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## ARISTOTLE'S CONCEPTION OF JUSTICE

### I

The term "just," as used by Aristotle,<sup>1</sup> has two separate meanings:<sup>2</sup> in its first meaning it is principally used to describe a conduct in agreement with the "law";<sup>3</sup> a conduct, therefore, which conforms to an established, authoritative rule of human conduct; in short, it is used to describe a conduct which conforms to whatever constitutes an authoritative instrument of social and moral control.<sup>4</sup> In this sense Justice denotes a "moral disposition which renders men apt to do just things and which causes them to act justly and to wish what is just."<sup>5</sup> It refers primarily to the application or

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<sup>1</sup> This article is based upon the text of the Nicomachean Ethics, which is commonly regarded as the authoritative statement of Aristotle's ethical system. We shall not enter into a discussion of the relationship of the Nicomachean Ethics to the Eudemian Ethics and the Magna Moralia. W. Jaeger (*Aristoteles, Grundlegung einer Geschichte seiner Entwicklung*, 1923) has put forth conclusive evidence that the Eudemian Ethics constitute an earlier course of lectures, disproving thus the old thesis of L. Stengel (*Ueber die unter dem Namen des Aristoteles erhaltenen ethischen Schriften*, in *Abhandl. d. bayr. Akad. d. Wissensch.*, 1841) which declares it the work of Aristotle's disciple Eudemos. The Magna Moralia, on the other hand, is a much shorter treatise, probably compiled by a Peripatetic and based chiefly on the Eudemian Ethics, but also on parts of the Nicomachean Ethics. Arnim (*Die drei Aristotelischen Ethiken*, in: *Sitzungsbericht d. Wiener Akad.* 202, 1924, 2d Abhandl.), however, insists that the Magna Moralia is the first genuine work on ethics by Aristotle. It is interesting to note that the books V (that concerning Justice), VI and VII of the Nicomachean Ethics belong also to the Eudemian Ethics. The MSS of the latter omit these books referring the reader to the corresponding parts in the Nicomachean Ethics. The fact that the three mentioned books of the Nicomachean Ethics constitute a series of somewhat independent and unrelated essays (particularly book V, which is not even mentioned in the list of topics contained in book II chapter vii of the Nicomachean Ethics) led some to assume that these parts originally belonged to the Eudemian Ethics and were afterwards included in the Nicomachean Ethics, the corresponding parts of the Nicomachean Ethics probably having been lost. This view could not, however, be maintained in the face of the fact that certain parts of the accepted Eudemian Ethics would demand a rather different treatment of the topics of the doubtful books.

<sup>2</sup> See, for instance, 1108 a 6 f. (quoted from "*Aristotelis Opera*, edit. Academia Regia Borusica, Berlin, 1831, vol. II, page 1108, left hand column—a—line 6); 1130 a 15; 1130 b5 f.; 8f.

<sup>3</sup> Cf. 1129 a 32. Since Homer and Hesiod, the term Justice denotes in its wider sense conformity to an established authoritative law.

<sup>4</sup> Cf. Aristotle, "*Politica*," 1287 a 18. The English term "norm" probably comes closest to the Greek "nomos," but "nomos" means also what is right and just by an established convention.

<sup>5</sup> 1129 a 6 f.

observance of certain authoritative rules of human conduct and should, consequently, rather be called the virtue of "righteousness" or of "moral Justice" — a *virtue*<sup>6</sup> displayed towards others,<sup>7</sup> a social virtue.<sup>8</sup>

In its second meaning<sup>9</sup> Justice signifies Equality,<sup>10</sup> or, to be exact, a "fair mean."<sup>11</sup> It is this second meaning of Justice — "Justice in the narrower sense"<sup>12</sup> — in which we are primarily interested, since it constitutes that concept by means of which the law in action, and not merely the moral conduct of man, can be more specifically evaluated. In order to make clear the distinction between "Justice according to an authoritative rule" and Equality, Aristotle states that a person whose conduct is "unjust," who acts contrary to certain moral principles<sup>13</sup> and, therefore, lacks virtue, is not necessarily unjust as far as the principle of Equality is concerned:<sup>14</sup> that is to say, "he need not be one who has or claims more than his fair due."<sup>15</sup>

Justice in the sense of Equality has to do with external and commensurable things;<sup>16</sup> it is concerned with the proportionate ratio of commensurable goods.<sup>17</sup> Thus, a "just" wage is a wage proportionate to the type and amount of labor invested; it is one which is neither too great nor too little (disproportionate), but midway between the two extremes. Similarly, a just law is the ideal mean<sup>18</sup> between the two extremes of defect and excess.<sup>19</sup>

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<sup>6</sup> It is possible that Aristotle took the notion of Justice as a basic virtue from Plato and particularly from Plato's Republic.

