to virtue, on the ground that it can form our minds and habituate us to true pleasures as our bodies are made by gymnastic to be of a certain character” (1339a21–25). As Aristotle explains:

Rhythm and melody supply imitations of anger and gentleness, and also of courage and temperance, and of all the qualities contrary to these, and of the other qualities of character, which hardly fall short of the actual affections, as we know from our own experience, for in listening to such strains our souls undergo a change. The habit of feeling pleasure or pain at mere representations is not far removed from the same feeling about

realities; for example, if any one delights in the sight of a statue for its beauty only, it necessarily follows that the sight of the original will be pleasant to him (*Politics* VIII.5, 1340a18–28).

Here, Aristotle argues that music provides mimetic representations of the various virtues. How precisely it does so is a topic outside the scope of this paper. But – as just noted – Aristotle thinks that we take pleasure in mimetic representations of the beautiful. And so, by listening to – and especially, by performing – musical representations of what is *kalos kagathos*, we can come to take pleasure in virtues themselves.³² Music, then, enhances our ability to respond to the intrinsically good and pleasant aspects of virtuous actions as we perform them for the sake of learning to be good.

In short: Confucius and Aristotle uphold certain discordant views on punishment's role in ethical self-cultivation. In identifying non-punitive means for accomplishing what law and its coercive mechanisms cannot, however, Confucius and Aristotle find ways to harmonize.³³

DISCLOSURE STATEMENT

No potential conflict of interest was reported by the author.

1. For a classic statement of deontological retributivism, see Immanuel Kant, *Metaphysical Elements of Justice*, trans. John Ladd (Indianapolis and Cambridge: Hackett, 1999), Ak. 331–337. For a classic statement of a consequentialist deterrence approach, see Jeremy Bentham, *The Rationale of Punishment* (London: Heward, 1830), l.l-3. For a brief discussion and criticism of classical and contemporary versions of deontological and consequentialist accounts of punishment, see, for example, Joel Feinberg, "The Classic Debate," in *Philosophy of Law*, 7th edn, ed. Joel Feinberg and Jules Coleman (Belmont: Wadsworth, 2004), 799–803.
2. On the ethics of Confucius and Aristotle, generally, see May Sim, *Remastering Morals with Aristotle and Confucius* (New York: Cambridge University Press, 2007) and Jiyuan Yu, *The Ethics of Confucius and Aristotle: Mirrors of Virtue* (New York: Routledge, 2007). For other works along these lines, see, for example, Max Hamburger, "Aristotle and Confucius: A Study in Comparative Philosophy," *Philosophy* 31 (1956), 324–357; Bryan W. Van Norden, "Toward a

Synthesis of Confucianism and Aristotelianism," in *Virtue Ethics and Confucianism*, eds Stephen Angle and Michael Slote (New York: Routledge, 2013), 56–65; Sean Drysdale Walsh, "Varieties of Moral Luck in Ethical and Political Philosophy for Confucius and Aristotle," in *Virtue Ethics and Confucianism*, 114–124; and Matthew D. Walker, "Confucian Worries about the Aristotelian Sophos," in *Moral and Intellectual Virtues in Chinese and Western Philosophy: The Turn Toward Virtue*, eds Chienkuo Mi, Michael Slote, and Ernest Sosa (New York: Routledge, 2016), 196–213.

3. I use *Confucius: Analects*, trans. Edward Slingerland (Indianapolis and Cambridge: Hackett, 2003), occasionally making slight stylistic emendations.
4. David L. Hall and Roger T. Ames, *Thinking Through Confucius* (Albany: SUNY Press, 1987), 189, highlight the aesthetic dimensions of the *junzi* as model. Among later pre-Qin Confucians, Xunzi is notable for emphasizing the aesthetic, beautifying dimensions of self-cultivation, which Xunzi also views as a task of refining and

