

THE HUMAN WILL AND ITS IMPACT ON CRIMINAL PUNISHMENT

Reza Berenjkar

Professor of university of Tehran

Translator: Jalil Dorrani

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Abstract: *The issue of will and free will has far-reaching effects and consequences in various sciences. In the field of law and jurisprudence how the will is formed and actualized is effective in the accuracy of contracts and convictions as well as the extent of punishment. According to Aristotle, the foundation of ethics and law rests upon will and free will. In the view of Aristotle, will is a volitional act that is uncoercive, and is based on knowledge and understanding, and actions that emerge out of coercion or ignorance are deemed as compulsive acts. Aristotle considers compulsive acts to be pardonable under certain circumstances.*

Key words: human development, criminal punishment

Introduction:

Will, as one of the most important factors influencing human actions and behavior, has long caught the attention of prominent thinkers and intellectuals. Since the formation of society and the emergence of the rights of individuals and conflict of interests, scholars of ethics and law have discussed issues such as: the effect of will, as a fundamental pillar in the sequence of actions in legal matters, including its cause in the aggravation and reduction of penalties or the sequence of effects on contracts and convictions of jurists. Thus, scholars have dedicated their efforts in exploring the concept of will and separated it from motives, as well as the groundwork and premises that form a will, and by groundwork, we mean perception, mindset, orientation, as well as agreement or disagreement with will, intention with consent and reluctance with compulsion, and various meanings of will.¹

In this article, a brief report will be presented on Aristotle's view on the will of choice, compulsion and their sources as well as their effect on the reduction and expansion of punishment.

Will, the crux of knowledge, ethics and law

According to Aristotle, moral virtues and vices are related to the realm of actions performed by one's will. This is because a person's actions, motivated by their will, are the acts that deserve praise or condemnation. Besides, when someone acts out of compulsion, people tend to show tolerance towards him, and sometimes even compassion. On the other hand, the virtuous and evil act that is discussed in ethics is an act that is praised and condemned.

Therefore, voluntary acts are the same as those discussed in ethics, and will is a precondition for virtue. For this reason, Aristotle considers

himself obligated to discuss will and compulsion before focusing on moral virtues and vices.²

After mentioning this point, Aristotle considers the same to be true for law and legislation. He said: "Will is not only the basis of ethics, but is also critical for the lawmaker's determination of reward and punishment for actions."³

Will, Compulsion and Choice

The key concepts in Aristotle's subject under discussion are "voluntary", "involuntary", and "choice". Persian translators have used diverse terminologies for these concepts, but based on Aristotle's presentation of discussion, the aforementioned terms seem more appropriate.

Aristotle examines the concept of will in contrast to compulsion. Then he says: "**Involuntary action is an act that originates from external compulsion or ignorance.**"⁴

Consequently, voluntary action is carried out without force, resulting from knowledge and awareness.⁵

Accordingly, coercive actions would be of two kinds, actions coerced by external factors, and actions that stem from ignorance. Aristotle discusses these two types in-depth, as summarized below.

Choice has a more specific and limited meaning than will, and between choice and will, there exists an absolute general and specific relationship; every choice is voluntary (according to one's free-will), but not every will is a choice. Aristotle draws two distinctions between choice and will. Firstly, will exists in both mature, and rational humans as well as animals, whereas choice is only present in mature humans. Secondly, voluntary actions occur instantaneously and timelessly, whereas choice is gradual and time-consuming.⁶ These two differences, and in reality, the two constraints of choice, may be attributed to a single

difference and constraint, namely the presence of rationality in choice.

Acts arising from external compulsion:

Aristotle considers an action caused by external compulsion to be an action that originates from a source beyond the individual, and in which he plays no active role, such as a sea storm or captors who hold someone in captivity take him somewhere.⁷

Another type of such action is those that are performed under the pressure of external factors, but where we ourselves have a share in the action and can choose to abandon it. **"For instance, a tyrant ruler who holds someone's father or mother or child as captive. He then orders an individual to commit some crime and promises to spare his family's life if the crime is committed, otherwise he would kill them."**⁸

Aristotle is of the belief that: **"Such acts are a combination of**

will and compulsion. But they are closer to voluntary actions, for the individual can choose whether or not to perform them."⁹ Aristotle goes on to say: **"The medium that moves the organs of the body in these actions is within man himself. And since the source of the stimulus is within the individual, he has the power to perform or abandon that action."**¹⁰

From Aristotle's words it can be concluded that the internal sources are not the sole and indispensable condition for an action to be considered voluntary, and that the external factors play no role. Rather, it suffices for an action to be voluntary if an individual has a share in it and the ability to abandon it. In other words, the internal source in general is the principle in question, the result of which is the power to perform or abandon an action, but not solely depending on internal source of action.

