ARISTOTLE'S THEORY OF JUSTICE

Sir Rupert Jackson's Lecture to Middle Temple Philosophy Group on 9 November 2023

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1. THE CONTEXT

Aristotle's works. The surviving writings of Aristotle span formal logic (of which he was the founder), astronomy, natural sciences, biology, psychology, metaphysics, philosophy and politics. Aristotle studied almost every aspect of the world around him. He applied his immense analytical powers to every subject in a broadly similar fashion. His surviving writings[1] are the product of a lifetime's work. Most take the form of lecture notes. Since Aristotle's ideas developed over time, his works do not represent an entirely coherent view of all topics.

Aristotle's works on ethics, politics and social issues comprise *Politics, Rhetoric, Nicomachean Ethics* (*NE*) and *Eudemian Ethics* (*EE*).[2] These are fragmented, compressed and sometimes inconsistent. The whole of this corpus was probably written piecemeal as lecture notes, which Aristotle revised and expanded over the years.[3]

The work which contains, and provides the immediate context for, Aristotle's study of justice is *Nicomachean Ethics*. Other works which should be noted for present purposes, as providing the broader context, are *Eudemian Ethics* and *Politics*.

A brief summary of *Nicomachean Ethics.* Political theory or political science is not a precise science like mathematics. Its aim is to achieve the maximum happiness for citizens. People's views differ as to what constitutes happiness. Since men are sociable by nature, they seek happiness not just for themselves, but also for their friends and family. People need a modicum of material goods, in order to live. However, human excellence and nobility are more important. The greatest happiness is activity of the soul, namely pure contemplation.

Every virtue and excellence is a mean, which lies between two extremes.[4] Liberality lies between miserliness and excessive spending. Good temper lies between irascibility and excessive placidity.

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[1] For a clear and readable summary of the entire *corpus* of Aristotle's surviving works, see JL Ackrill, *Aristotle the Philosopher*, Oxford University Press (1981).
[2] *Eudemian Ethics* was edited by Aristotle's pupil, Eudemus; *Nicomachean Ethics* (a later treatise) was edited by Eudemus' son, Nicomachus: see AC Grayling, *History of Philosophy*, Viking (2019), p. 91.
[3] Zoli Filotas, *Aristotle and the ethics of difference, friendship, and equality* (Bloomsbury Academic, 2021) p. 16
[4] NE II 7. This does not mean that every goal should be a compromise: Grayling (2019), pp. 93-94

Truthfulness lies between boasting and false modesty. Friendliness lies between (a) being obsequious or flattering and (b) being quarrelsome or rude. Courage lies between cowardice and unthinking fearlessness.[5] Temperance is a mean in one's attitude to pleasures. Justice is also a mean (see below).

Legislators endeavour to make citizens act well. Good constitutions achieve this more effectively than bad ones. So a proper education is important for all citizens. Also the laws impose punishments as a form of cure for unacceptable behaviour. For the purpose of awarding honours or imposing punishments the law must distinguish between voluntary and involuntary actions. Ignorance may make an act involuntary, but not self-induced ignorance such as drunkenness.

Aristotle next discusses the nature of mind and the intellectual virtues at some length. This part of his writings has less to offer the modern reader. However, Aristotle makes the interesting observation[6] that while a young man may become expert at geometry or mathematics, he cannot be φρόνιμος. That, broadly, means possessing practical or political wisdom. This kind of wisdom requires experience of life, which can only be gained over time.

Aristotle then turns to the nature of friendship and the duties placed upon friends in the different forms of relationship. The good man does acts for the benefit of his friends or his country. If necessary, he will die for them. The possession of friends is a necessary ingredient of happiness. Those friends must be virtuous.

The last part of *Nicomachean Ethics*[7] comprises a review of happiness and the role of the state. Pleasures vary. They are not all good and not all bad. Happiness is the ultimate goal. It consists of pure contemplation. The wise man is happiest. Lawmakers and constitutions should promote goodness and happiness. Good lawmakers need more than academic knowledge. They must have experience and right judgment.

