

Justice according to Aristotle and its usefulness in mediation

George Papageorgiou

Judge, Hellenic Supreme Civil and Criminal Court

Accredited mediator from the Greek Ministry of Justice, Certified from the Piraeus Mediation Centre (KEDIP)

Vice -President of GEMME HELLAS

GEMME - INSTITUTIONAL EVENT

AT THE GREEK MINISTRE OF JUSTICE IN ATHENS

10 NOVEMBER 2023

According to Aristotle, justice is the highest virtue in a person that makes him coexist harmoniously with his fellow human beings and live in a state with law. The existence of the rule of law requires obedience to the laws of the state.

..... justice is a virtue by which is said that the fair man practice intentionally the fair and distributes between himself and the others, or between two, not in the way that he receives the better and the others less, but proportionally the same and if the distribution is between the two of them. And talking of the unfair, injustice is the opposite [of the justice], this is, excess and defects of the useless and harmful, against every proportion. Injustice is excess and defects, in the way that is excess of the usefulness absolutely in relation to us, and defect of what is harmful; talking of the others, in union with the same but against proportion in each of the cases.

Also, according to Aristotle, the purpose of law is justice, because if there is no justice then "the unjust through injustice will possess more, but the wronged through injustice will possess less".

Indeed, Aristotle distinguishes justice in a broad sense (general) from justice in a narrow sense. In its broad sense it includes the social aspect of

virtues because it is synonymous with respect for the laws that dictate the exercise of virtue and the avoidance of malicious acts. The moral virtues combined will constitute a single virtue, justice, which constitutes an ideal pattern of behavior¹.

Special or partial justice refers to issues of equality in the distribution of prices, goods, and reparations for injustice from previous damage². partial justice is concerned also with the share of burdens and harms that individuals should bear. Injustice in the partial sense occurs when a person receives an unfair share of benefits or burdens.

According to Aristotle, there are three types included in the concept of individual justice: distributive ("to be distributed"), corrective ("to restorative") and retributive ("antipeponthos"), which are governed by the principle of proportional equality.

Distributive justice is related to the legislative and executive branches and concerns the sharing of political offices (honors), where the value of each and the specificity of situations are considered. The function of the State is to give or recognize to everyone what is just to belong to him. Distributive justice, according to Aristotle, is the one that distributes in an equal proportion; "the fair is a medium term in relation of something or with somebody. As medium term will be one of the extremes as also can be according to the terms and as fair in relation of certain people". This type of justice is based on the

¹ general justice as the virtue of being a law-abiding person (the nomimos) who cares about the norms of society and obeys the constraints that are imposed on his or her behavior; general injustice refers to the person (the paranomos) who shows disrespect for the laws and norms of society, both written and unwritten. The law lays down constraints on behavior in many areas—for example, it requires you to pay your taxes, perform military service, keep your hands off your neighbor's property, support your parents in their old age, and so on. The just person obeys those constraints whereas the unjust person does not. (It is worth keeping in mind that Greek nomoi include laws both written and unwritten—and the latter includes customs, conventions, and norms widely endorsed and followed.)

² Special justice is the virtue that belongs to people who care above all about the fairness of social and political institutions, arrangements and distributions of benefits and harms. Aristotle clearly has in mind a virtue that would belong to magistrates, statesmen, and especially judges—but presumably this is a virtue that all citizens in a good state should be expected to have. Special justice is a virtue that is conceptually secondary to a prior concept of fairness, understood as equality in distributions of goods, or equality in rectification of harms.

geometrical proportion and is developed in the distributions of honors, money and any other good. It is a midterm measure on the proportion, an equality of reasons, refers to people and things; it constitutes the proportional thought of the political communities and the principal reason of the existing disagreements.

Corrective justice deals with transactional relationships and exercises a restorative role between people. Aristotle distinguishes transactions on the one hand into voluntary, such as sale, and involuntary, which he divides into those that are done secretly, such as theft, and those that are carried out with the use of force, such as attacks.

ANTIPEPONTOS law (Retributive justice) is found in exchanging societies and regulates matters of an economic nature and depends on the three powers: legislative, executive and judicial. Aristotle gives a new content to retributive justice and defines it as an analogy, not based on strictly formal equality, but as a proportionate reciprocal service.

Aristotle's principle of golden middle way in mediation

For Aristotle distributive justice is identical to equal, which is defined as middle way. According to this theory, a fair share is in the middle, that is, between a share that is either too large or too small. "The equal is the one, the first, the finite, which is the good, while the infinite, the multitude and the unequal are the evil.