In continuation of the discussion, Aristotle asserts there are varying degrees and forms of

voluntary actions influenced by external forces. He believes that committing certain wrongful acts in such circumstances makes the committer deserving of blame and punishment, and that is when there exists no noble discretion and purpose. However, if such a purpose exists, the perpetrator is not only exempt from blame and punishment, but is also praised.¹¹ In other words, repelling corruption from the corrupt is not only non-criminal, but a commendable act.

Actions due to ignorance:

Aristotle makes precise distinctions about actions that arise from ignorance. Here, we will only mention the distinctions that have implications for crime punishment.¹²

Aristotle distinguishes between actions caused by ignorance and actions undertaken in ignorance. In the case of actions undertaken in ignorance, Aristotle's example is of an individual who commits an act in a state of intoxication or anger. Such an

individual is unaware of what he is doing, i.e., he is in a state of ignorance and insensibility. However, his action cannot be deemed as a result of ignorance, rather his action is the result of intoxication or anger.¹³

One can consider such acts as involuntary, because the perpetrator is unaware of his action and lacks the second condition of a voluntary act, i.e., knowledge and awareness. Nonetheless, one can still consider the same as a voluntary act, because the person willfully put himself in a state of drunkenness, anger and, consequently, ignorance. In fact, in terms of moment of its occurrence, the act is involuntary, but considering the voluntary source of action, it is a voluntary action. As the saying goes: **"Refraining from choosing does not preclude choice"**.

Aristotle does not specify here whether action in ignorance like action caused by ignorance is compulsive (involuntary) or not. Of course, in the discussion on justice and injustice,

which he addresses again in this matter, he considers it a compulsive (involuntary) action, akin to actions caused by ignorance. However, it is an involuntary act that is unpardonable while an act caused by ignorance is a compulsive (involuntary) action that is pardonable and forgivable. He says:

Some compulsive (involuntary) actions are pardonable and some are not, because those who not only commit an act in ignorance, but also due to ignorance are forgivable, whereas those who commit an act because of ignorance (even though in ignorance) but which are due to a reaction that is neither natural nor human, (and commits a crime), is unforgivable.¹⁴

Aristotle in this case considers unnatural reaction to be the cause of ignorance. It seems, by unnatural reaction, he means instances like drunkenness and willful anger, in which a person puts himself into a state of ignorance by his own will.

From this point it can be concluded that in Aristotle's view, if someone is naturally ignorant or involuntarily gets angry, he is not to be blamed for his ignorance. Consequently, his wrong deed is forgivable or deserves concession in punishment.

Aristotle states two kinds of ignorance, the first type comprises of ignorance regarding what should be done and what shouldn't be done. Second, ignorance about what is beneficial and what is not beneficial. The first kind is ignorance about the essence of good and bad actions and its generalities; and the second type is ignorance about the particulars of action, that is, the circumstances, state and subject matter of action.

He believes that only the second form of ignorance provides grounds for pardon and forgiveness for compulsive action. His reasoning is that in the case of the first form, the perpetrator is condemned and people believe the concept of compulsion does not apply to him. However, it is

only in the second type that people show mercy and tolerance towards the ignorant perpetrator and consider him as a distressed person.

For example, someone who injures a friend while showing him how to operate a weapon, or one who kills his son believing him to be an enemy, and so on, which leads to regret and reproach of the perpetrator.

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Aristotle's statement about voluntary action arising from ignorance concerning goodness and badness of action, and thereby deserving punishment is apparently true only if the ignorance is due to fault. This is because if someone is faultless and is ignorant of the general nature of action and commits a crime, people consider him to be entitled to forgiveness.

From the two recent discussions, namely "**actions caused by external compulsion**" and "**acts caused by ignorance**", in order to

explain will, we can deduce that a voluntary action has two conditions: One that it must originate from within the performer and not by external compulsion; the other is that the performer must be mindful of the details and circumstances of the action. But in the midst of Aristotle's discourse on these two discussions, it appears, he also believes a voluntary action must comply with two additional conditions: one that the performer must possess the ability to perform or abandon the action, and the other that the action must be desirable to the performer.

Choice

It has been noted earlier that choice is a will in which the element of reason is present. The principle of voluntary action and choice from Aristotle's point of view can be expressed as follows:

Sensing - Imagination -
Eagerness - Voluntary Action

Sensing - Imagination +
Reasoning - Rational Eagerness-
Selective action (Choice)¹⁶

In explaining choice, Aristotle critically examines the various opinions and concepts made in the interpretation of choice. These concepts include eagerness, anger, wish and belief.¹⁷ After criticizing various interpretations of choice, he first discusses the subject of choice. Since the element of contemplation is involved in choice, it is necessary to specify the subject of contemplation.