<sup>7</sup> 1129 b 27; 34; 1130 a 12 f.; 1130 b 1; 20; 1129 b 32; 1130 a 2; 4; 8.

<sup>8</sup> 1130 a 3; 1129 b 26; 30 f.

<sup>9</sup> 1129 a 25; 1130 a 15; 22; 32 f.; 1130 b 6 f.; 8 f.

<sup>10</sup> 1129 a 34; 1130 b 9; 33; 1131 a 10 f.; 12; 13; 14; 15; 16.

<sup>11</sup> See note 17.

<sup>12</sup> See, for instance, 1130 a 23; 1130 b 2; 30.

<sup>13</sup> 1130 a 18; 19; 30; 31.

<sup>14</sup> 1130 a 21; 24; 1129 b 3 f.

<sup>15</sup> 1129 a 33; 1129 b 10; 1130 a 26; 1133 b 31; 1134 a 4 f.; 7 f.

<sup>16</sup> 1130 b 2; 1133 a 10 f., also 1119 b 26.

<sup>17</sup> 1129 a 3; 1130 b 2; 1133 a 9 f.; 20 f.

<sup>18</sup> 1108 a 6; 1130 a 9; 22; 1130 b 14; 1131 a 14; 1132 a 22 f.; 29; 1132 b 4.

<sup>19</sup> 1108 a 7 f.; 1129 b 6 f.; 1131 b 11; 12; 32 f.; 1133 a 9 f.

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. This parallelism<sup>20</sup> of "moral Justice" and Equality raises many difficult questions, particularly as regards the relation of these two terms. It is not permissible to assume that Equality alone constitutes the basis of all "legal Justice," since Aristotle himself makes the definite assertion that the common welfare of a politically organized society depends primarily upon "moral Justice," which alone preserves happiness.<sup>21</sup> Nor, on the other hand, does "moral Justice," as a general virtue, hold a rank superior to that of Equality.<sup>22</sup> It cannot, therefore, be made use of to define, modify, or complement the principle of Equality.<sup>23</sup>

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.<sup>24</sup> Moral Justice and Equality are not two co-extensive terms. In order to illustrate this particular relationship he adds that not everything which runs counter to the notion of "moral Justice" also runs counter to the principle of Equality, while whatever runs counter to the principle of Equality also runs counter to the notion of moral Justice.<sup>25</sup> In other words, every infraction of the principle of "Justice in the narrower sense"<sup>26</sup> (Equality) constitutes an infraction of the principle of "Justice in the wider sense" (moral Justice), while not every infraction of the principle of "moral Justice" implies an infraction of the principle of Equality. By this one might be led to believe that "Equality," as used by Aristotle, is merely one particular moral concept among

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<sup>20</sup> Cf. 1129 a 31 f.

<sup>21</sup> 1129 b 18.

<sup>22</sup> 1130 a 14.

<sup>23</sup> 1129 a 31.

<sup>24</sup> 1130 b 11 f.

<sup>25</sup> 1130 b 12 f.

<sup>26</sup> See, for instance, 1130 a 23; 1130 b 2; 30.

others — a particular aspect of “general moral Justice.” Such is not the case, however, for Aristotle’s very definition of the term “Equality”<sup>27</sup> shows it to be a principle of the most particular nature, and not merely a derivative aspect of the principle of moral Justice.<sup>28</sup> In fact, the principle of Equality is essential to a complete understanding of the full implication and significance of the principle of moral Justice; the more so, since it constitutes a vital part or element of that principle<sup>29</sup> — namely, one form in which moral Justice is manifested<sup>30</sup> — while moral Justice as such expresses the fullness of what is called “righteous” or “just.”<sup>31</sup> Thus we may say that the moral virtue called “Justice” is, in its ultimate meaning and content, but the ideal coincidence of human conduct with certain authoritative moral rules, while Equality is one of the forms in which this virtue appears.<sup>32</sup>

The principle of Equality not only creates a definite moral criterion for the administration of human conduct, but also becomes actual in and through the principle of moral Justice. At the same time, the principle of moral Justice unfolds and manifests itself in the different forms of Equality.

