



**FACULTY OF JURIDICAL SCIENCES**

**COURSE: LL.M 2Year**

**Semester: IInd**

**GROUP: 1. Constitutional and Administrative Law**

**2. Corporate and Business Law**

**3. Criminal and Security Law**

**SUBJECT: : LAW AND JUSTICE IN A**

**GLOBALISING WORLD**

**SUBJECT CODE: LLM 202**

**NAME OF FACULTY: Ms. Anjali Dixit, Assistant Professor**

## Lecture-20



## LECTURE 20: Aristotle's Concept of Justice

### Aristotle (384–322 B.C.)

Born in the north of Greece, Aristotle came from a family linked to the kingdom of Macedon. His father worked for the king as a court doctor.

When Aristotle grew up, he studied philosophy at Plato's Academy for 20 years, leaving when Plato died. He traveled and then tutored the king of Macedon's 13-year-old son, Alexander (the future Alexander the Great).

When Alexander became king of Macedon in 335 B.C., Aristotle returned to Athens to set up his own school, called the Lyceum. He studied, catalogued, lectured, debated, and wrote about every area of human knowledge.

Although Plato had been his teacher, Aristotle disagreed with much of Plato's philosophy. Plato was an idealist, who believed that everything had an ideal form. Aristotle believed in looking at the real world and studying it.

Aristotle spent many years teaching in Athens, which was under the control of Macedon. When Alexander the Great died, however, anti-Macedonians took control of Athens. Linked to Macedon, Aristotle was accused of not accepting the gods of Athens, one of the same charges leveled against Socrates. Unlike Socrates, however, Aristotle did not stand trial. He fled to a home in the countryside, saying, as the story goes, that he did not want Athens to "sin twice against philosophy" (its first sin being the execution of Socrates). Aristotle died the following year in exile.

### Aristotle's Politics

Like Plato, Aristotle, wrote extensively on the subjects of tyranny and the rule of law. He hoped that his *Politics*, a collection of essays on government, would provide direction for rulers, statesmen, and politicians.

In *The Politics*, Aristotle *rejected* Plato's ideal state. He said that it fails to address conflicts that will arise among its citizens. He claimed Plato's ideal state will

contain two states in one, each hostile to the other . . . [Plato] makes the guardians [the warriors] into a mere occupying garrison, while the husbandmen and artisans and the rest are the real citizens. But if so, the suits and quarrels and all the evils which *Socrates* affirms to exist in other states, will exist equally among them. He says indeed that, having so good an education, the citizens will not need many laws, . . . but then he confines his education to the guardians.

### Aristotle's 'True' vs. 'Despotic' Forms of Government

Number of Rulers	'True' (Common Interest)	'Despotic' (Selfish Interest)
one	Monarchy	Tyranny
few	Aristocracy	Oligarchy
many	Polity	Democracy

Unlike *The Republic*, *The Politics* does not depict an ideal system of government. Instead, Aristotle explored practical constitutions that city-states can realistically put into effect. His aim was to "consider, not only what form of government is best, but also what is possible and what is easily attainable."

He studied the different governments in Greece's many city-states. He identified six different kinds of constitutions, and he classified them as either "true" or "defective." He stated that

governments which have a regard to the common interest are constituted in accordance with strict principles of justice, and are therefore true forms; but those which regard only the interest of the rulers are all defective and perverted forms, for they are despotic . . .

“True” constitutions served the common interests of all citizens. “Despotic” constitutions served only the selfish interests of a certain person or group. The chart below shows the “despotic” and “true” constitutions. (Despotic is a synonym for “tyrannic.”)

Tyranny perverts monarchy, because it “has in view the interest of the monarch only.” To Aristotle, tyranny is the

arbitrary power of an individual . . . responsible to no one, [which] governs . . . with a view to its own advantage, not to that of its subjects, and therefore against their will.

Aristotle wrote, “No freeman, if he can escape from it, will endure such a government.”

Aristotle believed that tyranny is the “very reverse of a constitution.” He explained that

where the laws have no authority, there is no constitution. The law ought to be supreme over all.

Aristotle stressed that these laws must uphold just principles, such that “true forms of government will of necessity have just laws, and perverted forms of government will have unjust laws.”

Aristotle held views similar to Plato’s about the dangers of democracy and oligarchy. He feared that both pitted the rich against the poor. But he recognized that these types of governments took many forms. The worst were those without the rule of law. In democracies without law, demagogues (leaders appealing to emotions) took over.

For in democracies where the laws are not supreme, demagogues spring up. . . . [T]his sort of democracy . . . [is] what tyranny is to other forms of monarchy. The spirit of both is the same, and they alike exercise a despotic rule over the better citizens. The decrees of the [demagogues] correspond to the edicts of the tyrant . . . . Such a democracy is fairly open to the objection that it is not a constitution at all; for where the laws have no authority, there is no constitution. The law ought to be supreme over all . . . .

Aristotle made the same argument about oligarchies.

When . . . the rulers have great wealth and numerous friends, this sort of family despotism approaches a monarchy; individuals rule and not the law. This is the fourth sort of oligarchy, and is analogous to the last sort of democracy.

Aristotle stated that “the rule of law . . . is preferable to that of any individual.” This is because individuals possess flaws and could tailor government to their own individual interests, whereas the rule of law is objective.

[H]e who bids the law rule may be deemed to bid God and Reason alone rule, but he who bids man rule adds an element of the beast; for desire is a wild beast, and passion perverts the minds of rulers, even when they are the best of men. The law is reason unaffected by desire.

Rulers must be “the servants of the laws,” because “law is order, and good law is good order.”