Here, contemplation is not just any type of perception, but a perception linked to action, meaning practical reason by the intellect. Aristotle reckons contemplation as something within our power and from things that we can do, but their results are not always the same, like making money.¹⁸ The issue of contemplation is not about the goal, it's about the best way and method to achieve the goal. The issue of contemplation is

sometimes about a medium, sometimes it's about how to use them, and sometimes it's about the people from whom we can seek help.¹⁹

Aristotle, in continuation of the discussion, defines choice as a deliberate desire for actions that are within our power²⁰ and elsewhere, he interprets choice as "intellectual desire" or "desiderative thought."²¹

Thus, in Aristotle's view, choice is a rational desire, i.e., a desire guided by reason, or desirable reasoning. In the discussion regarding will too, which was previously raised in Aristotle's discourse, Aristotle attributes will to desire and eagerness in his book "Soul" concerning the motivating force.²²

But in a section of the book "Nicomachean Ethics", he seems to view choice as an independent state, but driven by measured desire. **He asserts that the source of action (as an effective cause, not a final cause) is choice, and the source of choice is**

desire and reasoning, and an outlook about the goal.²³

David Ross also interprets Aristotle's theory of choice in this manner. He believes that the subject of choice is something new for Aristotle and distinct from its foundations.²⁴

Among Islamic philosophers, there are also some who consider will to be equal to intense eagerness, while others believe that willpower develops after a strong eagerness is formed in man. Molla Hadi Sabzwari is amongst those who believe in the first theory. In one of his poems, he says:

عقيب داع در كنا الملايما شوقاً مؤكداً
ارادة سما

"Following a motive, which is our gentle perception of a particular action, there emerges a strong eagerness in man, which is called will."²⁵

Molla Sadra is one of the believers of the second theory. He

believes that humans first imagine an action, then acknowledges the benefits he would derive from it, which sparks his eagerness to perform the action. If the motivation is strong, the will materializes. After these five stages, which are called the bases of a voluntary action – the bodily driving force is activated and the action is realized.²⁶

It is important to discern whether the choice is the result of measured desire or the desire itself. Also, whether the will is the result of eagerness or the eagerness itself. In the first instance, it is possible to prove the developmental freedom for man. However, such a possibility cannot transpire in the second case. Considering that desire is not voluntary, if the will or choice stay similar to the measured desire or desire, it would not render them voluntary as well.

But if will and choice are consequences of desire, then two conditions are conceivable: one is that

we consider desire to be effective only in the will and choice, and accept the possibility of not willing or choosing something that we strongly desire. In this case, human freedom will be acceptable. The second is to consider the will and choice as a necessary and forced effect of desire. In this case, similar to the first case, man is condemned to his own forced will, and his true freedom cannot be proven. Except in very few cases, Aristotle assigns choice to desire and reason. In Aristotle's anthropology, there are only three faculties of action in the human soul: sensing, reason and desire (he incorporates imagination into reason).²⁷

Therefore, apart from the aforementioned three powers, no other power accounts for the emanation of the will and choice. Thus, it is natural that the will and choice are attributed to these three faculties or some of them. The phrase cited by Aristotle contradicts his other statements, and in that he considers the measured desire

to be the effect of choice, not the choice itself. If this very phrase is deemed to be his main belief, yet, he would not be able to prove freedom of choice because he regards choice as a necessary and inviolable consequence of measured desire, and he does not see man capable of resisting this desire.²⁸

Of course, Aristotle's principles in the discussion of will and choice cannot prove the true freedom of man, but he defends human freedom in many ways. For example, he considers initiatives taken by lawmakers to punish evil actions as proof of a criminal's freedom.²⁹

This statement is true and conforms to human conscience. The general conscience of the people acknowledges the freedom of man. Therefore, the verdict of criminality ensues for the criminal, because without the acceptance of human freedom, the crime would be meaningless and the punishment unacceptable. But the point is that

Aristotle's anthropological foundations make it unfeasible to provide a philosophical explanation of human freedom.

Good and Evil in Actions and Subjects

One of the important topics that Aristotle raises in his discussing of will and compulsion in the subject of Justice and Injustice is the distinction between good and evil pertaining to actions and subjects.

He says: "If a person knowingly, but without careful contemplation and assessment, commits an evil act, this act is unjust." Actions that are carried out due to emotions and natural and necessary reactions can be considered as cases of such actions. An example of this is an evil action that man commits as a result of anger arising naturally and unwillingly in him.

This is an unjust act but not in the sense that its perpetrator is an unjust and evil person, because the harm he causes to others is not due to wickedness and evil. But when someone deliberately and thoughtfully commits such an act, he will be considered unjust and sinful.³⁰

Therefore, it is possible a person may commit a crime without being labeled a criminal, because the crime he perpetrated wasn't out of choice. Here, the action is evil and criminal in nature, but its perpetrator is not truly unjust and criminal.