<u>*Eudemian Ethics.*</u> Aristotle's *Eudemian Ethics* covers much of the same ground as *Nicomachean Ethics*. There is lengthy discussion of happiness, virtues and wise judgment. Aristotle discusses in further detail the difference between voluntary and involuntary actions. Instantaneous actions and responses are not the result of a deliberate decision. Compulsion makes actions involuntary. This may take different forms. Strong desire sometimes comes close to compulsion. A person acting in self-defence can only claim to be acting under compulsion, if the threat against him justified his response. Where someone acts under the influence of emotions which are too strong for human nature, then his conduct may be pardonable.

Eudemian Ethics also contains a lengthy analysis of friendship. Aristotle argues in *Eudemian Ethics* book 7 that a kind of justice, albeit informal, regulates the relations between friends.

<u>*Politics.*</u> In *Politics* Aristotle examines and evaluates the different forms of constitution which were known in the fourth century BCE. He argues that men are political animals and naturally form associations, culminating in the state.[8]

Aristotle discusses the true meanings of 'citizen' and 'state' and the virtues which are required both of citizens and those in authority. He examines the nature of happiness.[9] It is the function of the state to maximise happiness.[10] All citizens, when they are older, should play their part in government. The state should train its citizens not only for warfare, but also how to use peace and

[5] NE III 6-8
[6] NE VI 8
[7] NE X 6-9
[8] *Politics* I 2
[9] *Politics* VII 1
[10] *Politics* VII 2

leisure. A liberal education must be provided by the state, so that citizens can use leisure properly. In Aristotle's view, the best life is one spent in contemplation.[11] Therefore, a well-run state will provide opportunity for that.[12]

There is, I think, an analogy with Aristotle's biological works, where he gives a teleological explanation of everything.[13] In particular, the body exists for the sake of the soul.[14] Nevertheless, in his work *On the Soul*, Aristotle rejects dualism as propounded by Plato (and later by Descartes).[15]

2. ARISTOTLE'S CONCEPTION OF JUSTICE

It is a mistake to look at Aristotle's theory of justice as a free-standing body of jurisprudence. It is just one small part of a vast intellectual enterprise, with numerous crossovers to Aristotle's discussion of physics, metaphysics, biology, psychology, logic, ethics, religion and politics. He was trying to make sense of the universe in a coherent and integrated fashion. As Grayling points out, Aristotle's genius was universal and synoptic: he was trying to bring all knowledge into a great system.[16]

Although we will now focus upon the specific passages in which Aristotle discusses justice, it is important not to assess them in isolation. They must be considered and understood in their wider context.

Aristotle's principal discussion and analysis of justice is to be found in book 5 of the *Nicomachean Ethics*. Parts of this discussion and analysis reappear in *Eudemian Ethics* and in *Politics* (at book 3 and book 6). Aristotle's argument runs as follows.

Justice in the general sense. 'Justice' generally refers to a state of mind, which causes people to do what is just and to desire what is just.[17] 'Injustice' is the opposite. A just person abides by the law. He is also equal (ἴσος) in his conduct. He is not grasping or overly concerned with material goods.

Laws are framed for the benefit of the community, alternatively some part of it.[18] So one meaning of 'just' is that which enhances the happiness of the community or parts of it. Hence the law requires citizens to be courageous in warfare, and to refrain from adultery, assaults, libel and similar injurious conduct. 'Justice' in the wide sense means moral excellence in one's dealings with other people. It encompasses, but is not limited to, obeying the law.[19]

In addition to its general meaning (moral excellence) justice also has more specific meanings. There is (a) distributive justice and (b) corrective justice.[20] This foundational distinction between the two forms of justice was an original idea of Aristotle.[21]

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[11] There is a link here with Aristotle's *Metaphysics*, where he argues that God (the unmoved mover) engages in pure thought. There is a divine element in man (νοῦς) which can engage in pure thought. This imitation of God is man's highest activity.
[12] Grayling (2019) p. 94
[13] Ackrill (1981) pp.46-54
[14] *Parts of Animals* I.5.645b15
[15] Ackrill (1981) p. 56
[16] Grayling (2019) p. 80
[17] NE V 1.1129a
[18] NE V 1.1129b
[19] NE V 1.1130a
[20] NE V 2.1130b
[21] Englard, Izhak, *Corrective and Distributive Justice*, Oxford University Press (2009).

