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Antonios Emmanuel Platsas\*

## THE USE OF THE COMPARATIVE LAW METHOD IN CLASSIC PIECES BY ARISTOTLE AND PLATO

*In memoriam Professor Basil S. Markesinis*

### Abstract

*The article explores the Platonic roots and the Aristotelian essence of such a leading academic subject as comparative law. Comparative law is not a creation of the 20<sup>th</sup> century, even though modern comparative law, as we know it, has indeed matured and developed in the 20<sup>th</sup> century. The journey of comparative law commences with Plato and Aristotle, even though it was Aristotle that seems to have placed comparative law on its academic rails through his extensive, systematic, and rigorous comparative exploration of constitutions. Nevertheless, Plato must have inspired his best student, Aristotle, in the examination of comparative legal matter. Equally, the mastermind and the driving spirit behind the subject of comparative law, as it came to flourish in modernity, seems to have been Aristotle. Generations of comparative lawyers from Lambert and Salleiles to Zweigert, Kötz, and David effectively cultivated a subject which is quintessentially Aristotelian, despite the subject's apparent Platonic roots. This exposition proves, substantiates, and analyses the Aristotelian spirit of our subject, a subject which has inspired the discipline of law, Academia, and the world, the article taking a balanced approach between the subject's Platonic roots and the subject's Aristotelian essence.*

### Keywords

*comparative law; comparative constitutional law; Aristotle; Plato; comparative law methodology; Laws; Politics*

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## INTRODUCTION

The article explores the beginnings of comparative law in ancient times, concentrating on the leading works of Plato and Aristotle in the area. It does so by addressing and analysing legal, historical, and political organization matter and by exploring the first recorded comparative legal researches in the ancient world, namely those of Plato, especially his *Laws*, and those of Aristotle, especially his *Politics*. In addition to briefly exposing the philosophical geniuses of Plato and Aristotle for the benefit of the reader, the article offers concrete information as to the first recorded works of comparative legal research in world history by positing that the roots of the subject of comparative law are effectively Platonic, but the essence thereof is Aristotelian. References to other ancient authors are made as appropriate.

### I. EARLIEST COMPARATIVE LAW RESEARCHERS

Greece is the place where the earliest recorded comparative law researches were conducted.<sup>1</sup> For a nation of intellectuals, traders, and sailors at heart<sup>2</sup>, the curiosity of the Greeks for comparative legal matter must have been only natural, if not irresistible. Hints as to the well-known curiosity of this people to learn the world and from the world and the customs of other people are already offered to us in the first lines of the *Odyssey*: “Many were the men whose cities he saw and whose mind he learned”<sup>3</sup> (Homer referring to Odysseus and his adventures prior to his eventually returning to Ithaca ten years after the destruction of the holy city of Troy).

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<sup>1</sup> K. Zweigert, H. Kötz, *An Introduction to Comparative Law*, OUP, 3rd ed., 1998, p. 49; B. Fekete, *Paradigms in Modern European Comparative Law: A History*, Hart, 2021, p. 12; J. Husa, *Introduction to Comparative Law*, Bloomsbury, 2nd ed., 2023, p. 12.

<sup>2</sup> E.g. N. Davies, *Europe: A History*, Pimlico, 1996, reprinted 1997, p. 149.

<sup>3</sup> Homer, *Odyssey*, Book 1, Line 2. In modern comparative law, cf. M. Van Hoecke, “Methodology of Comparative Legal Research”, *Law and Method*, 2015, p. 8. See also Legrand’s *theoros* (θεωρὸς) example in P. Legrand, *Negative Comparative Law: A Strong Programme for Weak Thought*, CUP, 2022, p. 18. All references to ancient texts are from the relevant resources found in the Perseus Digital Library of Tufts University.

Furthermore, the intellectual curiosity of the Greeks for the legal and constitutional frameworks of different city states would not be easily satisfied or put at rest: Plato compared the laws of Greek city states and identified the constitutional models that such can follow, while Aristotle “examined the constitutions of no less than 153 [sic]<sup>4</sup> city-states”<sup>5</sup>; he also offered a slightly different division of constitutions in his *Politics* from the division of constitutions of Plato in his *Republic*. We otherwise have only fractions of Aristotle’s comparative law researches, i.e. mainly those relating to Athens, Sparta, Crete, and Carthage. Also, Theophrastus, one of Aristotle’s most apt students, would be interested in the comparison of private laws, his approach *On Laws* having been described as quite modern, in that he attempts to first identify the general principles behind his legal comparables in order to explain the divergence of particular rules.<sup>6</sup> Zweigert and Kötz report that his approach has been used by Von Gierke and Huber, in the explanation of private laws in the legal orders of Germany and Switzerland respectively.<sup>7</sup> Reverting to Plato, he would, thus, limit his comparative law researches to the Greek world, as he was reluctant to extend his comparative researches to places like Carthage, as the Carthaginians were according to him hopeless barbarians.<sup>8</sup>

Nevertheless, both Aristotle in the 4<sup>th</sup> century BC and Eratosthenes later in the 3<sup>rd</sup> century BC found the constitution of Carthage a fascinating one to examine. Indeed, it is Aristotle that effectively first broke free from the Greek world in his comparative researches and examined the

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<sup>4</sup> Most of the sources give a figure of 158 constitutions with regard to Aristotle’s *Politeiai*, but cf. G. Dietze-Mager, “Die *Politeiai* des Aristoteles und Ihre Beziehung zu den *Nomima Barbarika*”, *Mediterranea*, 2017, Volume 2, pp. 35-72, her raising this figure to 255 constitutions, especially if one included the lost constitutions that would be found in the *Nomima Barbarika*. There is also considerable disagreement as to whether it was Aristotle or his students that drafted the *Politeiai*, but there seems to be agreement that these works were in any case composed under Aristotle’s direction. See e.g. D.L. Toye, “Aristotle’s Other *Politeiai*: Was the *Athenaion Politeia* Atypical?”, *The Classical Journal*, 1999, Volume 94, Issue 3, p. 235 citing P.J. Rhodes, *A Commentary on the Aristotelian Athenaion Politeia*, OUP, 1981, pp. 58-63.

<sup>5</sup> Zweigert and Kötz, *supra* note 1, p. 49.

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*

<sup>8</sup> A. Herman, *The Cave and the Light: Plato Versus Aristotle and the Struggle for the Soul of Western Civilization*, Random House, 2014, p. 81.

constitution of a foreign, a “barbaric” city, that of Carthage, commenting on the Carthaginian constitution by deeming its laws “good”<sup>9</sup>. As we shall see, not only did he proceed with his axiological judgements as to the suitability of the constitution of Carthage for Carthaginians and Carthaginian interests, but he also compared<sup>10</sup> this constitution to the constitution of Sparta. Furthermore, we would not be aware whether Aristotle examined the constitution of the Roman Republic, but we would certainly be aware that he had a keen interest in Roman history, reporting his version of the foundation of Rome<sup>11</sup> and the well-known story of Camillus,<sup>12</sup> the saviour of Rome after Rome was sacked by the Gauls in c. 390 BC. Polybius too, as an eventual member and messenger of the Roman political machinery, offers us certain comparative law information with regard to the constitution of the Roman Republic, which he thoroughly examined.<sup>13</sup>

In modern comparative law, one ought to raise the question whether the embryonic comparative law ways of the ancient Greeks, especially through Plato, Aristotle, and Threophrastus, would amount to the beginning of our subject. More research would need to be conducted in the future in this respect and, by all means, if more Aristotelian fragments come to light, the history of our subject may well need to be somewhat reconsidered. So too, it would be open to debate whether there is a direct relationship between the antique ideas on systematizing various forms of governments in the Greek city states and modern scholarly ideas about comparative law as an autonomous discipline, but the proto-scientific ways in comparative law could certainly be traced back to Greek scholars such as Plato, Aristotle, and Theophrastus. After all, to examine the world’s first comparative law attempts *lato sensu* through the eyes of modernity would be scientifically anachronistic. The analysis will now revert to the comparative nature of Greek culture, in which these first comparative lawyers *mutatis mutandis* flourished.

