

Dispassionate Judges Encountering Hot-headed Aristotelians

Christof Rapp 

DPSP Annual Volume 1 (2020)
ISSN: 2667-2790

Digital Paul Scholten Project
<https://paulscholten.eu/>



Keywords

Aristotle, Emotion, Emotion regulation, Judges Anger, Character virtue, Virtue ethics.

Article Info

Category: research

Research Question: Law and Emotion

Reviewed by: Cristina Viano, Ton Hol

Cite as: Rapp, Christof. Dispassionate Judges Encountering Hot-headed Aristotelians. *DPSP Annual*, I: Research, Volume 1 (2020), 87-107.

Abstract

Traditionally, it has been assumed that a judge should pass her judgement in an entirely dispassionate state of mind. More recently this traditional assumption has been challenged by authors who claim that emotions as compassion, indignation or anger are not only indispensable, but can even play a beneficial and important role in judicial decision making. Thus the old ideal of the impassionate judge is challenged by the new ideal of rightly compassionate, rightly indignant or even rightly angry judges. Some supporters of this new ideal of an emotionally engaged judge invoke Aristotle for the idea that a judge should feel the right emotions in the right way. The paper argues that, although there are passages in Aristotle that might be understood as implying such views, Aristotle's account of the right emotions of a virtuous person does not lend support to ideal of passionate judges. On the contrary, the paper will point to contexts in which Aristotle seems to be rather concerned about the possibility of judges who pass their judgement in an emotional state. It is thoroughly justified, though, to regard Aristotle as an ally in the promotion of the idea that emotions, rather than being blind, obstructive impulses, are intrinsically connected with our thoughts,

seems to be suggested that the deeper reasons for why righteously angry judgements are preferable to dispassionate ones (the kind of reasons we were unable to find during the discussion of section (4.) above) are to be found in Aristotle's philosophy. We will examine this suspicion in the following sections.

6. Aristotle and angry judges: a mismatch?

Before we start browsing Aristotelian philosophy for hints to the ideal of the angry judge, it might be useful to address some preliminary concerns.

To begin with, the formula that according to Aristotle the judge should feel anger for the right reasons and should deal with her anger in the right way (see section (5.) above), bears a significant ambiguity. Aristotle himself, to be sure, never applies the formula of having emotions in the right way etc. to judges in particular. In any case, leaving aside this minor mismatch, the formula applied to judges could either mean (a) that whoever acts as judge should feel anger at the case at hand and should feel it for the right reasons and in the right way, or it could mean (b) that *if* a judge happens to feel anger, it should be for the right reasons and in the right way. As we will see below in section (7.), Aristotle's account of virtues, from which this formula is taken, provides a rationale for the claim given in reading (b), while it is much more difficult to find an Aristotelian theorem that would correspond to claim (a). If, however, one wishes to ground a preference for angry judgements in Aristotelian virtue ethics, one would need to presuppose reading (a), not (b).

A related point is this. Maroney's account is based on the claim that judicial anger is ubiquitous and inevitable. Reading (a) in the previous paragraph would square well with this ubiquity claim, while the claim in reading (b) is much more limited. Frankly speaking, I find it hard to imagine that Aristotle thought of emotions as a ubiquitous phenomenon. For example, Aristotle says that young people usually follow their passions or emotions and are at this stage not able to follow reason. (*EN*³⁵ 1095a4-9) This sounds to me as if the emotion-driven stage of life is something that we should overcome rather sooner than later. Once we are grown up, we should be able to structure our lives in accordance with reason and should no longer follow emotional impulses. Here is another example: Aristotle clearly thinks of emotions as episodes that involve extraordinary bodily changes. (*DA*³⁶ 403a5-6, 16-8, 31f) Anger, he thinks, is connected with the boiling of the blood in the region around the heart. Such bodily conditions are exhausting and thus have definite limits in time. (*Rhet.*³⁷ 1382a7) On this account, a job in which we are expected to produce episodes of anger on a regular basis would be extremely unhealthy. Aristotle once reports a case in which people who poured all their anger in into the sentencing of culprit A on the one day, were too exhausted to be angry with culprit B on the next. (*Rhet.* 1380b10-4) These are not decisive reasons, but together they suggest a picture in which the experience of anger and other strong emotions is rather limited to very specific situations.

Another preliminary worry. *Human beings should have emotions in the right way. Judges are human beings. Judges should have emotions in the right way.* This sounds like a safe conclusion. Nevertheless we never find anything like this in Aristotle. Why is this so? Well, when Aristotle speaks about the conditions under which a person is thought to be virtuous, his paradigm case is a moral agent who makes decisions concerning her own life and then acts on them. (for example *EN* 1105a28-33) What is decisive is the good practical decision (*prohairesis*), which involves both practical reason and the virtues of the non-rational part of the soul (which, on Aristotle's account, is also responsible for the emotions). It is due to the latter part that the virtuous persons desire the right virtuous goals. The *prohairesis* is always directed at things that are possible for the agent to do and that lie in the future. If the *prohairesis* is good, it singles out the option that makes the best

