

ARISTOTELIAN MISTAKES

In his book *Roman Law: Linguistic, Social and Philosophical Aspects* (Edinburgh, 1969), Professor Daube proposes a heterodox interpretation of Aristotle's distinction in *EN* v 8 between two sorts of ἀμαρτήματα: ἀτυχήματα, mishaps, and ἀμαρτήματα proper, mistakes. Mr Crook, in his review of the book (*CR* n.s. xx (1970), 363), has already taken issue with the main point of this interpretation. In what follows I hope to clinch the verdict for orthodoxy, while ceding to Daube a point of broader significance.

Aristotle characterizes ἀμάρτημα as a sort of injury committed 'in a transaction' (as we might say, by one private person against another), involving ignorance on the agent's part about some particular circumstance of his action (1135 b 11–16). He calls this class of injury ἀμάρτημα because he holds that inasmuch as the agent did not know what he was doing, to that extent he did not mean to do what he did (cf. 1135 a 23–32). The distinction within the class which is our concern is presented in these terms: ὅταν μὲν οὖν παραλόγως ἢ βλάβη γένηται, ἀτύχημα · ὅταν δὲ μὴ παραλόγως, ἀνευ δὲ κακίας, ἀμάρτημα (1135 b 16–18). Ross gives the orthodox translation: 'Now when the injury takes place contrary to reasonable expectation, it is a *misadventure*. When it is not contrary to reasonable expectation, but does not imply vice, it is a *mistake*.' Daube's contention is that it is wrong to render παραλόγως as 'contrary to reasonable expectation'. He thinks this rendering reflects a long tradition of misinterpretation in which Aristotle's text has been understood with the aid of inappropriate categories of liability drawn from Roman law (pp. 131–56). His quarrel is with 'reasonable'. Aristotle's distinction is, he believes, based solely on a question of psychological fact, not at all on any consideration of what the agent might have been expected to foresee (e.g. pp. 132–4, 144–5).

The principal argument Daube brings against the usual translation is that in this passage (and in related passages in the *Rhetoric* I 13. 1374 b 2 ff. and the un-Aristotelian *Rhetoric to Alexander* 1427 a 23 ff.) there is in the context no play with concepts like care, negligence, and the like. It is rather ignorance which is invoked in characterization and explanation (e.g. pp. 132–4, 140–2). Now whether this observation of Daube's is sound is a question to which we shall return in due course. For the present we should notice that the considerations of context he adduces make in any event an inconclusive argument. He does not perceive that if παραλόγως means (as he allows, p. 144) 'contrary to calculation', it may conceivably have the force 'contrary to any reasonable calculation' (as distinct from 'contrary to what *X* calculated') even when talk of care or negligence is absent. Nor does Aristotle's stress on the ignorance involved in ἀμαρτήματα preclude him from distinguishing between ἀτυχήματα and ἀμαρτήματα proper in the way he has usually been thought to do. Even if such injuries are most importantly characterized as the results of actions which their agents would not have performed had they known the crucial facts they were ignorant of, that is no reason why Aristotle could not still find it worth distinguishing between cases where the agent might reasonably have been expected to foresee such an unhappy outcome and others where he might not. His main aim is to mark off the class

of unintentional injuries. But once that is done, he can turn to make differentiations within the class on a quite different basis from that on which he establishes it as a class.

What considerations ought we to allow to decide us on Aristotle's meaning, then? We shall do better to attend to Aristotle's use of παράλογος, παραλόγως elsewhere (which Daube fails to do) and to the philosophical merits of the rival interpretations of the word in the sentence which concerns us (as Daube does – if he does – much too hastily, as we shall see).

Aristotle often uses παράλογος, παραλόγως in ways which show that he has the notion *contrary to reason* in mind (cf. Bonitz, *Index Aristotelicus* 565 a 48–51). This is pre-eminently the case when he applies the word to luck, as here. In his essay on luck he says: καὶ τὸ φάναι εἶναι τι παράλογον τὴν τύχην ὀρθῶς · ὁ γὰρ λόγος ἢ τῶν αἰεὶ ὄντων ἢ τῶν ὡς ἐπὶ τὸ πολὺ, ἢ δὲ τύχη ἐν τοῖς γιγνομένοις παρὰ ταῦτα (*Phys.* II 5. 197 a 18–20; cf. *EE* VIII 2, esp. 1247 a 31–5 [N.B. also 1247 b 6–8: διὸ καὶ ὀριζόμενοι τὴν τύχην τιθέασιν αἰτίαν ἄλογον ἀνθρωπίνῳ λογισμῶ]). In this sentence παράλογον is 'unaccountable'. And Aristotle associates its applicability to luck with an entirely objective feature of lucky events, not with the psychological states of an individual agent. The mere similarity between what he says there and his specification of ἀτύχημα in our *Ethics* passage tells strongly in favour of the traditional reading of that passage. If we were to press the connection, we could say that in the *Physics* Aristotle explains why τὸ παράλογον is the distinguishing mark of ἀμαρτήματα that are ἀτυχήματα which he claims it to be in the *Ethics*.