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<sup>9</sup> Aristotle, *Politics* 2.1272b.

<sup>10</sup> Aristotle, *Politics* 2.1272b-2.1273b.

<sup>11</sup> G Verhasselt, “Heraclides’ Epitome of Aristotle’s Constitutions and Barbarian Customs: Two Neglected Fragments”, *The Classical Quarterly*, 2019, Volume 69, Issue 2, p. 676 citing Dionysius of Halicarnassus, *Antiquitates Romanae* 1.72.3–4.

<sup>12</sup> Plutarch, *Camillus* 22.3.

<sup>13</sup> Polybius, *Histories* 6.51.

## II. A CULTURE OF COMPARATIVE ELEMENTS OR THE GREEK CULTURE'S BEST KEPT SECRET: TO COMPARE AND REFINE IS FINE – TO IMITATE IS NOT

All cultures, unless a culture is grown in perfect isolation, are based on the idea of *heterophoton*, i.e. they attract certain intellectual light from cultures with which they communicate. There is no such thing as an advanced culture in human history which grew out of perfect *autophoton*, i.e. on its own and in perfect isolation from others. To compare and refine is the story of human civilization. For instance, the Romans created Roman culture by amalgamating (not always very successfully)<sup>14</sup> cultural elements and traits from Etruria, north of Rome, and cultural elements and traits from Greece and Greater Greece, south of Rome.<sup>15</sup> The culture of the Greeks was no different: it too attracted and amalgamated many cultural elements from the East and Egypt, to state the obvious, and yet we have it in good authority that it is in Greece that the West started as a new original perception of the world, different from the world of the Orient. Nevertheless, “[t]he debt – material and intellectual and artistic – which the Greeks owed to the peoples of the East was rarely forgotten.”<sup>16</sup> As a further thought-provoking example here one can find ancient sanctuaries dedicated to Egyptian deities scattered all over Greece from Attica to Dion and from Delos to Messena. Also, there are quite a few geographical names (toponyms) in Greece that would not necessarily qualify as proto-Greek but as pre-Greek or “Aegean” ones: Athens, Corinth, Zakynthos, Parnassos, and so on.<sup>17</sup> However, this people, the Greeks, comprehended and communicated with the East relatively well and relatively often, but never adopted the customs and the practices of the East wholesale. The opposite is true: they were highly eclectic, when extracting and filtering information from the Orient, by maintaining for the Greek culture what they would consider the best

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<sup>14</sup> Davies, *supra* note 2, p. 150 citing R. Blomfield, in R.W. Livingstone (ed.), *The Legacy of Greece*, The Clarendon Press, 1924, p. 406.

<sup>15</sup> E.g. W. Kunkel, *An Introduction to Roman Legal and Constitutional History*, The Clarendon Press, 2nd ed., 1973, p. 4.

<sup>16</sup> H.D.F. Kitto, *The Greeks*, Penguin Books 1951, reprinted 1960, pp. 7-8.

<sup>17</sup> E.g. Kitto, *supra* note 16, p. 14.

cultural traits therefrom. The Greeks would have otherwise divided the world between Hellenes and barbarians not in contempt, but on linguistic grounds and would feel, “in quite a simple and natural way, that they were different from any other people that they knew”<sup>18</sup>. Nevertheless, they would have assessed and probably “appreciated” the despotic ways of the East and Egypt for the respective peoples of these lands and why such ways have flourished there, but would never have adopted or condoned them, for despotism and tyranny would be wholly repugnant ideas to them, at least in the classical years. Finally, a look at the Olympian Pantheon would convince even the more sceptical of us as to the spirit of mixity within Greek culture and religion: the Pantheon seems to be an amalgamation of northern European male gods and southern, as in oriental, Mediterranean female goddesses.<sup>19</sup>

Thus, the greatest secret of Greek culture is found in this culture’s continuous examination, exploration, and eclectic amalgamation of different cultures, ideas, traits, and perceptions of life, from Asia, from Africa, from Europe, from the Haemus Peninsula, from Asia Minor, the particular culture having created a new vision of life, a first and fine systematic elaboration of the world and its composition. Masters of intercultural translation,<sup>20</sup> to use a German historian’s terminology in the area, the Greeks translated and amalgamated, for instance, the deities of foreign peoples into a number of deities in their “own” polytheistic perception of religion; the Greek experiment worked, in that a new genuine culture was generated. As such, Rimbaud’s famous quote “je est un autre”<sup>21</sup> would be a quote that would match the Greek culture and people well.

Comparative law is a subject that follows a very similar path to the way the ancient Greeks compared the world in order to produce their own unique culture: in modernity, we find it interesting to compare laws only to identify effective and efficient solutions elsewhere, but we also find it an appalling idea to merely transplant what has grown and

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<sup>18</sup> *Ibid.*, p. 7.

<sup>19</sup> *Ibid.*, pp. 19-20.

<sup>20</sup> J. Assmann, *Moses the Egyptian: The Memory of Egypt in Western Monotheism*, Harvard University Press, 1997, p. 45.

<sup>21</sup> A. Rimbaud [1871] [Letter to G Izambard], in A. Guyaux (ed.) *Oeuvres complètes*, Gallimard, 2009, p. 340, as cited in P. Legrand, “Foreign Law: Understanding Understanding”, *The Journal of Comparative Law*, 2011, Volume 6, Issue 2, p. 89.

matured elsewhere without examination of the legal ground on which it arose and the legal ground on which it will be transplanted, if at all, without adapting the transplant to local needs.

### III. PLATO THE PHILOSOPHER

*"I think that if anything is beautiful besides absolute beauty it is beautiful for no other reason than because it partakes of absolute beauty; and this applies to everything."*<sup>22</sup>

Plato, as the world's founder of epistemological rationalism, political philosophy, and the Academy, and as the father of the metaphysical idea of Forms (*Ἰδέεσς*), needs no introduction. Plato is humanity's head-priest of speculative philosophy, despite the previous great accomplishments in the area by Pythagoras, Parmenides, and Socrates. Platonic doctrine has had an unparalleled impact in time and space, not only on the field of philosophy, but also on the way we conceive and perceive the world through reason. Of course, Plato's best student, Aristotle, whilst he still believed in the importance of thoughts and reason, would prioritize the senses as a final determinant of reality. Also, while Plato's and Aristotle's theses have been occasionally replaced by modern philosophy e.g. their justification of slavery has been most certainly rightly discarded altogether,<sup>23</sup> many of their theses are still very much relevant and valid in modernity and are still the subject matter of thorough and detailed philosophical enquiry to this day.