Distributive justice.[22] Distributive justice involves the fair distribution of material goods within the community. Between people who are equal, that means equal shares. In other circumstances merit is relevant. Distributive justice requires that the apportionment should be proportionate. Distributive justice requires that both the benefits and the burdens should be shared out amongst all members of society in a proportionate manner. It is unjust if one person takes more than his proper share of the benefits or bears less than his proper share of the burdens. Aristotle's concept of distributive justice roughly corresponds with the modern concept of social justice.[23]

Corrective justice.[24] Corrective justice involves correcting what has gone wrong in private transactions. Such transactions may be voluntary ones between individuals, such as sales, purchases, loans or lettings. Alternatively, the transactions may be criminal acts, such as theft, enticement of slaves, assault or murder. It is the function of corrective justice to make good the damage which has been done. The judge imposes a penalty upon the wrongdoer, in order to restore the pre-existing equality between the parties. In the eyes of corrective justice, all men are equals.[25] It makes no difference whether a bad man has wronged a good man, or a good man has wronged a bad man.

Justice as a mean.[26] Justice is something more than mere reciprocity. Justice [like all virtues in Aristotle's scheme of things] is a mean. Corrective justice seeks the mean between the loss suffered by the victim and the gain made by the wrongdoer. In distributive justice, the proportionate share of benefits and burdens which each person receives is a mean between the two possible extremes. Each of the two possible extremes (too much and too little) represents an injustice.

Political justice. Political justice is possible as between citizens of the same state. Any state must be subject to the rule of law, rather than the tyranny of whoever is in power. Political justice has two parts: (i) natural (φυσικός) and (ii) conventional or imposed by law (νομικός).[27] The word φύσις, from which φυσικός is derived, means nature, the natural order of things or the inherent quality of a person, animal or thing. The word νομός, from which νομικός is derived, means both custom or convention *and* law.

Natural justice.[28] Natural justice is unchanging and is the same everywhere. It does not depend upon what any individuals think. Some commentators doubt the existence of natural justice, because people's perceptions of what is just vary from one place to another and from one age to another. They argue that justice is fundamentally different from natural phenomena. Fire, for example, burns both here and in Persia in exactly the same way. Aristotle disagrees. Natural justice must exist amongst the gods. Even in our world natural justice exists. It is reflected in some human laws. In the same way, different states have different constitutions. But only one constitution is the best. That constitution is based upon nature (κατά φύσιν).

Conventional justice.[29] Conventional justice, or law, consist of a series of rules which are arbitrary and fixed by convention: for example, the rate for ransoming a prisoner, the rules about sacrifices, or the provisions contained in decrees passed by the legislature. These rules are like units of measurement. They have not been fixed by some law of nature and they might have been otherwise.

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[22] NE V 2.1130b and 5.1134a
[23] This comparison is not perfect, because notions of right and wrong have changed over the last 2,300 years. For example, in Aristotle's Athens and Macedon, no-one thought there was anything wrong with slavery.
[24] NE V 2.1131a
[25] Aristotle appears to say the opposite elsewhere, but this may be due to the nature of damage being considered: Englard (2009), pp. 16-17.
[26] NE V 5.1133b
[27] NE V 7
[28] NE V 7
[29] NE V 7

Rules of law are universal. The relationship between rules of law and acts performed in accordance with those rules is the same as that between universals and particulars.

Justice requires an assessment whether conduct was voluntary.[30] If A takes B's hand and strikes C with it, B has not assaulted C because B's conduct was not voluntary. Nor is B's conduct voluntary, if he strikes C by accident. Likewise if B strikes C, not knowing that C is his father, B's assault on his father was not voluntary. If B acts under duress (e.g. unwillingly and through fear he fails to return a deposit), then he is acting unjustly by chance. If B acts in anger or under the influence of some other overwhelming human emotion, then he has acted unjustly in that instance, but this does not make him an unjust or evil man. [Aristotle's reasoning at this point is, in essence, the rationale of 'provocation' which under English law, as it was 20-25 years ago when I tried murder cases, reduced the offence of murder to manslaughter].