Only now are we able not only to appreciate Aristotle’s reasons for conceiving of two types of Justice<sup>33</sup> which, though separate and distinct, are nevertheless grounded in the same genus:<sup>34</sup> but also to understand why he makes two separate inquiries into the nature of Justice. While there exists but one universal concept of the “just,” its implications can be fully understood only if we approach it simultaneously from two directions — from the direction of moral Justice and from the direction of the principle of Equality. The “just” is the same in both instances, although the par-

<sup>27</sup> See, for instance, 1130 a 16 f.; 24.

<sup>28</sup> 1130 b 10 f.

<sup>29</sup> 1130 b 14.

<sup>30</sup> 1130 a 22 f. The vice of injustice is an infraction of the principles of moral Justice, though of no other virtue.

<sup>31</sup> Cf., for instance, 1130 b 22 f.

<sup>32</sup> 1129 b 17 f.

<sup>33</sup> 1139 a 25; 33; 1130 a 8 f.; 14 f.; 1130 b 5 f.; 18; 24.

<sup>34</sup> 1130 b 1.

ticular forms in which Justice is administered or formulated — the “modes” of Justice — are separate. For instance, if a man displays certain vices, such as throwing away his shield from cowardice or using vile language from bad temper,<sup>35</sup> one might assume that his actions were prompted by a wish to avoid bearing his fair share of the burden of evil and thus, since to aspire to a deficiency of proportionate evil is a violation of the principle of Equality,<sup>36</sup> that he had been guilty of an “injustice in the narrower sense.” But since these examples of “vice” are meant to describe a conduct motivated primarily by cowardice, ill temper, and the like, and not so much by the desire for disproportionate gain,<sup>37</sup> the principle violated is seen to be that of moral Justice.

This illustration shows clearly that our moral evaluation of an action depends upon our viewpoint; that is to say, upon whether we examine such an action as regards its relation to an authoritatively established rule of conduct, whether we consider it in the light of its manifest effects upon others and its particular motivation, or whether we evaluate it by the criterion of whether it exceeds or falls short of that “mean”<sup>38</sup> which is expressed by the principle of Equality<sup>39</sup> and which is concerned with the proportionate ratio of commensurable goods.<sup>40</sup>

If we are dealing primarily with the full content of Law and Justice, our main problem is that of discovering whether Law and Justice coincide with the authoritative rules of moral control. But if we are interested only in the manner in which this Justice manifests itself; with how “just” action differs from morally virtuous action, we are concerning ourselves with the principle of Equality or “equitable fairness.” Thus “moral Justice” and Equality are seen to be merely two different aspects of the same thing.

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<sup>35</sup> 1130 a 17 f.

<sup>36</sup> 1108 a 6 f.; 1129 a 10; 1131 a 17; 1132 b 3; 5.

<sup>37</sup> 1132 b 13.

<sup>38</sup> See, for instance, 1130 a 9; 1130 b 14; 1131 b 14; 1132 a 2 f.

<sup>39</sup> 1131 a 17.

<sup>40</sup> 1129 a 3; 1130 b 2; 1133 a 9 f.; 20 f.