Plato is otherwise the person that has, almost by common assent, defined much of our perception of life and philosophical enquiry in the West and beyond. Plato had it all: wealth, time, the love of philosophical and geometrical<sup>24</sup> enquiry, and, of course, the Attic and the Mediterranean sun, that followed him in his life's path, that sun that he imple-

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<sup>22</sup> Plato, *Phaedo* 100b.

<sup>23</sup> Cf. J. Sellars, *Aristotle: Understanding the World's Greatest Philosopher*, Pelican Books, 2023, pp. 62-63.

<sup>24</sup> E.g. M.F. Burnyeat, "Plato on Why Mathematics is Good for the Soul", in T. Smiley (ed.), *Mathematics and Necessity: Essays in the History of Philosophy*, OUP, 2000 and D.R. Lloyd, "Symmetry and Beauty in Plato", *Symmetry* 2010, Volume 2, Issue 2, p. 455.



ly so much praised and deified in his best philosophical metaphor, the allegory of the cave<sup>25</sup>. He also had a most curious mind, a prescriptive *nous*, while Greece's philosophical mastermind, Socrates, was his teacher; he also had the luxury to be able to travel the then known world. But, except for having it all, Plato had something more than that: a restless idealistic mind that would brook few comparisons in human history, his effectively standing for a relentless rationalistic philosophical machine of a man: according to him it is reason that guides us in proving concepts and things. And it is the concept of light and idealism that have defined his philosophy. A world of darkness and a world of light have been dramatically juxtaposed in his philosophy, the former being a world of captives and lost souls, the latter being a world of free individuals unchained and unrestrained from the vices that haunt human existence and the mind. Plato has been both a genius and the product of photochemistry at its finest. As Davies reminds us, "high-intensity sunlight may well have been one of the many ingredients which produced [the] spectacular results [of human development in Greece]-in which case Homer, Plato, and Archimedes may be seen as the product of native genius and photochemistry"<sup>26</sup>. In all this, Plato created something astoundingly appealing and beautiful: our definition of beauty ("a thing is beautiful (...) for no other reason than because it partakes of absolute beauty"<sup>27</sup>), a philosophical school so complex and refined to the point that much of the world's modern philosophy still revolves around Platonic doctrine in one way or another, the classic quote here coming from mathematician Whitehead: "the safest general characterization of the European philosophical tradition is that it consists in a series of footnotes to Plato"<sup>28</sup>.

It is in his *Laws* (*Nómoi*) that we observe elements of the legal genius that Plato actually was. In the *Laws*, Plato compares the constitutions of Greek city states and additionally compares these with an ideal constitution he would otherwise have devised out of them,<sup>29</sup> the constitution of fictitious Magnesia. In his masterpiece, the *Republic* (*Πολιτεία*),

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<sup>25</sup> Plato, *Republic* 7.514a.

<sup>26</sup> Davies, *supra* note 2, p. 95.

<sup>27</sup> Plato, *Phaedo* 100b.

<sup>28</sup> A.N. Whitehead, *Process and Reality: An Essay in Cosmology*, Free Press, 1978, p. 39.

<sup>29</sup> Zweigert and Kötz, *supra* note 1, p. 49.

Plato had previously identified and compared his five forms of constitutional governance: tyranny, oligarchy, democracy, timocracy, and aristocracy, using the name Callipolis (“good city”) as his fictitious paradigm there. Plato was a staunch supporter of aristocracy (as in the rule of the best), famously proclaiming that in his ideal republic, the philosophers should become rulers, this being the only way for the evils in our states to cease.<sup>30</sup>

## IV. ARISTOTLE THE PHILOSOPHER

*“Some people think that all rules of justice are merely conventional, because whereas a law of nature is immutable and has the same validity everywhere, as fire burns both here [in Greece] and in Persia, rules of justice are seen to vary.”<sup>31</sup>*

As the world goes, our sciences, the division of cognitive matter into taxonomies, much of our perception of life, our states, the way our republics in the West and beyond present themselves and operate under constitutions, and the separation of powers are all ideas that are fundamentally and indistinctly Aristotelian. Aristotle first signalled these ideas. Salvaged and studied by the Arabs, initially neglected by the medieval Latins and the Westerners, only for him to be later embraced and be called simply “the Philosopher”, Aristotle’s ideas have affected almost the totality of academic disciplines. There is no other mind as multifarious, curious, and enquiring that the world has ever known as Aristotle’s. Aristotle, a concurrently down-to-earth and proud philosopher taught us one thing fundamentally: to always enquire, to be inquisitive, to always search and, even when we find, to go deeper than that: to look for the essence of things. Leonardo da Vinci is perhaps the closest to the universal type of spirit that Aristotle was, but even the great genius that Leonardo da Vinci clearly was would not have entered and defined the number of disciplines which Aristotle entered and defined.

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<sup>30</sup> Plato, *Republic* 5.473c-d.

<sup>31</sup> Aristotle, *Nicomachean Ethics* 1134b.

Aristotle, unlike the divine<sup>32</sup> Plato, achieved something greater than Plato ever did: he firmly bound divine philosophy in the realm of the humans. Thereafter, the ethereal Plato was thus forever held tight in Aristotle's philosophical grasp. Aristotle showed absolute respect, but absolutely no fear, towards his teacher: "Plato is dear to me, dearer still is truth"<sup>33</sup> he posited, which brings us to Aristotle's first lesson: authorities shall die and fall, but truth stands above authority and will always do so<sup>34</sup>. For instance, sweet defeat for Aristotle and his geocentric perception of the cosmos has come from Copernicus and his heliocentric thesis of our planetary system, Copernicus, with or without the help of Aristarchus, finally putting Aristotle's and Ptolemy's geocentric demons to rest for eternity. In greatness of spirit (*μεγαλοψυχία*), however, Aristotle would eventually have to admit and succumb to Copernicus's superior scientific method and hypothesis in the field of astronomical enquiry about the position of the planets and the sun. Indeed, in the face of relentless subsequent scientific evidence promoting the Copernican hypothesis into a thesis, to concede defeat in scientific enquiry would not be the preferable Aristotelian path: it would be the only Aristotelian path. Aristotle would then tell us that "Aristotle is dear to us, dearer still is truth".

Aristotle can be plausibly described as Greek philosophy's landing gear and equipment for humanity. It is the case that Socrates brought philosophy from the heavens into human affairs,<sup>35</sup> while his student, Plato, codified for human beings the language of the Gods, philosophy, but it is Aristotle that captivated and fascinated the human mind more than any other philosopher with his pragmatic, often adaptable and eternal doctrine. It is he who gave us one of the best explanations as to what one's meaning of life ought to be: to reach happiness (he called this *eudaimonia*) is the ultimate purpose of one's actions in life,

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<sup>32</sup> E.g. A. Andurand, C. Bonnet, "The Divine Plato among Greeks and Romans: Banquet Literature and The Making of Cultural Memory of Cultural Memory in the Greco-Roman Empire", *Archimède: Archéologie et Histoire Ancienne*, 2018, Hors-série N° 1, pp. 42-53 and B. Cartledge, L. Costantini, "The Divine Plato': Philosophy and Literature in the Second Sophistic", *Bulletin of the Institute of Classical Studies*, 2023, Volume 66, Issue 1, pp. 1-6.