The task of assessing the philosophical advantages and drawbacks of Daube's attempt to remove 'reasonable' from the translation of παραλόγως is complicated by his extremely elastic statements of his own interpretation of the Greek. Although μὴ παραλόγως is first rendered as 'not unexpectedly' (p. 133), this is quickly glossed as 'you intend it' (*ibid.*; cf. p. 141), which in turn is paraphrased as 'by no means unlooked for' (p. 144) and 'according to plan' (p. 149).

The least objectionable interpretation of Daube's position is the one he himself does not, it seems, really want to adopt. According to this construction of the Greek, ἀμαρτήματα proper would be distinguished from ἀτυχήματα as injuries unwittingly brought about by a man's action *not* contrary to what he actually expected or calculated, yet without vice. There are two principal difficulties entailed by it: the criterion it imputes to Aristotle demarcates the class of mistakes proper in an arbitrary way; and there is a serious unclarity in the notion of calculation or expectation involved in the criterion. These points can perhaps be best made by an example.

We may suppose that a greengrocer unwittingly sells his customer a bad orange, and so (by Aristotle's criterion of intention) unintentionally does him an injury. He need not be dishonest, merely less than completely vigilant: let him be ἀνευ κακίας. But it was not, let us say, an outcome contrary to his expectation or calculation: this sort of thing happens often enough in the greengrocery business, so he is not surprised. Certainly it is plausible to say that the man sold the bad orange by mistake. But suppose all the circumstances the same save that the greengrocer *is* surprised by what happens: despite its having happened not infrequently in the past, he never

reckons or expects that it will do so again. According to this version of Daube's Aristotle, the selling of the bad orange will this time not be a mistake but just an accident, a mishap. Yet plainly the single difference between the two cases, if we take it to consist in the presence or absence of surprise, is on any reckoning irrelevant to the question of whether a mistake was committed or not.

I have used the words 'expectation' and 'calculation' indifferently in presenting this example. But, of course, the difference between them is important here in a way in which it is not for the traditional interpretation. According to the traditional view, Aristotle makes a distinction on the basis of what *could or could not reasonably be foreseen*; whether one expresses this notion by 'expect' or 'calculate' does not matter. If, however, the distinction is founded not on possibility but on fact, then it is of some importance to know the precise state of mind of the author of an unwitting injury. For the closer the injury approaches to being a calculated risk, an unfortunate but foreseen consequence of a plan, the less sympathetic do we become to the plea that it was just a mistake. If, on the other hand, expectation amounts to little besides not being very surprised in the event, the purity of the agent's intention is not similarly in doubt.

But it is time to examine the version of Daube's interpretation favoured by its author. Again, we may take an example, this time one at the heart of Daube's conception of the Aristotelian ἀμάρτημα proper. Oedipus killed his father by mistake rather than by accident, because although he did not know that the old man at the crossroads was his father, and consequently committed parricide unwittingly, he did intentionally harm *someone* (if under provocation and hence without vice). In pure accidents no harm whatever is intended. The example is fitted to Aristotle's criterion of ἀμάρτημα thus: the injury which comes about μὴ παραλόγως is not, as has usually been supposed, the unwitting injury (in this case, parricide), but the intentional injury to the stranger at the crossroads; and μὴ παραλόγως is pressed into service for 'intended' (cf. pp. 141, 144, 147–51).

This account of Aristotle's words is fantastically implausible. For one thing, its relation to the text is acutely uncomfortable. 'Intended' is not a natural translation of μὴ παραλόγως. And it is hard to discern the reason for Aristotle's inclusion of the ἄνευ κακίας proviso. What conceivable difference does it make to deciding whether Oedipus killed his father by mistake if he hit out at the man at the crossroads with malice aforethought or not? Daube at one point (p. 134, top) tries to represent ἄνευ κακίας as a consequence of μετ' ἀγνοίας. But this move, suspect in itself, makes Aristotle equivocate on βλάβη: the βλάβη which is intended is the harm to the man at the crossroads, the βλάβη that is without vice is the harm to Oedipus's father, who unknown to him is identical with the man he intentionally harmed. So much for Daube's handling of the text. The logic of his Aristotle's position is no happier. It is not convincing to rule that only persons who intentionally *harm* others make mistakes. If in a gun shop I pick up what I take to be a toy gun and jokingly shoot you dead with it, that is not just a chapter of accidents.

All in all, Daube's treatment of the distinction between ἀτυχήματα and ἀμαρτήματα proper leaves much to be desired. But he has posed a question of great interest in

raising the issue of the role of negligence in Aristotle's thinking on this matter. And while he is wrong to seek to extrude from Aristotle's characterizations of the species of ἀμαρτήματα features which open the door to consideration of whether the agent was negligent, he is right in maintaining that the notion of negligence does not figure in the further treatment of ἀμαρτήματα in the context. I am inclined to believe this more significant than the fact that μὴ παραλόγως invites us (no more than invites) to ask whether the agent did not take due care. Consequently, I find persuasive Daube's general thesis that Aristotle's discussion here is cast in a conceptual mould altogether different from that which shapes the distinction in Roman law between *culpa* and *casus*, where the criterion of negligence became fundamental (pp. 131–56).