Justice is a virtue — the most difficult of all virtues —<sup>41</sup> which differs from all other virtues in that it is displayed towards others<sup>42</sup> and not towards oneself.<sup>43</sup> It is the most perfect virtue because it is the practice of perfect virtue;<sup>44</sup> it is a social virtue, for it involves a relationship with others,<sup>45</sup> and embodies the good of others, because it does what is to the advantage of another.<sup>46</sup> The virtue of moral Justice is on equal footing with the other moral virtues, having as a basis the same “inner attitude” or disposition which accounts for a definite conduct; however, the disposition peculiar to Justice is qualified as a “teleological” attitude, since it is an attitude displayed towards others.<sup>47</sup> The social nature of Justice in Aristotle belongs not only to the general virtue of moral Justice, but also to the principle of Equality: that is to say, to that kind of Justice which is displayed in the form of “equitable fairness.”<sup>48</sup> Equality, like moral Justice, is a social virtue, and this social nature, common to both moral Justice and Equality,<sup>49</sup> furnishes further proof that they are not two different virtues but merely two aspects of the same virtue. Equality denotes “equitable fairness” in ones dealings with others; it denotes a conduct towards others not motivated by a desire to exceed or fall short of the “fair mean.”<sup>50</sup> Such conduct always presupposes an attitude which is significant only when displayed towards another. If, then, Justice and Equality differ from other virtues in being concerned with the well-being of a fellowman,<sup>51</sup> only the “citizen,” the “social man,” the member of a socially organized society, and not the morally virtuous man, deserves

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<sup>41</sup> 1130 a 8.

<sup>42</sup> 1139 b 27; 32; 33; 35; 1130 a 2; 4; 7; 8; 13; 1130 b 1.

<sup>43</sup> 1129 b 33; 1130 a 6.

<sup>44</sup> 1129 b 30 f.

<sup>45</sup> 1130 a 2.

<sup>46</sup> 1130 a 3 f.

<sup>47</sup> 1130 a 13.

<sup>48</sup> 1131 b 11; 1132 b 32 f.; 1133 a 9 f.

<sup>49</sup> 1130 b 1.

<sup>50</sup> 1139 a 33; 1129 b 10.

<sup>51</sup> 1130 a 2 f.

the predicate "just."<sup>52</sup> Thus the problem of Justice and Equality is one of the "common good,"<sup>53</sup> of the politically organized<sup>54</sup> society and its welfare.

## II

The distinction between "commutative Justice," and "distributive Justice"<sup>55</sup> is undoubtedly the best known and most significant feature of what might be called Aristotle's "theory of law."<sup>56</sup> 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,<sup>57</sup> 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,"<sup>58</sup> consists of two main phases, the first of which is exhibited in the act of "distributing"<sup>58a</sup> certain matters between two or more persons, or in adjusting<sup>59</sup> 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.<sup>60</sup> The principle of

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<sup>52</sup> 1130 b 29.

<sup>53</sup> 1130 b 26.

<sup>54</sup> 1129 b 19.

<sup>55</sup> Several attempts have been made to prove "retaliatory Justice" also equivalent to "distributive Justice" and "commutative Justice."

<sup>56</sup> The problems of "distributive Justice" and "commutative Justice" are treated in 1130 b 30; 1133 b 28.

<sup>57</sup> The relevant Aristotelian text in the *Nicomachean Ethics*, it must be admitted, is quite often puzzling, not so much in content as in structural articulation.

<sup>58</sup> 1130 a 8 f.; 14 f.; 1130 b 6; 16; 18; 30; 1131 b 24.

<sup>58a</sup> See, in general, 1131 a 9 f.; 1131 b 9; 15.

<sup>59</sup> 1130 b 31; 1131 a 9 f.

<sup>60</sup> 1131 a 16.

Justice and Equality, which for the purpose of comparison always presupposes a duality, requires, therefore, at least four different factors: namely, two conflicting claims and two claiming persons.<sup>61</sup> should these two persons be of unequal rank they cannot be treated alike,<sup>62</sup> for the principle of Equality demands that only equals be treated equally.<sup>63</sup> In this sense Equality is always proportionate equality — that is to say, it is a form of Justice which allots burdens according to the individual's ability to carry them and accords support in amounts which vary with the needs of the individuals — and is called "distributive Justice."<sup>64</sup>

On the other hand, "commutative Justice," which constitutes the second phase of the principle of Equality or "equitable fairness," is distinguished from "distributive Justice"<sup>65</sup> in so far as it ignores the rank of the persons involved.<sup>66</sup> 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.

The problems raised by the concepts of "distributive Justice" and "commutative Justice" do not originate with the moral virtue of righteousness, but stem rather from the concept of Equality or "equitable fairness." To Aristotle, Equality is not only the basic form in which the authoritative rules of human conduct are unfolded and made manifest, but constitutes also the main topic of his investigation into the nature of "legal Justice." The problems of "distributive Justice" and "commutative Justice" are in fact incidental to his investigations into the nature of Equality, and are treated, along with other problems, as arising from that principle.