<sup>33</sup> Cf. Aristotle, *Nicomachean Ethics* 1096a.1.

<sup>34</sup> Cf. Whitehead, *supra* note 28, p. 39 where he states "ultimately nothing rests on authority; the final court of appeal is intrinsic reasonableness".

<sup>35</sup> Cicero, *Tusculanae Disputationes* 5.10.

a goal in itself, but one happy moment in time or a good act on its own will never amount to a complete eudemonic existence “for one swallow does not make spring, nor does one fine day; and similarly one day or a brief period of happiness does not make a man supremely blessed and happy”<sup>36</sup>. He went further than that explaining how to achieve happiness: to achieve happiness, one must lead a virtuous and self-sufficient life<sup>37</sup> being a proud and confident person, one that would be great-souled, great-hearted, and great-spirited, as greatness of soul is the crown of all virtues;<sup>38</sup> but Aristotle did not stop there: he went even further than that by positing for all posterity that to achieve a virtuous existence one must cultivate both intellectual and moral virtue, the former being the result of instruction and experience, the latter being the result of a fine ethos, as in custom.<sup>39</sup>

Aristotle, let us be clear about this, was not anywhere near a perfect philosopher (aside from the fact that there is no such thing as a perfect philosophy for life in human affairs). Indeed, Aristotle had himself practiced the idea of “critically examining the ideas and writings of his predecessors”<sup>40</sup>, a very Aristotelian approach, which he would probably like us to follow over his works that would be open to our critical eye as moderns. In fact, he would probably like us and invite us to vehemently critically assess certain parts of the *Corpus Aristotelicum*, for he himself would occasionally disagree with himself and reach tentative conclusions. Moreover, aside from the fact that there is no such thing as a perfect philosopher, Aristotle knew this all too well: not only was his pragmatic philosophy one of variable geometry in crucial places, but he himself knew well of his own limitations in knowledge.<sup>41</sup> The genius of his spirit can be manifested in the fact that, even though he did not always have the answers to his problems, he would squeeze his mind and cover as many possible angles to a given problem to generate all logical possibilities. The proud and humble Stagirite, Plato’s finest student and Alexander the Great’s greatest teacher, was a man of unparalleled aca-

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<sup>36</sup> Aristotle, *Nicomachean Ethics* 1098a.

<sup>37</sup> Aristotle, *Nicomachean Ethics* 1101a.

<sup>38</sup> Aristotle, *Nicomachean Ethics* 1124a.

<sup>39</sup> Aristotle, *Nicomachean Ethics* 1103a.14.

<sup>40</sup> Sellars, *supra* note 23, p. 108.

<sup>41</sup> E.g. Sellars, *supra* note 23, pp. 27, 108-109.

demical rigour that no man to this day has matched. Most of us in modern Academia are specialists.<sup>42</sup> Aristotle was that rare species of a scientist that would define academic universalism. Of course, Aristotle did not always achieve the degree of specialization that most of us achieve in our subjects nowadays, but the systematic and comprehensive enquiry of so many different cognitive fields was first achieved by him, so that even the term “polymath” would not always do justice to the array of his research interests, his actual academic endeavours, and his intellectual accomplishments.

## V. ARISTOTLE KNOCKING ON COMPARATIVE LAW'S DOOR

In recognition of Aristotle's superior comparative law technique and ways amongst ancient philosophers, our analysis will now revert to Aristotle's engagement with the subject of comparative law, moving away from strict chronological order between Plato and Aristotle and the fact that it was actually Plato that laid the beginnings of many of Aristotle's doctrines.

Moreover, one might thought-provokingly argue at this point that Aristotle having made so many and extensive contributions to the fields of logic, biology, botany, ethics, politics, medicine, philosophy, and mathematics, to name but a few fields which he affected, his contributions to law would be trivial or would not match his contributions in other fields. Nothing could be further from the truth: it is the exploration and comparison of at least 158 constitutions<sup>43</sup> of city states from the Greek world and beyond in his *Politeiae* that stands for Aristotle's unique legacy in comparative law. Of course, it may well have been the case that both he and his students wrote the *Politeiae*, of which we have only the *Constitution of the Athenians* that has been salvaged almost in its totality. For instance, Aristotle himself could have composed certain of these comparative constitutional texts as models for his students and, under his guidance, his school's students<sup>44</sup> may have drafted many or

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<sup>42</sup> Cf. Kitto, *supra* note 16, p. 169.

<sup>43</sup> E.g. Husa, *supra* note 1, p. 12.

<sup>44</sup> E.g. Sellars, *supra* note 23, p. 66.

even the majority of them. However, it must have been Aristotle who would have been the driving spirit behind such an enormous comparative law project, which would practically act as a sort of legal encyclopaedia of the ancient world in relation to the overwhelming majority of constitutions in Greek city states.

Now, Aristotle would not have known of the *praesumptio similitudinis*<sup>45</sup>, especially the way we have come to know it from Zweigert and Kötz. Nor would he have explicitly explored the principle of functionality<sup>46</sup> of comparisons,<sup>47</sup> a principle which modern legal scholars take for granted in their comparisons (with or without references to contextual matter). Nor would we know to what extent and to what depth he would have examined the constitutions which he is said to have examined. As stated above, a major work such as *Politeiai* might have been mostly written by Aristotle's students, albeit under his overall guidance. Aristotle would not have devised a comparative law method *stricto sensu* either, but this was a brave scholar in law and political science, to state the least: the exploration of a handful of constitutions nowadays in a handful of areas within them seems and is a titanic task. Yet Aristotle wrote and/or supervised comparative analyses of dozens of them. Also, Aristotle would not necessarily be concerned with context in the way or to the extent many comparative lawyers nowadays would be. Yet, he would pay tribute to the idea of context in his comparisons, especially when it came to introductory legal historical materials<sup>48</sup> in certain<sup>49</sup> of his comparables and the transplantation of laws and legal customs from one reality to another.<sup>50</sup> In other words, Aristotle proceeded free from strict academic agendas, contextualist, and functionalist tendencies, because he obviously prioritized the academic essence behind his comparables rather than matters which help one's comparison, but would not

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<sup>45</sup> Zweigert and Kötz, *supra* note 1, p. 40.

<sup>46</sup> *Ibid.*, p. 34..

<sup>47</sup> But cf. B. Fekete, *Paradigms in Modern European Comparative Law: A History*, Hart, 2021, p. 78 where he speaks of a neo-Aristotelian tradition of functionalism amongst a number of other traditions in the area.

<sup>48</sup> The classic example here would be Aristotle's *Athenaion Politeia* (*The Constitution of the Athenians*) where he offers a detailed historical account of the constitution in question. See e.g. Toye, *supra* note 4, pp. 235-246.