- polishing one's given human nature: "Thus, I say that human nature is the original beginning and the raw material, and deliberate effort is what makes it patterned, ordered, and exalted. If there were no human nature, then there would be nothing for deliberate effort to be applied to. If there were no deliberate effort, then human nature would not be able to beautify itself" ("Discourse on Ritual," in *Xunzi: The Complete Text*, trans. Eric Hutton [Princeton and Oxford: Princeton University Press], lines 359-364).
5. I use *Collected Commentaries on the Great Learning*, trans. Bryan W. Van Norden, in *Readings in Later Chinese Philosophy: Han Dynasty to the 20th Century*, eds Justin Tiwald and Bryan W. Van Norden (Indianapolis and Cambridge: Hackett, 2014).
 6. On *kalokagathia*, see *Eudemian Ethics* VIII.3. See also *EN* IV.3, 1124a4; X.9, 1179b10.
 7. On the *kalon's* aesthetic dimensions in Aristotle's ethics, see, especially, Joe Sachs, *Aristotle: Nicomachean Ethics* (Newburyport, Mass.: Focus Publishing, 2001), xxi-xxiv, and Richard Kraut, "An Aesthetic Reading of Aristotle's *Ethics*," in *Politeia in Greek and Roman Philosophy*, eds Verity Harte and Melissa Lane (Cambridge: Cambridge University Press, 2013), 231-250. See also *Metaphysics* M.3, 1078a36-b1 and *Topics* V.5, 135a13, and the discussion in Kelly Rogers, "Aristotle's Conception of *To Kalon*," *Ancient Philosophy* 13 (1993), 355-357.
 8. Translations of Aristotle are from *The Complete Works of Aristotle: The Revised Oxford Translation* (ROT), ed. Jonathan Barnes (Princeton: Princeton University Press, 1984). I occasionally make small emendations, including translating *aretê* as "virtue." In *Aristotle on the Uses of Contemplation* (Cambridge: Cambridge University Press, 2018), ch. 6, I explore the ways in which Aristotle borrows this conception of the harmonious, integrated soul from Plato's *Republic*.
 9. See, for example, Roger T. Ames and Henry Rosemont, Jr., "Were the Early Confucians Virtuous?" in *Ethics in Early China: An Anthology*, eds Chris Fraser, Dan Robins, and Timothy O'Leary (Hong Kong: University of Hong Kong Press, 2011), 20. Ames and Rosemont also deny that Confucius has conceptual space for the Aristotelian conception of a soul. For his part, the early Confucian Mengzi is more explicit about human nature and its elements, identifying its authoritative aspect as the heart-mind (*xin*) and the heart-mind's dispositions toward benevolence, righteousness, propriety, and wisdom. I discuss Mengzi's account of human nature, and its principles of hierarchy and unity, in "Structured Inclusivism about Human Flourishing: A Mengzian Formulation," in *Virtue Ethics and Confucianism*, 94-102.
 10. On the doctrine of the mean in Confucius and Aristotle, see Sim, *Remastering Morals with Aristotle and Confucius*, ch. 4 and Yu, *The Ethics of Confucius and Aristotle*, ch. 3.
 11. As Hall and Ames, *Thinking Through Confucius*, 174-175, observe, such penalties sought to bring shame to the offender (especially for failing to return his complete body to his ancestors).
 12. Confucius' worries about legal punishment and the evasiveness that it encourages invite a certain comparison with Nietzsche's views in *On the Genealogy of Morals*, trans. Walter Kaufmann and R.J. Hollingdale (New York: Vintage Books 1967/1989), II.14 about punishment's incapacity to generate a sense of bad conscience.
 13. See Bryan W. Van Norden, *Virtue Ethics and Consequentialism in Early Chinese Philosophy* (New York: Cambridge University Press, 2007), 259-260 and Justin Tiwald, "Punishment and Autonomous Shame in Confucian Thought," *Criminal Justice Ethics* 36 (2017), 48. My thinking has benefitted much from Tiwald's insightful paper.
 14. Generally following Myles F. Burnyeat, "Aristotle on Learning to Be Good," in *Essays on Aristotle's Ethics*, ed. A. O. Rorty (Berkeley: University of California Press, 1980), 73-76. Howard J. Curzer, *Aristotle & the Virtues* (New York: Oxford University Press, 2012), 325-326, challenges this pleasure-oriented account on various points. (1) Curzer notes that Aristotle thinks that those who are still learning to be good should avoid pleasures (*EN* II.9, 1109b7-13). (2) Curzer argues, following Sarah Broadie, that to take pleasure in "the intrinsic value of virtuous acts, one must first consider them to be intrinsically valuable." One need not take pleasure in virtuous actions simply from performing them over and over.
In response to (1): a proponent of the pleasure-oriented account can insist that Aristotle's insistence that the ethically immature avoid pleasure applies not to the pleasures of virtue, but to bodily pleasures, which the many and the young overvalue (see, for example, *EN*