A person is only fully responsible for his conduct if he acts freely, with knowledge of the relevant facts and after deliberation. Contrary to what may be supposed, it is by no means easy to act justly all the time and as a matter of settled habit.

Justice and equity.[31] Equity (επιείκεια) is related to justice, but not identical to it. Equity is never contrary to justice, but on occasions is superior to human justice. The reason is that the law comprises general rules. The lawmaker can never foresee all the situations which may arise. Thus there will be hard cases, where the law produces an unfair result. Equity rectifies the law in this situation. An equitable person is one who does not enforce his strict legal rights in circumstances where it would be unreasonable to do so.

Justice and equality. The relationship between justice and equality in Aristotle's scheme is not entirely clear. He states in *Eudemian Ethics*:
"Δοκεῖ δὲ τό δίκαιον εἶναι ἴσον τι"[32] – it seems that what is just is something that is equal.
However, the assets of the community should be distributed according to merit, i.e. not equally. Hence justice involves proportionality. The same set of rules should be applied to everyone and there should be equality before the law (ἰσονομία).[33]

Justice and third parties. Justice regulates a person's conduct towards third parties. Strictly speaking, it is not possible to commit an injustice against oneself. Even suicide is not an injustice against oneself. It is an offence against the state.

3. THAT'S ALL VERY INTERESTING, BUT DOES IT MATTER NOW?

Yes, it does.

Justinian. Aristotle's teaching feeds directly into Justinian's definition of justice, as set out in both the *Digest* and the *Institutes*. The latter begins:
"Justitia est constans et perpetua voluntas ius suum cuique tribuens."[34]
Nevertheless, as Englard (Israeli jurist and former Supreme Court judge) points out, Roman law did not contribute anything to our understanding of the distinction between distributive and corrective justice.[35]

Aquinas. St Thomas Aquinas was the dominant figure of the scholastic movement. He demonstrated that Aristotle's teaching provided the foundation for Christian belief and Catholic

[30] NE V 8; EE II 7-8
[31] NE V 10
[32] EE VII 9
[33] See Filotas 2021, chapters 4 and 5.
[34] "Justice is the constant and perpetual will to render to each person his due."
[35] Englard (2019) p. 13

dogma.[36] Indeed he made Aristotelianism the official philosophy of the Catholic Church, and it so remains.[37] Aquinas sought to reconcile some of the apparent inconsistencies in Aristotle's theory of justice, in particular the relevance of the complainant's status in corrective justice.[38] Aquinas calls corrective justice *iustitia commutativa* and maintains that this takes into account the victim's role in society.[39]

Modern law. Until relatively recent times, most of the leading jurists and judges had a classical education and would have been well familiar with Aristotle. So the ancient philosopher has exerted an influence, usually unspoken but sometimes express, on the emerging law of contract, tort and equity. To take just one example, in their seminal 1936 article '*The reliance interest in contract damages'*, Fuller & Purdue wrote:
"*In passing from compensation for change of position to compensation for loss of expectancy we pass, to use Aristotle's terms again, from the realm of corrective justice to that of distributive justice."*

This short paper cannot possibly give a full account of Aristotle's jurisprudence or its massive impact on the Western world, which is similar to that of Confucius on the Eastern World.[40] But I hope that this modest introduction has aroused your interest.

Rupert Jackson 9 November 2023

[36] Russell B., *History of Western Philosophy*, 2nd edition. George Allen & Unwin (1961), Book 2, chapter 13
[37] See Grayling (2019) pp. 133-134, 154-155.
[38] See the discussion of justice in *Summa Theologiae* Question 61; Izhak (2019) 16-18.
[39] Our law says the same. Assaulting a policeman in the execution of his duty adds to the offence of assault.
[40] It is interesting to compare Confucius' doctrine of the mean with Aristotle's teaching about the mean. But that is definitely for another occasion!