<sup>49</sup> *Ibid.*

<sup>50</sup> Cf. Aristotle, *Rhetoric* 1.4 [13].

always be strict requirements thereto. Indeed, in perfect agreement with the idea of academic freedom, Aristotle chose to proceed with the exploration of dozens of constitutions, because he himself chose to do so. This was an intellectual who compared because he was only fascinated by comparisons and because he genuinely enjoyed what he did, for what he explored would satisfy his academic curiosity. Aristotle, thus, stands for humanity's classic example of what a polymath is or what a universal spirit, a *homo universalis*, could achieve.

Only fragments of his comparative constitutional law treatises remain with the exception of the *Constitution of the Athenians*. For instance, very limited fragments have been found in relation to the *Constitution of the Thessalians*<sup>51</sup> and also numerous limited fragments from Aristotle's other *Politeiai*, such as those of the *Constitution of Ithaca*<sup>52</sup>, the *Constitution of the Acarnanians*<sup>53</sup>, the *Constitution of Ambracia*<sup>54</sup>, the *Constitution of Miletus*<sup>55</sup>, and the *Constitution of Tegea*<sup>56</sup>, but only a most limited number of fragments from his *Nomima Barbarika*.<sup>57</sup> Yet Aristotle does offer us excellent comparative legal analyses in his exploration of the constitutions of Crete, Sparta, and Carthage and in many excerpts<sup>58</sup> about the constitutions of other states in his *Politics*, his magnum opus. It is posited that even if a few new paragraphs of a few constitutions from those he examined come to light in the future, such a discovery will break new ground, not just in the disciplines of law, philosophy, and world history, but also in our understanding of the ancient Greek world and beyond.

Finally, recent fascinating research informs us in a systematic fashion and in detail of the fact that Aristotle was engaged on multiple occasions, as in many different parts of *Corpus Aristotelicum*, with the

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<sup>51</sup> E.g. S. Sprawski, "Remarks on Aristotle's *Thettalon Politeia*", *Electrum*, 2012, Volume 19, pp. 137-147.

<sup>52</sup> E.g. Toye, *supra* note 4, p. 236.

<sup>53</sup> *Ibid.*

<sup>54</sup> Toye, *supra* note 4, pp. 236-237.

<sup>55</sup> *Ibid.*, p. 250.

<sup>56</sup> *Ibid.*

<sup>57</sup> E.g. Dietze-Mager, *supra* note 4, pp. 35-72.

<sup>58</sup> Toye, *supra* note 4, p. 247. Toye suggests that Aristotle has made references mainly to the constitutions and histories of Athens, Sparta, and Syracuse but there are 72 references of the kind to city states and countries such as Carthage, Crete, Corinth, Persia, Thessaly, and so on.

question of comparability *per se*.<sup>59</sup> Of course, for a multifarious person like Aristotle this would be a rather natural matter. However, owing to his active engagement with the particular research theme, we quickly realise that Aristotle's engagement with comparative legal analysis must clearly have been the result of extensive research on the question of comparability in the first place. For instance, Aristotle was interested in such questions as whether things compared do not have to be synonymous,<sup>60</sup> homonymy and comparability,<sup>61</sup> synonymy and comparability<sup>62</sup>, analogical comparisons<sup>63</sup> and so on.

## VI. PLATO AS A COMPARATIVE PUBLIC LAWYER AND AS A LAW UNIVERSALIST

Let us revert to Plato now. As things stand, Plato was effectively the world's first comparative lawyer *lato sensu*. Plato kindled the fire of comparative law, Aristotle setting the subject on its academic rails. However, the fact that Plato was the first to engage with "comparables" for reaching his conclusions as to what an ideal state ought to be does not make our subject a Platonic one *per se*. Aristotle, on the other hand, had as great an interest in law and political science as his learned teacher, Plato, did. As we are aware, not only did Aristotle compare the constitutions of dozens of city states but, more importantly, his powerful comparative law writing can be displayed in his *Politics*, even if we have only fractions of his *Politeiai*, his comparative law work *par excellence*.

However, it was Plato who first engaged in a jurisprudential fashion with comparables. At this point, one would be reminded that almost everything in academic law is philosophy. Conversely, not all that is legal is philosophical. The jurisprudential essence of law we know already from Plato's moral questions which he posed in *The Republic* and *The Laws*. In these two works one can also identify Plato's broad interest

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<sup>59</sup> E. Comay del Junco, "Aristotle on Comparison", *Oxford Studies in Ancient Philosophy*, 2022, Volume 61, 103-142.

<sup>60</sup> Comay del Junco, *supra* note 59, pp. 104-105.

<sup>61</sup> *Ibid.*, 106-108.

<sup>62</sup> *Ibid.*, 108-116.

<sup>63</sup> *Ibid.*, 125-129.



in comparative public law. For instance, Plato posits in *The Republic* his ideal model of a state, thereby creating an “instrument for (...) comparison, and evaluation of institutions”<sup>64</sup>. In the same work, Plato asks us to compare the notions of justice and injustice.<sup>65</sup> Furthermore, in his *Laws*, he also compares the ideal colony of Magnesia with the ideal polity of Callipolis from the *Republic*, claiming that the former is second best<sup>66</sup> to the latter.<sup>67</sup> In his comparison, Plato is revealing the fact that Callipolis was effectively a utopia, a perfect and ideal utopia, while Magnesia is the more attainable model in human affairs by elegantly arguing that the model of the ideal state in the *Republic* was effectively one for gods and one in which the sons of gods would dwell.<sup>68</sup> Furthermore, his famous allegory of the cave would be beneficial to modern comparative lawyers in epistemological terms, in that it would actually allow us to explain the emancipatory nature of a more contextual approach in comparative law to colleagues who would insist on a strict doctrinal approach.<sup>69</sup> The *Laws* was Plato’s last work, which we can relatively safely presume that he could not have written prior to his second visit to Syracuse. As such, we can hypothesize that this work must have been written after 367 BC<sup>70</sup>, Plato dying in 348 BC. Thus, *The Laws* must have been written in the last twenty years of Plato’s life, when his thinking would be even more mature and more pragmatic than in the times when he wrote the *Republic*, a hymn to aristocratic constitutions. Also, more importantly, Plato did not engage with comparative law scholarly work *per se*; and he did not break free from rather strict philosophical arguments and political theory perspectives in *The Laws* to the point that his exploration of his main “comparables” in *The Laws*, would not make him a “comparative lawyer” *stricto sensu*. Even where “comparisons” are

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<sup>64</sup> J. Hall, “Plato’s Legal Philosophy”, *Indiana Law Journal*, 1956, Volume 31, Issue 2, p. 178.

<sup>65</sup> Plato, *The Republic* 2.369a.

<sup>66</sup> Plato, *Laws* 5.739e.

<sup>67</sup> Plato, *Laws* 5.739a-740a.

<sup>68</sup> Plato, *Laws* 5.739d.

<sup>69</sup> J. Husa, “The Comparatist and Plato’s Cave”, in L. Siliquini-Cinelli, D. Gianti and M. Balestrieri (eds), *The Grand Strategy of Comparative Law: Themes, Methods, Developments*, Routledge, 2024, pp. 55-66.