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<sup>61</sup> 1131 a 19; 32; 1131 b 4; see also "Politica" 1120 a 11 f.

<sup>62</sup> 1131 a 22.

<sup>63</sup> Cf. "Politica" 1280 a 11 f.

<sup>64</sup> From all this it follows that the "retaliatory Justice" is but part of the "distributive Justice" (or "proportionate Justice"), since retaliation is not merely giving "tit for tat" but an act rewarding a person. See, for instance, 1132 b 30.

<sup>65</sup> 1131 b 27; 1132 a 1.

<sup>66</sup> 1132 a 5.

Thus we cannot say that he created the principle of Equality in order to answer the questions raised by the notions of "distributive Justice" or "commutative Justice."<sup>67</sup>

The fundamental distinction between "distributive Justice" and "commutative Justice" is to be found in the distinction between Equality with regard to the persons involved and Equality without regard to the person; between the notion that the same treatment applies to everyone and the notion that everyone should have his due according to his worth. This also furnishes the basis for Aristotle's division of "particular" Justice into "strict equality" and "proportionate equality."<sup>68</sup>

Only by reducing the form in which the law operates to the principle of Equality may law and Justice become a rational object of human understanding, an object of scientific inquiry. The application of law and Justice thus becomes not only predictable, but also its very existence can be proven; the more so, since Equality (and therefore Justice) as a problem of ratios is based on mathematics.<sup>69</sup> The mathematical method which subtends "distributive Justice," or "proportionate Justice,"<sup>70</sup> is, however, different from that which is applied in "commutative Justice," in that the former always presupposes four, and the latter but two, terms.<sup>71</sup> The Justice of "strict Equality" rests upon a principle which treats the persons involved as absolute equals.<sup>72</sup> Here it makes no difference "whether a good man has defrauded a bad man or a bad man a good one; the law looks only at the nature of the damage, treating the parties as equal, and asking merely whether one has done and the other suffered injustice: hence the unjust being here the unequal, the judge endeavors to equalize it."<sup>73</sup> The Judge, in considering mere-

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67 1132 a 17 f.

68 1131 b 10 f.; 1132 32 f.; 1133 a 9 f.

69 1131 a 31.

70 1131 a 29.

71 1131 a 19; 32; 1131 b 4; 1132 a 17 f.

72 1132 a 2 f.; 5.

73 1132 a 2 f.

ly the relative worth of different claims, restores Equality<sup>74</sup> by taking away from the party holding an excessive advantage half of the amount by which his share exceeds that of the party in defect and adding it to the share of the party holding the lesser advantage.<sup>75</sup> The equal is here a mean by way of a purely arithmetical ratio between excess and defect,<sup>76</sup> for "the just in private transactions, although in a sense Equality, is equality according to arithmetical proportions."<sup>77</sup> Justice thus achieved is Equality "analogous to arithmetical proportions."<sup>78</sup>

The actualization of the principle of "distributive Justice," which deals with the "equitable mean" of at least four contributing factors —<sup>79</sup> that is to say, which takes into account the worth, not only of the two claims, but also of the two claimants — proceeds according to geometrical proportions.<sup>80</sup> Equality in this sense "involves . . . not only (a) that the just is a mean and equal, and relative to something and just for certain persons, but also (b) that, as a mean, it implies certain extremes between which it lies, namely excess and defect; (c) that, as equality, it implies two shares that are equal; and (d) that, as just, it implies certain persons for whom it is just. It follows therefore that Justice (in the sense of "proportionate equality") involves at least four terms, namely two persons for whom it is just and two shares which are just. And there will be the same Equality between the shares as between the persons, since the ratio between the shares will be equal to the ratio between the persons; for if the persons are not equal, they will not have

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<sup>74</sup> 1132 a 25.

<sup>75</sup> 1132 a 24 f.: "Now the judge restores equality: if we represent the matter by a line divided into two unequal parts, he takes away from the greater segment that portion by which it exceeds one-half of the whole line, and adds it to the lesser segment."