That there is a very considerable difference in conceptual framework comes out clearly if we ask to what extent and in what way Aristotle would hold those who commit ἀμαρτήματα responsible for them. The justification which he appends to his distinction between ἀμαρτήματα plainly bears on this latter question: ἀμαρτάνει μὲν γὰρ ὅταν ἢ ἀρχὴ ἐν αὐτῷ ἢ τῆς αἰτίας, ἀτυχεῖ δ' ὅταν ἔξωθεν (1135 b 18–19). It might be argued that a substantial concern with negligence could be attributed to Aristotle in this chapter if we could follow Jackson in reading ἀγνοίας for αἰτίας. For then he would be insisting that with ἀμαρτήματα proper not only does responsibility lie with the agent, but the relevant responsibility is responsibility for his own ignorance. And if we accept that it is on this ground (γὰρ) that such mistakes are taken to come about not contrary to reasonable expectation, we must infer that the starting point of Aristotle's account is the thought that in these cases the agent is negligent (cf. III 5. 1113 b 30–1114 a 3).

This line of argument should be resisted. Emendation of the MS reading is not necessary; and in proposing ἀγνοίας Jackson failed to notice that the distinction between an ἀρχὴ ἐν αὐτῷ and one ἔξωθεν was forged originally to distinguish voluntary *action* from forced (III 1. 1109 b 35–1110 b 17; so also at 1113 b 30–3). Moreover, to agree to the inference that Aristotle's eye is fixed on the agent's negligence is to meet embarrassment when we read the last paragraph of the chapter (1136 a 5–9), where Aristotle writes as if the only explanations of unintended injuries he is prepared to countenance are that the injury was done not only in ignorance but because of ignorance, and that it was done in ignorance but διὰ πάθος μήτε φυσικὸν μήτ' ἀνθρώπινον (for which see VII 5. 1148 b 15–1149 a 20).

With Burnet, Ross *et al.* we ought to retain αἰτίας and suppose Aristotle to mean that a man ἀμαρτάνει when the charge (i.e. the offence charged against him) originates in him, ἀτυχεῖ when its origin is external. The point of the remark will have to be merely that the distinction between types of unintended βλάβη is supported by the fact of an everyday distinction between ἀμαρτάνειν and ἀτυχεῖν; its doctrine, that in the latter case the man does not contribute the circumstance of central importance to the outcome (his javelin may have hit a bystander, but a freak gust of wind was to blame), whereas in the former, where he can cite no such interfering factor, it is he who is responsible for what happened.

Here, as in his division of explanations of unintended injuries, Aristotle works almost exclusively with the Socratic conceptual equipment employed in the discussion

of τὸ ἐκούσιον and τὸ ἀκούσιον in III 1, and, of course, in much of the rest of v 8. Where we would impute negligence, he sees behaviour which satisfies one criterion of τὸ ἐκούσιον (voluntariness: the ἀρχή was within the agent), but fails the other (what is done is not wholly intended: the agent was ignorant). Only with μὴ παραλόγως is there a hint of a different viewpoint. Such evidence as we possess suggests, I submit, that it arises not from a belief on Aristotle's part in the central importance of asking whether the agent took due care or not, but rather as an unexplored consequence of his firmly established view of lucky (and unlucky) events as παράλογα.

I have restricted discussion to *EN* v 8. Elsewhere Aristotle does introduce a concept of negligence (ἀμέλεια). A man may fail to possess or to use some vital piece of factual information through negligence. In the latter case he is not properly described as ignorant, according to Aristotle; we are presumably supposed to think of him as a fully responsible agent. In the former case he is to blame if the information was easy to come by or something 'necessary' (ἀναγκαῖον) (*EE* II 9. 1225 b 11–16, a passage overlooked by Daube). A closely related text in *EN* (III 5. 1113 b 30–1114 a 3, unconvincingly discussed by Daube, pp. 137–9, 145 n. 1) makes it fairly plain that the blame attaches first and foremost to the agent's ignorance (he was responsible for taking care to obtain the relevant information); we should infer that Aristotle thinks him responsible for what he did only at this second remove.

It might be thought that we should simply assimilate the author of ἀμαρτήματα proper with the ignorant but negligent man. But negligence is not necessarily ἀνευ κακίας; and in any case Aristotle evidently holds it to be a proper reason for punishing someone. If we read 1136 a 5–9 as an integral part of *EN* v 8 (and the contrast of a 8–9 with 1135 b 20–2 makes it hard not to do so), we have to take Aristotle as implying that all ἀμαρτήματα except those committed διὰ πάθος μήτε φυσικὸν μήτ' ἀνθρώπινον are pardonable.

The absence of the notion of ἀμέλεια in that chapter therefore leaves us with a puzzle. In both his ethical treatises Aristotle recognized the existence and importance of a category of deeds done in ignorance out of negligence – in the earlier *EE* actually in the section on τὸ ἐκούσιον and τὸ ἀκούσιον. Why did he make no mention of it in *EN* v 8?