<sup>70</sup> E.g. L.A. Post, “The Preludes to Plato’s Laws”, *Transactions and Proceedings of the American Philological Association*, 1929, Volume 60, p. 5, at pp. 7-8.

made though, the *Laws* seems to be more of a political text than Aristotle's comparisons made in *Politics*, which tend to come with a more legal essence. Also, Plato's comparisons might well have been driven by political considerations altogether e.g. the Peloponnesian war or the fact that he was a friend of aristocratic and oligarchic ideas and so on. Aristotle in this respect seems somewhat more open-ended, even though he too believed in monarchic, aristocratic, and mixed constitutions.

One could, of course, argue that it was Plato that had already laid the seed for comparative law enquiries to grow in *The Laws*. He may also have had considerable impact on Aristotle in the area to the point that his best student, Aristotle, brought comparative legal research to new heights. When it comes to the relationship between Plato and Aristotle vis-à-vis the subject of comparative law, such a relationship somewhat reminds us of the relationship between Herodotus and Thucydides vis-à-vis the subject of history. Herodotus has been traditionally described from the times of Cicero as the "father of history"<sup>71</sup>. It was Thucydides, however, that defined the discipline of history; it is he who stands as the mastermind of the fundamentals of history as a subject, as we know it, and as the father of political realism together with such personalities as Niccolò Machiavelli, Thomas Hobbes, Jean Jacques Rousseau, and Carl Philipp Gottfried von Clausewitz.

Finally, Plato as a comparative lawyer would almost certainly subscribe to the theme of legal universalism because he was an advocate of the idea of universals through his theory of *Forms*, a key doctrine in his philosophy. So would Aristotle, but the Aristotelian world is more pragmatic and less idealistic than that of Plato, Aristotle being interested both in the universal and the particular.<sup>72</sup> We otherwise observe Plato's universalism all too well in his famous principle of one-over-many<sup>73</sup>, in which he expounds the theory of universal forms, positing that human beings "are in the habit (...) of positing a single idea or form in the

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<sup>71</sup> Cicero, *De Legibus* 1.5.

<sup>72</sup> E.g. D.T. Devereux, "Particular and Universal in Aristotle's Conception of Practical Knowledge", *The Review of Metaphysics*, 1986, Volume 39, Issue 3, p. 484.

<sup>73</sup> Plato, *The Republic*, 10.596a. For more on this see e.g. J.E. González-Varela, "The One Over Many Principle of Republic 596a", 2020, *Apeiron*, Volume 53, Issue 4, pp. 339-361. Cf. Aristotle, *Nicomachean Ethics* 1134b and Cicero, *De Republica*, 3.33.

case of the various multiplicities to which (they) give the same name”<sup>74</sup>. Whereas the idea of universalism and, by extension, the idea of legal universalism is clearly Platonic, Aristotle too could claim a spirit of universalism in his political science and legal writing to the point that the idea of legal universalism could be actually seen as a Platonic-Aristotelian idea rather than a wholly Platonic one, even if philosophical universalism is one of the key tenets of Plato’s theories. The reason for this would be Aristotle’s dual interest, i.e. an interest both in particularism and universalism.

## VII. ARISTOTLE AS A SYSTEMATIC COMPARATIVE PUBLIC LAWYER

*“Moreover, with reference to acts of legislation, it is useful not only to understand what form of government is expedient by judging in the light of the past, but also to become acquainted with those in existence in other nations, and to learn what kinds of government are suitable to what kinds of people”*.<sup>75</sup>

Aristotle is effectively the world’s first systematic comparative public lawyer according to current sources. Prior to exploring the comparative public law genius that Aristotle was, one must offer Aristotle’s definition of a *politeia/polititeia* (constitution). Defining man as “zoon politikon”<sup>76</sup>, a political animal, in Book 1 of the *Politics*, it is in the fourth book thereof that one identifies Aristotle’s classic and most coherent definition of a constitution: “a constitution is the regulation of the offices of the state in regard to the mode of their distribution and to the question what is the sovereign power in the state and what is the object of each community (...)”<sup>77</sup>.

Furthermore, the comparative law genius that Aristotle was can be readily attested out of the fact that when he compared a foreign constitution, that of Carthage, to constitutions from the Greek world, he did not

<sup>74</sup> Plato, *The Republic*, 10.596a.

<sup>75</sup> Aristotle, *Rhetoric* 1.4 [13].

<sup>76</sup> Aristotle, *Politics* 1.1253a.

<sup>77</sup> Aristotle, *Politics* 4.1289a.

actually “translate” the foreign terms he would come across in his examination of the bodies and magistrates under the constitution of Carthage. Instead he made it a straightforward exercise for his readers to appreciate the constitutional frameworks of Carthage by using familiar legal terms for them.<sup>78</sup> Furthermore, Aristotle proceeded under a scientific system, concrete criteria, and targeted analytical matter. In his comparison of the constitution of Carthage, Aristotle thus follows a scientific<sup>79</sup> approach and a criteria-based type of analysis: in comparing the constitution of Sparta with that of Carthage, he proceeds on the following analytical criteria: i. the exposition of the top magistrates and key bodies in his two comparables, ii. the identification of the ways by which magistrates are appointed, iii. the exploration of the power of the wealthy in the two states, and iv. the political regimes’ end and the transformation thereof.<sup>80</sup> Aristotle’s approach in comparing legal matter reminds us of the approach that most modern comparative lawyers take, in that they normally proceed by dissecting legal information and thereafter compare it, based on observation and thorough analysis; thus, most of us in comparative law tend to be legal anatomists rather than mere legal physiologists: “[in his analysis of the constitution of the Athenians] there’s a sense in which Aristotle is describing the inner workings of an organism, just as he did when examining his fish on Lesbos”<sup>81</sup>.

Moreover, whereas it was Herodotus that was the first intellectual to offer us minimum constitutional law information about Carthage, Herodotus was nowhere near a comparative lawyer, but a historian. What Herodotus offered us in his *Histories* was that Hamilcar (Amilcas) was the king of Carthage,<sup>82</sup> thereby suggesting that Carthage did come with a monarchic element to its constitution. Aristotle, on the other hand, considers the constitution of Crete similar to that of Sparta, in its oligarchic elements that is, by stating that the higher magistrates of Sparta, the “Ephors”, have the same power as the “Cosmi” in

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<sup>78</sup> I. Τζαμτζής, *Carthago Καρχηδών*, Εκδόσεις Σάκκουλα, 2023, pp. 6-7.

<sup>79</sup> Sellars, *supra* note 23, p. 65.

<sup>80</sup> F. Pezzoli, “Aristotle and the *Politeia* of the Carthaginians”, *Araucaria*, 2022, Volume 24, Number 49, p. 316.

<sup>81</sup> Sellars, *supra* note 23, p. 67.

<sup>82</sup> Herodotus, *The Histories* 7.165.