In addition to law, Aristotle believed a large middle class would protect against the excesses of oligarchy and democracy:

[T]he best political community is formed by citizens of the middle class, and that those states are likely to be well-administered in which the middle class is large, and stronger if possible than both the other classes . . . ; for the addition of the middle class turns the scale, and prevents either of the extremes from being dominant. In fact, one of Aristotle’s true forms of government is a polity, a combination of oligarchy and democracy. This type of state arises when the middle class is strong.

## **The U.S. Constitution**

Like Plato and Aristotle, our nation’s founders worried about tyrannical government. Recognizing that tyranny could come from a single powerful ruler or from “mob rule,” the founders wrote into the Constitution mechanisms to prevent tyranny and promote the rule of law. They separated the powers of government into three equal branches of government: the executive (the president), the legislative (Congress), and the judicial (the Supreme Court). Each branch can check the other to prevent corruption or tyranny. Congress itself is divided into the House of Representatives and the Senate. The House, elected for two-year terms, is more likely to be swayed by the passions of the people than the Senate, elected to six-year terms. The Constitution further limits the powers of the government by listing its powers: The government may not exercise any power beyond those listed. The first 10 amendments to the Constitution, the Bill of Rights, protect people’s liberties and freedoms from government encroachment. In creating the judicial branch of government, the framers gave

federal judges lifetime terms, thus ensuring that judges would base their decisions on the law and not on politics.

### **Aristotle's Theory of Justice!**

The entire Greek political thought revolves around the important concept of justice. This is an abstract concept and is difficult to define it in fixed terms, as it is viewed differently by different thinkers. But for Aristotle, justice is of two types, viz., universal justice and particular justice. The former refers to obedience to laws—that one should be virtuous.

As far as particular justice is concerned, it is again of two types, viz., distributive justice and remedial or corrective justice. Distributive justice implies that the state should divide or distribute goods and wealth among citizens according to the merit.

Again remedial justice is divided into two, dealing with voluntary transactions (civil law) and the dealing with involuntary transaction (criminal law). Further, Aristotle added commercial and cumulative justice to the above-mentioned types of justice.

### **Distributive Justice:**

Aristotle was of the opinion that this form of justice is the most powerful law to prevent any revolution, as this justice believes in proper and proportionate allocation of offices, honours, goods and services as per their requirement being a citizen of the state.

This justice is mostly concerned with political privileges. Aristotle advocated that every political organization must have its own distributive justice. He, however, rejected democratic as well as oligarchic criteria of justice and permitted the allocation of offices to the virtuous only owing to their highest contributions to the society, because the virtuous people are few. Aristotle believed that most of the offices should be allocated to those few only.

### **Corrective Justice:**

All laws related to commercial transactions are dealt within the remedial and corrective actions. It aims to restore what an individual had lost due to the injustice of the society. This justice prevents from encroachments of one right over the other.

Aristotle opined that corrective justice relates to voluntary and commercial activities such as hire, sale and furnishing security. These actions involve aggression on life, property, honor and freedom. In brief, this justice aims at virtue and moral excellence of character and it is for this reason, it is called corrective justice.

The distinction between "commutative Justice," and "distributive Justice" " is undoubtedly the best known and most significant feature of what might be called Aristotle's "theory of law." It is erroneous, however, to assume that this distinction actually constitutes the structural scheme underlying his "legal system," or that it was proposed as such by Aristotle. While it is certainly true that the concepts of "commutative Justice" and "distributive Justice" were coined and treated by Aristotle, it must be acknowledged on the strength of existing literary evidence that he never seriously attempted to "schematize his legal theory" according to the above-mentioned distinction, and that all such schematizations are, in the last analysis, the product of later interpretation and interpolation of his doctrine. Equality, also called "Justice in the narrow (or special) sense," consists of two main phases, the first of which is exhibited in the act of "distributing" certain matters between two or more persons, or in adjusting " them to their proper ratios. Every form of proportional adjustment in the sense of Equality or "equitable fairness" has to deal not only with the reciprocal claims of two or more persons, but also with the persons making the claims.

On the other hand, "commutative Justice," which constitutes the second phase of the principle of Equality or "equitable fairness," is distinguished from "distributive Justice" in so far as it ignores the rank of the persons involved. Thus "commutative Justice" requires only two factors, since its particular task is limited to the proportionate ratio between two "goods" - labor and wage, damage and recovery, and the like.

**SELF-TEST QUESTIONS**

S.NO	Question	Option (a)	Option (b)
1.	Justice signifies Equality	True	False
2.	Justice according to an authoritative rule" and Equality, Aristotle states that a person whose conduct is "unjust," who acts contrary to certain moral principles	True	False
3.	Justice in the sense of Equality has to do with external and commensurable things;	True	False

4.	Justice or the "just" in the sense of moral virtue is determined by the authoritative rule or rules of human conduct, while Justice in the sense of "proportionate fairness" is founded on the principle of Equality.	True	False
5.	Aristotle explains the relation of "moral Justice" and Equality by pointing out that Equality is related to "moral Justice" in the same way as the part is related to the whole.	True	False

**Answers: 1-(a),2-(a), 3-(a),4-(a),5-(a)**

### SELF-TEST QUESTIONS

S.NO	Question	Option (a)	Option (b)
1.	When Aristotle grew up, he studied philosophy at Plato's Academy for 20 years, leaving when Plato died.	True	False
2.	When Alexander became king of Macedon in 335 B.C., Aristotle returned to Athens to set up his own school, called the Lyceum	True	False
3.	Aristotle disagreed with much of Plato's philosophy	True	False
4.	Aristotle believed in looking at the real world and studying it.	True	False
5.	Aristotle spent many years teaching in Athens, which was under the control of Macedon.	True	False

**Answers: 1-(a),2-(a), 3-(a),4-(a),5-(a)**