<sup>76</sup> 1132 a 29; 1131 2 17; 1132 b 3; 5.

<sup>77</sup> 1131 b 32 f.

<sup>78</sup> 1132 a 30. Note that we do not call this a proportion at all.

<sup>79</sup> 1131 a 19; 32; 1131 b 4.

<sup>80</sup> 1131 b 13 f. It might be possible that Aristotle borrowed the notion of Equality according to geometrical proportions from Plato. Cf., for instance, "Gorgias" 507 e, 508 a; the "Laws" 757.

equal shares.”<sup>81</sup> “When the persons are omitted, then men judge erroneously. The reason is that they are passing judgment on themselves, and most people are bad judges in their own case.”<sup>82</sup> The so-called “geometrical equation” includes among its four terms the difference of the persons or parties involved and does not limit itself to the shares, as does the arithmetical or algebraic method employed by “commutative Justice.” In order to maintain the inner consistency of the “geometrical equation,” two of its four terms must be commensurate;<sup>83</sup> that is to say, one of the terms pertaining to the ratio of the shares or goods must be commensurate with one term pertaining to the ratio of the two persons.<sup>84</sup> Aristotle explains the need of a dual method in establishing Justice and Equality — the need of a “commutative Justice” side by side with a “distributive Justice” — by pointing out that “where equals possess or are allotted unequal shares, or persons not equal, equal shares, quarrels and complaints arise.”<sup>85</sup>

The inequality of men rests, according to Aristotle, upon the fact that men themselves are of different value or “worth.”<sup>86</sup> This difference in man’s value<sup>87</sup> becomes an essential element of “distributive Justice.”<sup>88</sup> “Commutative Justice,” on the other hand, entirely ignores the individual worth, “dignity,” or standing of the parties involved. For instance, any barter of economic goods is exclusively concerned with the quality and quantity of these goods — with the balance or equality in the exchange of them.<sup>89</sup>

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<sup>81</sup> 1131 a 15—24.

<sup>82</sup> “Politica” 1280 a 18 f.

<sup>83</sup> 1131 a 33—The Aristotelian “continuous proportion” means one in which the two ratios have a factor in common.

<sup>84</sup> Aristotle is fully aware that any attempt to reduce to one common term two such basically different things as the value of a person and the value of a share will have to contend with almost insurmountable difficulties. See, for instance, 1133 b 19; “Politica” 1280 a 18. “Alike persons . . . acknowledge the equality of things, but dispute about the merits of a person.” Cf. also 1129 b 33 f.

<sup>85</sup> 1134 a 24.

<sup>86</sup> 1131 a 24.

<sup>87</sup> 1131 a 27.

<sup>88</sup> 1131 a 25.

<sup>89</sup> 1133 a 14 f.

To define the nature of the Aristotelian notion of human worth is extremely difficult, since Aristotle conceives of human worth or dignity as a factor which varies, particularly with variations in the form of government.<sup>90</sup> It depends primarily, at any rate, upon the social ideals of the government in power.<sup>90a</sup> Thus the notion of "distributive Justice," which always operates with the worth of man as a factor, turns into a problem of what might be called "public law" or "public policy." Everything that is "distributed" or "allocated" by the government in the form of proportionate burdens or "goods" constitutes a public or "common good"<sup>91</sup> — that is to say, a matter of universal concern.

We have thus gained another means of distinguishing between "commutative Justice" and "distributive Justice"; the former being always the Justice of the "private law" or the "voluntary transaction,"<sup>91a</sup> while the latter constitutes the justice of the "public law." "Commutative Justice" is the "Justice of co-ordination," since the two parties involved face each other as equals. "Distributive Justice," on the other hand, denotes the "Justice of subordination," since there must be one authority which distributes Justice; one which allocates advantages or disadvantages, and which, consequently, must be above the two claimants. This becomes particularly apparent in Aristotle's treatment of the consequences of punishable acts.<sup>92</sup> Every crime, every act causing distress and suffering, disturbs that balance which, as the essence of the principle of Equality, forms the basis of all "corrective" or "retaliatory" Justice. Hence it is the effort of the judge (or the court) in dealing with such an act to restore equality by the different penalties or losses he imposes

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<sup>90</sup> 1131 a 27. Aristotle implies that such advantages as nobility, wealth, freedom, etc., depend largely upon the kind of government in power.