Crete<sup>83</sup>. Indeed, in the same book of his *Politics*, in the second book, Aristotle directly compares the constitutions of Sparta, Crete, and Carthage famously noting that “these three constitutions are in a way near to one another and are widely different from the others”<sup>84</sup>. Thus, Aristotle not only compares three constitutions, when examining the constitution of Carthage, but he also places it in a wide category of constitutions that share certain similar features and are discernible from other constitutions.<sup>85</sup> A similar analytical pattern has been followed later by Polybius when he considers the Consuls of Rome as the Roman republic’s royal element.<sup>86</sup> In doing so, Polybius concludes that the overall constitutional framework of Carthage was similar to that of Sparta and republican Rome.<sup>87</sup>

Aristotle proceeds, as Polybius did later, with an axiological evaluation of the Carthaginian constitution: not only did he compare it to Greek constitutions and considered the laws of Carthage “good”, but he also noted that “as a proof of [Carthage’s] well-regulated<sup>88</sup> constitution, the populace willingly remain[ed] faithful to the constitutional system, and that neither has civil strife arisen in any degree worth mentioning, nor yet a tyrant”<sup>89</sup>. A contemporary of Aristotle, Isocrates, would effectively be of the same mind, even though he would idealize the Spartan and the Carthaginian constitution for political reasons, claiming that the Carthaginians and the Spartans would be ‘the best governed peoples of the world’<sup>90</sup>. Here, Aristotle in his comparative examination of the Carthaginian constitution and, by extension, Plato<sup>91</sup> in his comparative view of the Spartan constitution at the very least, seem to offer us the more balanced view of things. Furthermore, Aristotle’s comparative

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<sup>83</sup> Aristotle, *Politics* 2.1272a.

<sup>84</sup> Aristotle, *Politics* 2.1272b.

<sup>85</sup> E.g. Pezzoli, *supra* note 80, pp. 318-319.

<sup>86</sup> Τζαμτζής, *supra* note 78, p. 7 citing Polybius, 6.12.9.

<sup>87</sup> Polybius, *Histories* 6.51: “and on the whole the adjustment of [the Carthaginian constitution’s] several parts was very like that of Rome and Sparta”.

<sup>88</sup> Cf. Pezzoli, *supra* note 80, p. 319 where she translates the Greek participle “ὀννε-*ταγμένη*” which Aristotle uses in evaluating the polity of the Carthaginians as “well-organized” (as opposed to “well-regulated”).

<sup>89</sup> Aristotle, *Politics* 2.1272b.

<sup>90</sup> Isocrates, *Nicocles or the Cyprians* 24.

<sup>91</sup> Plato, *Crito* 52e.

account of the Carthaginian constitution comes with considerable value to this day: his account is not only an account of historical significance in relation to the Carthaginian constitution of the 4<sup>th</sup> century BC but also “the only ancient source that does not describe that city’s political regime from the perspective of an enemy”<sup>92</sup>.

Remarkably, Aristotle then directly compares certain constitutional bodies of Carthage with their equivalents in Sparta by highlighting both similarities<sup>93</sup> and differences<sup>94</sup>. For instance, he finds a comparable to the Spartan *Gerousia* in Carthage, the Council of the Elders, Aristotle using the term *παρπλήσια*<sup>95</sup> (which translates as *similia* in Latin or similar in English) to precisely indicate that there were institutions and magistrates under the constitution of Sparta and the constitution of Carthage whose functions were similar. The Aristotelian approach here is practically a predominantly functional comparative one. Equally, a difference between the constitution of Carthage and that of Sparta would be the fact that the Kings of Carthage would be elected, when the Kings of Sparta would come from certain aristocratic families in the *polis* of Sparta. Modern comparative lawyers ought to take particular note of the fact that Aristotle is completely neutral and wholly scientific in his methodology in this respect: he puts forward neither a differences comparison nor a similarities comparison, but one that combines both worlds of legal differences and similarities. He presumes nothing prior to his comparisons but, when he compares, he attempts to identify and identifies both similarities and differences.

Additionally, it becomes clear that, whilst Plato believed that the Carthaginians were a clear-cut example of “barbarians”, Aristotle breaks free from the Greek traditions in this respect by placing Carthage at the same level as the average Greek *polis* (city), even though he too would still nominally consider Carthage a “barbaric” city, as in a foreign city (as opposed to it being a barbarous city). As such, Aristotle’s thesis is that Carthage is ascribed a position comparable to the *poleis* (city states) of the Greek world, Aristotle being of the view that the Carthaginians

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<sup>92</sup> Pezzoli, *supra* note 80, p. 326 citing K. Jahn, “Die Verfassung Karthagos - Eine Bestandsaufnahme”, *Dike*, Volume 7, p. 180.

<sup>93</sup> Aristotle, *Politics* 2.1272b.

<sup>94</sup> Aristotle, *Politics* 2.1273a.

<sup>95</sup> For more on this, see Pezzoli, *supra* note 80, p. 319.

were able to build a city, the city of Carthage, unlike other nations that were living in tribal form (i.e. as *ethne*).<sup>96</sup> For Aristotle, it was only the Carthaginians, as a non-Greek people, with reference to their political organization, that could match the Greeks in building a *polis*.<sup>97</sup> The connotations of something of the kind must have been significant in Aristotle's thinking: Carthage was from the constitutional and political organization point of view directly comparable to the average Greek *polis* (*similia similibus*).

Presumably, if Aristotle went further than the constitution of Carthage and compared the constitution of the Roman Republic with contemporary Greek city states, Rome of the 4<sup>th</sup> Century BC would not necessarily match the Greek definition of a *polis* according to him, especially considering that according to him it would be only the Carthaginians, of foreign peoples, who would have been able to build a *polis* in political organizational terms. However, this is a speculative point at best, as we have no evidence to date to the effect that he compared or did not compare the constitution of the Roman Republic with the constitutions of the city states in the Greek world. Had he done so though, it would be likely that he would have placed Rome too in the wider definition of a *polis*, as he did in the case of Carthage. We can presume only that Carthage was falling in his circle of comparability, when Rome did not, because he did not have the chance to compare the constitution of the Roman Republic or, more provokingly, because the Roman Republic of the 4<sup>th</sup> Century BC was more of a proto-republic or a republic which was still in its embryonic stages. Equally, it would be fair to maintain that at least according to leading modern authority, Rome, as in the Roman Republic of the 4<sup>th</sup> Century BC, would traditionally fall in "into the Greek conceptions of *polis*"<sup>98</sup>. One thing is certain: had Aristotle had the

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<sup>96</sup> P Barceló, "The Perception of Carthage in Classical Greek Historiography", *Acta Classica*, 1994, Volume 37, Issue 1, p. 8.

<sup>97</sup> Barceló, *supra* note 96, p. 8 citing *Pol.* 1273 b 12; 1293 b 15; 1307 a 5, 1316 a 34; b 5; 1320 b 4.

<sup>98</sup> F. Millar, *The Roman Republic in Political Thought*, University Press of New England, 2002, p. 2. Cf. K.A. Raaflaub, "The Conflict of the Orders in Archaic Rome: A Comprehensive and Comparative Approach", in K.A. Raaflaub, *Social Struggles in Archaic Rome: New Perspectives on the Conflict of Orders*, Blackwell Publishing, 2nd ed., 2005, p. 27, Raaflaub arguing that "in structure and early development Rome and many archaic Greek cities were closely comparable (...)".

full picture of the Roman Republic, he would in all probability include it in his comparisons and he would have considered it as one of certain interesting constitutional features.