- III.10, 1118b1-8; b21-28; III.12, 1119b3-10). Zena Hitz, "Aristotle on Law and Moral Education," *Oxford Studies in Ancient Philosophy* 42 (2012), 293, concurs that Aristotle is concerned with appetitive pleasures. As for (2): I take Aristotle to suggest that the person learning to be good takes pleasure in the intrinsically pleasant aspects of virtuous actions. One can take pleasure in these aspects without first considering virtuous actions to be intrinsically valuable. By being exposed to the former, the learner is in a position eventually to come to consider virtuous actions intrinsically valuable (or at least valuable for their own sake). More importantly, as I discuss in Part IV, Aristotle identifies another mechanism - musical education - that explains how ethical learners can begin their habituation to virtuous acts positively disposed to ethical virtue's intrinsic goodness. Still, Curzer's stimulating discussion, which properly highlights punishment's role in Aristotle's account of ethical development, invites fuller engagement than space allows me here.
15. For a fuller discussion of Aristotle on shame, see Alessandra Fussi, "Aristotle on Shame," *Ancient Philosophy* 35 (2015), 113-135. Fussi also discusses Aristotle's account of shame in *Rhetoric* II.6. As Van Norden, *Virtue Ethics and Consequentialism in Early Chinese Philosophy*, 269-270, suggests, Aristotle's unwillingness to identify shame as a virtue reflects his concern to identify the virtues of fully cultivated agents; Confucius, by contrast, may be more concerned to identify the virtues of less-than-perfect human beings where they stand.
 16. Burnyeat, "Aristotle on Learning to Be Good," 78.
 17. Robert P. George, *Making Men Moral: Civil Liberties and Public Morality* (Oxford: Clarendon Press, 1993), 25-26, highlights this aspect of Aristotle's view.
 18. On this medical model of punishment, cf., Plato, *Gorgias* 479a-c; *Protagoras* 325a; *Republic* III.409e; *Laws* V.735c-e; IX.854d-e (in *Plato: Complete Works*, ed. John M. Cooper [Indianapolis and Cambridge, 1997]).
 19. Tiwald, "Punishment and Autonomous Shame in Confucian Thought," 56.
 20. *Analects* 4.11, noted by A.C. Graham, *Disputers of the Tao: Philosophical Argument in Ancient China* (Indianapolis: Open Court, 1989), 429n3, also suggests that the *junzi* will concern himself with (suitable) punishments.
 21. In *Virtue Ethics and Consequentialism in Early Chinese Philosophy*, 86, Van Norden accepts an older proposal in Arthur Waley, *The Analects of Confucius* (London: Allen and Unwin, 1938), 21-22. On Xunzi on correct naming, see, in particular, Xunzi, ch. 22. For Han Feizi's defense of harsh punishments, see, for example, "On the Importance of Having Standards (A Memorial)," in *Readings in Classical Chinese Philosophy*, 2nd ed., eds Philip J. Ivanhoe and Bryan W. Van Norden (Indianapolis and Cambridge: Hackett, 2005), 322-323.
 22. Other passages where Confucius appears to accept the importance of "rectifying names" include *Analects* 6.25, 12.11, 12.17, and 13.14. On the doctrine as authentically Confucian, see, for example, Graham, *Disputers of the Tao*, 24n, and Peimin Ni, *Confucius: The Man and the Way of Gongfu* (Lanham, MD: Rowman and Littlefield, 2016), 92-93. At any rate, Xunzi, ch. 24 seems to accept that when a *junzi* rules, punishments will be few and far between.
 23. Joseph Chan, *Confucian Perfectionism: A Political Philosophy for Our Times* (Princeton and London: Princeton University Press, 2014), 13. Graham, *Disputers of the Tao*, 24n, argues that the *Analects* at least "accept punishment as a practical necessity." As Tiwald, "Punishment and Autonomous Shame in Confucian Thought," 53, notes, this view does not imply "that one should first try to govern by cultivating a sense of shame and only resort to establishing rules and procedures for punishment if the great 'shame experiment' falls on its face." Instead, as Tiwald clarifies, the idea is that a good ruler will design proper punishments - yet ensure that they are used as sparingly as possible.
 24. Cf. Hall and Ames, *Thinking Through Confucius*, 175, who contend that Confucius accepts punitive order "as a reinforcement where intrinsically generated order breaks down."
 25. Like Hitz, "Aristotle on Law and Moral Education," 270, I accept that political courage is not an immature ethical state on the way to real courage, but rather, a defective non-virtuous state.
 26. Tiwald raises this question in "Punishment and Autonomous Shame in Confucian Thought," 54-55.