.. while the equal is a mean between more and less in contrary ways, better and less evil being gain and more evil and less good. And as the equal, which we pronounce to be just, is, as we said, a mean between them, it follows that justice in Rectification (EPANORTHOTIKON) will be the mean between loss and gain.

In this way it can be justified why the righteous is good, while the unjust is evil. It follows from this that only equal is just, while unequal will necessarily be unjust.

The aim of corrective law is to restore the disturbed legal balance in the light of the concepts of 'profit' and 'loss'. In corrective law, it is important who has committed the wrong and who has suffered injustice, so that the latter is reimbursed the share deducted from the former, without caring about any inequality between them. So, profit and loss represent more and less, and the middleness of these two concepts is the equal, which is law

As Aristotle mentions in the Nicomachean Ethics (1133 b30)

« ... It is obvious that just contact is the mean between doing and suffering injustice, for the former is to have too much and the later to have too little .And justice is a mode of observing the mean , though not in the same way as the other virtues are, but because it is related to a mean, while injustice is related to the extremes. Thus, according to justice, a person with the ability to do, after a conscious decision, is rightly called the law. Also, to be able to distribute - either to himself and to another, or to two others a selected good, not so that he himself reaps the most and his neighbor the least (for something harmful the reverse), but to distribute it to himself and to the other in the way of proportional equality. The same when he distributes it to two others. Based on injustice, on the contrary, a man consciously does the unjust. And injustice is exaggeration and lack of what is beneficial or harmful, as opposed to analogy. That is why injustice is an excess and lack is tied to excess and lack. By exaggerating oneself when it comes to something generally beneficial, and by lacking when it comes to something harmful. When, elsewhere , the division is made between two others, the whole thing is the same, except that the contrast with the analogy is for or against one or the other. And as for the offense: it is less to be wronged than to be wronged”

Justice seems to be a means between two acts. What acts? A middle ground between what would happen if I were wronged and what would happen if I had been wronged. Avoiding these two I need to see what the middle is or between what would happen if the other was wronged or if the other was advantageous. Here again I can find something like an average.

Aristotle describes a judge as the personification of justice, who mediates and thus achieves a mean = justice = equality between disputants. In so doing, of course, he disregards the differences between a judge and an arbitrator, as well as the notion of punishment. An arbitrator, a *diatêtês*, tries to work out an equitable settlement between disputants. In classical Athens the judge, the *dikastês*, must choose between one side and the other, making one side a winner and the other the loser. There seem two different notions of justice in play, which Aristotle is content at this point to ignore. His attempt at etymology, seeing the *dikastês* as a *dichastês*, a halver, puts emphasis on the arithmetic aspect of the corrective justice in which the judge participates. Unlike his notions of distributive justice, which acknowledge differing statuses with differing distributions of money and power, corrective justice's arithmetic equality follows the democratic notion that all free people receive equal justice. In this Aristotle's judges follow a distinctly democratic principle.

"To go to a judge is to go to justice, for the ideal judge is so to speak justice personified. Also, men require a judge to be a middle term or medium - indeed in some places are called **mediators** - for they think that if they get the mean they will get what is just. Thus, the just is the sort of mean since the judge is a medium between the litigants."

The idea that justice is about middle is something that is deeply rooted in us - we believe it today, for example the judge and the mediator take equal distances between the two opposing parties so that they do not discriminate in favor of one or the other. The one who can distance himself from extreme positions, the one who can take a neutral stance towards extreme demands, this is the mediator. Therefore, this idea that it is a means between the wants, or demands, or aspirations of the opposing parties is rooted in today's way of understanding justice and mediation. It is the same idea we have today and applies even to Mediation.

Aristotle teaches us: a) that mediation is part of the justice system, b) to keep an equal distance from the interested party, b) the way we should handle the interested parties so that they neither do wrong nor be wronged, c)

elevate the institution of mediation as a function of society that aims to improve the all the citizens .

Bibliography.

Aristotelistes The cooperative corpus+ of Aristotle A digital humanities project : https://aristotelistes.cti.gr/welcome/index_en.html

Gravias George : Deontology in Mediation .

Kontos Pavlos Aristotelian Ethics .Mathesis /CUP : https://mathesis.cup.gr/assets/courseware/v1/038cbd4e9e06fd971ea3dbe688c9aa4e/asset-v1:Philosophy+PHL2+2017_T2+type@asset+block/Aristotles_Ethics_Week_1-8_revised.pdf

Mi- Kyoung Lee: Justice and the laws in Aristotle's ethics : Strategies of Argument: Essays in Ancient Ethics, Epistemology, and Logic, Oxford University Press (2014), pp. 104-123

Tzimas George : The moral discourse in Aristotle's rhetoric. Teaching approach to educational and mediation. 2018 Stamoulis Ed.