<sup>90a</sup> 1131 a 27 f.

<sup>91</sup> 1131 a 28.

<sup>91a</sup> 1131 a 2; 3; 4; 5.

<sup>92</sup> 1132 a 9.

— by taking away the “gain.”<sup>93</sup> The corrective function of the judge in this case must be understood in terms of a contract between two parties, for it is the restoration of a balance upset by the “gain” of the criminal and “loss” of the victim<sup>94</sup> which constitutes the essence of “corrective Justice.” From all this it would seem to follow that simple reciprocity<sup>95</sup> describes best the nature of Justice, particularly that of “corrective Justice,” and that the “arithmetical” method is the only way to bring about Equality. But Aristotle himself admits that strict reciprocity does not fully coincide with the principle of “distributive Justice” or “corrective Justice”<sup>96</sup> (itself a form of “distributive Justice”). In many cases “reciprocity is at variance with the idea of Justice: for example, if an officer strikes a man, it is wrong for the man to strike him back; and if a man strikes an officer, it is not enough for the officer to strike him, but he must be punished as well.”<sup>97</sup> The difference in the rank of the persons involved in this exchange of blows plays an important part in establishing Justice and Equality. The policy of strict reciprocity, of “absolute Equality” cannot restore the balance disturbed by one party if the other is of different rank or “worth.” Thus, in the case of the officer who is struck by an ordinary citizen, the law, in order to restore Equality, must not merely take away from one of the involved persons half of his excessive advantage and add it to the defect of the other; it must impose additional punish-

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<sup>93</sup> 1132 a 6 f.; 9; 10: “For the term ‘gain’ is used in a general manner to apply to such cases, even though it is not strictly appropriate to some of them, for example to a person who strikes another, nor is ‘loss’ appropriate to the victim in this case; but at all events the results are called ‘loss’ and ‘gain’ respectively when the amount of the damage sustained comes to be estimated.”

<sup>94</sup> 1132 a 14 f. Cf. also 1132 b 11 f.: “The terms ‘loss’ and ‘gain’ in these cases are borrowed from the operations of voluntary exchange.”

<sup>95</sup> 1132 b 21.

<sup>96</sup> 1132 b 25.

<sup>97</sup> 1132 b 28 f.

ment.<sup>98</sup> Aristotle remarks in this connection that punishment and "corrective Justice" — in other words "proportionate retribution" — is the bond which holds together any politically organized society, since the very existence of such a society depends on proportionate reciprocity.<sup>99</sup>

"Corrective Justice," as one form of "distributive Justice," operates with reference to the status of the different persons involved. "Cummulative Justice," or "private law Justice," on the other hand, ignores the worth and rank of the persons. Any punishment imposed by the courts is aimed at restoration of balance through the principle of "proportionate Equality." There exist two kinds of Equality (or Justice): namely, "strict Equality" and "proportionate Equality," for there are certain claims which can only be adjusted by the application of the principle of "strict Justice" and Equality, while certain others require in their adjustment the application of the principle of "proportionate Justice" and Equality. The difference in the administration of Justice in these matters is, however, not the result of the difference between simple and proportionate Justice or Equality. The different legal problems arising from the conduct of human life are themselves responsible for the two different kinds of Equality and Justice. Thus it might very well be possible for one conduct to involve questions pertaining to "strict Justice" as well as to "proportionate Justice." This difference in the administration of Justice is, however, not identical with the difference that exists between the general moral virtue of Justice and "Justice in the narrower sense," since it is neither simply a question of dualism of form and content, nor a problem of the particular

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<sup>98</sup> 1132 b 30. It has been said that the Aristotelian term "punishment," by means of which Equality should be restored, really suggests what we would call a fine, since a fine, rather than general punishment, would serve to balance gain and loss. This "Punishment" is, in the last analysis, part of the recovery for damages arising from tort.

<sup>99</sup> 1132 b 33 f.

standpoint. "Strict Justice" and "proportionate Justice" are, in the last analysis, merely two separate processes of which neither could be called superior to the other, since the choice of the kind of Justice to be applied is always determined by the nature of the facts underlying each legal dispute.

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