From this discussion, we also perceive that in some volitional acts (i.e., actions resulting from natural reactions), the doer may not be praised or blamed, and therefore, does not warrant any reward or punishment, although the action itself is praiseworthy or blameworthy. These actions are volitional, yet they are not subject to choice. Therefore, according to Aristotle, the moral element of a crime is not mere will, but rather the

combination of will and contemplation (which Aristotle refers to as choice) is the moral element of a crime.

As mentioned earlier, will, in the Aristotelian sense, exists not only in rational individuals, but also in children and, in general, in all animals. Basically, Aristotle's definition of an animal is a movable entity possessing will. In one article of the discussion on will and compulsion, Aristotle says:

Actions that occur out of anger or desire cannot accurately be called as compulsion, for otherwise, no animal or child would perform voluntary acts. ³¹

In this phrase, Aristotle considers voluntary actions to be driven by anger or desire, including the actions of children and animals that arise out of eagerness or anger and which are not based on contemplation. In this way, Aristotle aligns with the concept of choice to what the lawmakers intend from will and

consider it amoral element of crime. He reckons choice, in which the factors of perception, desire, contemplation, and eventually motive and direction are present, as amoral element of crime.

Criticism and Opinion:

There are two fundamental flaws in Aristotle's explanation of voluntary action. As a result of these two aspects, he is unable to explain voluntary and non-coercive actions.

Firstly, he associates will with knowledge and desire and does not recognize will to be independent from knowledge and desire. Therefore, from Aristotle's point of view, will is bound to knowledge and desire and cannot be actualized freely, for in principle, the will is not at the level of knowledge and desire.

Secondly, he regards voluntary or non-compulsive action as an act that is carried out without external coercion. So, if the act results from an internal compulsion, it is still

non-compulsive. However, true volitional involves freedom from both internal and external compulsion.

In order to elucidate the concept of free will, or authority, it seems at least two things needs to be addressed.

One is to consider the will as an affair other than knowledge and desire, and to reconsider it in relation to other mental actions and states. The second task is not to think of the will as bound by knowledge and desire, and to prove its freedom from external compulsion (disinclination) and internal compulsion (determinism of knowledge and desire).

Vahid Behbahani asserts: We should not interpret voluntary action to mean an act that originates from will without external compulsion, because this type of authority and liberty is in fact, compulsion. He calls external coercion as "compulsion" and internal coercion as "necessity" and places authority and liberty in opposition to

compulsion and coercion. He regards free will as a conscientious matter and interprets the causality of knowledge and desire (and generally internal and external causes) in relation to will as "unnecessary influence," and not as "philosophical causality that is necessary and inviolable."³²

The prominent researcher Nayini, Ayatollah Khoi, and the martyr Sadr also hold similar views.³³

¹ Katouzian, Civil Rights, p. 491. Shahidi, Establishment of Contracts and Obligations, p.56

² Aristotle, The Complete Works of Aristotle, p.1752, Stewart, Notes on the Nicomachean Ethics of Aristotle, p.223

³ Aristotle, The Complete Works of Aristotle, p.1752

⁴ Ibid

⁵ Ibid, p.1791

⁶ Ibid, p.1755

⁷ Ibid, p.1752

⁸ Ibid

⁹ Ibid

¹⁰ Ibid

¹¹ Ibid, p.1753

¹² One of Aristotle's accurate distinctions in this discussion is the distinction between a compulsive action and an action without will. (In this regard, see the commentary of Gomperts, a Greek philosopher, p.1480)

¹³ Aristotle, The Complete Works of Aristotle, p.1752

¹⁴ Ibid, p.1793

¹⁵ Ibid, p.1753 and 1754.

¹⁶ Ibid, p.688-690

¹⁷ Ibid, p.1755

¹⁸ Ibid, p.1759

¹⁹ Ibid

²⁰ Ibid, p.1757

²¹ Ibid, p.1799

²² Aristotle, About Soul, p.255-269

²³ Aristotle, The Complete Works of Aristotle, p.1798

²⁴ Ross, Aristotle, p.207

²⁵ Sabzawari, Shahr al-Manzumah, p.184

²⁶ Mollah Sadra, Al-Asfar al-Arba'ah, v.6, p.254; v.4, p.114

²⁷ Aristotle, The Complete Works of Aristotle, p.688

²⁹ Aristotle, The Complete Works of Aristotle, p.175

³⁰ Ibid, p.1790 and 1792

³¹ Ibid, p.1745

³² Behbahani, Risalah Fi al-Jabr Wa al-Ekhtiyar, p.467-473.

³³ Khoei, Ajwad al-Taqrirat, p. 90-91; Hashemi, Bahuth fi al-Usul, p. 34-37; Fayyaz, Mahazirat fi Usul al-Fiqh, p. 47 and 57

²⁸ Proving this matter requires several discussions including an explanation of Aristotle's reaction to Socrates' theory, which is beyond the scope of this brief article.