27. On the importance of emulation in the *Analects*, see Amy Olberding, *Moral Exemplars in the Analects: The Good Person is That* (New York: Routledge, 2012), 14, 33-36, as well as my "Non-Impositional Rule in Confucius and Aristotle," a companion to this paper, forthcoming in *The Bloomsbury Research Handbook in Early Chinese Ethics and Political Philosophy*, ed. Alexis McLeod (London: Bloomsbury Academic, 2018). On the charismatic power of virtue, see Slingerland, *Confucius: Analects*, xviii. Hall and Ames, *Thinking Through Confucius*, 178, highlight the *junzi*'s status as an exemplary model, but suggest that charisma might be the wrong term to apply to him, at least if the charismatic figure is ultimately an intermediary "gifted" with a transcendent message, rather than a complete model in his own right. Graham, *Disputers of the Tao*, 13 - translating *de* as "Potency" - speaks of the traditional sense of *de* as "the power, whether benign or baleful, to move others without exerting physical force."
28. On the ways in which performing rituals enables one to internalize the values that rituals embody, see Yu, *The Ethics of Confucius and Aristotle*, 96-97, 101, and Van Norden, *Virtue Ethics and Consequentialism in Early Chinese Philosophy*, 111-112.
29. Van Norden, *Virtue Ethics and Consequentialism in Early Chinese Philosophy*, 113, notes that music and poetry were typically performed as part of ritual ceremonies.
30. Sim, *Remastering Morals with Aristotle and Confucius*, 148-150, makes a related point, noting that Aristotle views the virtuous person as the "norm and measure" of what is *kalon* and pleasant (see *EN* III.4, 1113a31-33). She notes that Confucius does the same (*Analects* 5.3). Still, she notes one way in which Aristotle is apt to depart from Confucius: "Aristotle would not go so far as to say that the mere presence of the virtuous will convert the virtuous" (150n2).
31. Following Yu, *The Ethics of Confucius and Aristotle*, ch. 4 and Sim, *Remastering Morals with Aristotle and Confucius*, 146-148, who helpfully compare Confucian ritualization and Aristotelian habituation.
32. For an excellent discussion of this point, see Hitz, "Aristotle on Law and Moral Education," 270-271, 296-301. Yu, *The Ethics of Confucius and Aristotle*, 107, notes that both Confucius and Aristotle accept a role for music in self-cultivation.
33. I presented an earlier version of this paper at "Law and Humanities: International Dialogues," a workshop co-organized by the University of Hong Kong and the Yale Center Beijing. I am grateful to Marco Wan for inviting me to participate in the workshop and for his encouragement with this project, to the other attendees for their questions and comments, and to a *Law and Literature* referee for helpful comments on the penultimate draft.

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