Aristotle not only knew the value of comparative law researches, but he explicitly posited that one should become acquainted with the laws available in other nations.<sup>99</sup> His thesis would not stop there: as in the case of every modern comparative lawyer who deals with legal transplants, he puts forward the idea of the suitability of legal solutions by stating that one of them is to identify “what kinds of government are suitable to what kinds of people”<sup>100</sup>. Thus, Aristotle proceeds beyond mere legal comparisons: he compares so as to identify the right solutions for the right peoples, in his case the Greeks. In this respect, the Aristotelian approach can be deemed as a highly contextual one.

In his *Nicomachean Ethics* too, Aristotle guides us to the need of identifying the reasons, positive and negative, which preserve and destroy city states and political systems.<sup>101</sup> Thus, “on the basis of our collection of constitutions we will consider what institutions are preservative and what destructive of states in general, and of the different forms of constitution in particular, and what are the reasons which cause some states to be well governed and others the contrary.”<sup>102</sup>

One has reason to believe that Aristotle did not stop in the Carthaginian world only, when it came to his comparisons. In his *Νόμιμα Βαρβαρικά* (*The Laws of Foreigners*), it is likely that he explored *inter alia* the legal customs of such peoples as the Carians, the Romans, the Thracians, and the Etruscans.<sup>103</sup> Pezzoli, drawing on Dietze-Mager, also convincingly argues that Aristotle may have proceeded in his comparisons by making use, not just of foreign *ethne* in his *Νόμιμα Βαρβαρικά*, but also of other nations in the wider Greek world, especially from north-western Greece and the Peloponnese.<sup>104</sup>

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<sup>99</sup> Aristotle, *Rhetoric* 1.4 [13].

<sup>100</sup> *Ibid.*

<sup>101</sup> Pezzoli, *supra* note 80, p. 314.

<sup>102</sup> Aristotle, *Nicomachean Ethics* Book 10.9 [23].

<sup>103</sup> Pezzoli, *supra* note 80, p. 314.

<sup>104</sup> *Ibid.*



## VIII. COMPARING PLATO AND ARISTOTLE

At this point, the author would deem it appropriate to offer to the reader a final comparative chart as to the worldviews which Plato and Aristotle held and the comparative law achievements which they accomplished. The comparative chart is submitted on an indicative basis and it merely aims to capture the main achievements of these two forerunners of modern comparative law.

	<b>Plato</b>	<b>Aristotle</b>
Magnum opus	The Republic	<i>Politics</i> <sup>105</sup>
Major work in the wider area of comparative law	Laws	<i>Politeiai</i> <sup>106</sup>
Other Key Works in which Comparative Legal Matter can be identified	<i>The Republic, the Sophist, Lakhes</i>	<i>Politics, Nomima Barbarika</i>
Best known ideas	Justice as the sum of all virtue; a state of philosopher kings; the immortality of the soul, it being captivated in its bodily form; the division of the soul into three constituent elements ( <i>λογιστικόν, θυμοειδές, επιθυμητικόν</i> ); hyperreality or ultimate reality exists beyond the physical world (theory of Forms).	The pursuit of objective happiness through continuous virtuous living and excellence, cultivating such by way of instruction and ethos; ethics; scientific method and reasoning; <i>zoon politikon</i> ; logic; separation of powers; distinction between universal and particular justice; further division of justice into corrective and distributive justice; equity as an auxiliary-to-law mechanism

<sup>105</sup> Others might argue that Aristotle's *Metaphysics* or his *Nicomachean Ethics* would amount to his magna opera.

<sup>106</sup> Fragments only of this Aristotelian work have come down to us in modernity. The only exception to this would be Aristotle's *Constitution of the Athenians*.

	<b>Plato</b>	<b>Aristotle</b>
		in the delivery of justice; republicanism; poetics; catharsis (purification through art); the golden mean.
Constitutional law expertise	Yes	Yes
Comparative law expertise	Yes	Yes
Comparative public law expertise	Yes	Yes
Political science expertise	Yes	Yes
Comparative law expertise per se	Partially	Yes
Comparative law criteria-based analysis	Partially	Yes
Areas of legal comparisons	Confined to the Greek world	Confined to the Greek world and beyond
Legal Universalist – Legal Particularist or both	Legal Universalist	Both
Main foreign constitution examined	None	Constitution of Carthage
Interested in “barbaric” cities and ethne	Partially (Lydia, Egypt, Atlantis etc)	Yes
Interested in the transplantation of laws and customs	Yes	Yes

	Plato	Aristotle
Number of constitutions examined in their main comparative law works	4 <sup>107</sup>	158/255 <sup>108</sup>
Divides and categorizes constitutions	Yes	Yes
Nature of ideal constitution	Aristocratic (in <i>The Republic</i> ) – Aristocratic-Democratic (in the <i>Laws</i> )	Kingship or Aristocracy or Polity (republican / mixed constitution) (in the <i>Politics</i> )
Typology and number of constitutional forms of governance	Yes / Five (Aristocracy <sup>109</sup> , Timocracy <sup>110</sup> , Democracy <sup>111</sup> , Oligarchy <sup>112</sup> , Tyranny <sup>113</sup> )	Yes / Six (Kingship, Tyranny, Aristocracy, Oligarchy, Polity, Democracy) <sup>114</sup>

## CONCLUSION

In conclusion, Plato and Aristotle did not start as comparative lawyers *stricto sensu* in their theoretical endeavours. They did become comparative lawyers through their rigorous philosophical examination of comparable political and legal systems. It would be fair to accredit Plato as the world's first comparative law scholar *lato sensu*. His engagement with comparative legal matter in *The Laws* was sufficient to justify such a claim. However, it was his best student, Aristotle, who effectively be-

<sup>107</sup> Plato refers to and effectively compares legal practices from Athens, Crete, Sparta, and the ideal colony of Magnesia. Other references e.g. to cities such as Tarentum are merely made for reference purposes.

<sup>108</sup> Dietze-Mager argues that the total number of constitutions which Aristotle compared range from 158 to 255: Dietze-Mager, *supra* note 4, pp. 35-72.

<sup>109</sup> E.g. Plato, *The Republic* 5.473c.

<sup>110</sup> E.g. Plato, *The Republic* 8.547c.

<sup>111</sup> E.g. Plato, *The Republic* 6.488b-c.

<sup>112</sup> E.g. Plato, *The Republic* 8.550c.

<sup>113</sup> E.g. Plato, *The Republic* 8.564a.

<sup>114</sup> Aristotle, *Politics* 3.1279b; for a modern discussion of Aristotle's classification of constitutional systems of governance see e.g. P. Pasquino, "Machiavelli and Aristotle: The Anatomies of the City", *History of European Ideas*, 2009, Volume 35, Issue 4, p. 400.

came the world's first systematic comparative law scholar. His comparative law approach can range from a strictly comparative functional approach to a highly contextual one, depending on subject matter. As such and for most intents and purposes, Aristotle would be the world's first systematic comparative public lawyer. His magnificent comparisons of constitutions in his *Politics* already allow us to observe a much more systematic type of comparative analysis than that of Plato in his *Laws*, which tends to be heavily philosophical and political theory oriented. We have but fragments from Aristotle's comparisons of 158 city states and even fewer fragments from his *Nomima Barbarika*, but it is hoped that archaeology will discover even more and even lengthier fragments from his comparative legal works, as these could reveal a whole new dimension of the great comparative legal mind that Aristotle was, but also new fascinating insights into the history of humanity and the ancient world.