Aristotle

Plato

Aquinas

Reformation

Augustinian

Coercion

Coercion, coercion, coercion

Humanity = Social contract

Communism

Common good

Best options

Political role

Unique, political theory

Neo-Marxist, ideological

Customary

Ethical, issues

Sage, philosophy

Thoughts

Ethnomethodology

Characteristics

Communalism, sterile, colonial

Coercion, coercive, reflective, rational

Critical reflection, assessment

Understanding, thought
Aquinas

Aristotle

Plato
Pre-modern philosophy

- Characteristics of pre-modern legal thinking:
  - Natural order that applies to law. Natural order / harmony that applies to social life.
  - Laws part of nature; cannot be criticized.
  - Belief in common good.
  - Community more than individual.
  - No conflict between community and individual.
  - Metaphysical assumption: reality begins world, separate set of law exists.
  - The order is God given.
  - Cannot be seen or felt; exists beyond physical world.
  - Natural social order originating from belief in God.
  - Natural laws pre-political, existed before formation of human societies.

- Not a value judgment.
- Not pluralist in nature.
- Small homogeneous society - same values, ideas, principles.

Greek philosophers

What is nature of reality? 38.6'11

1. Plato

- Ideas of law are linked to his theory of knowledge.
- Noted to understand how we tell what is true or false.
- Cave story: don't see real things.
- Idealism: everything we see are just shadows of real things. e.g., "You need an ideal tree to know that you see a tree and not a bush."
- Idealism - metaphysics where reality consists of ideals. Material objects are only examples of this absolute ideal.
- To grasp meaning of justice we must rise above the prejudices and routines of everyday life.
- essentialism = objects have innate unchanging core of meaning
- metaphysics = dual world: hidden essence
- respect for obedience to law is more important than personal convictions
- saw ideas as concrete essentialism
- he provided a fixed unchanging set of rules
- everyone had a role in the state, can't be changed ever.
- its a dangerous thing as change & transformation becomes difficult if people can't change ad no progress is possible.

2. Aristotle

- realism
- we can trust what we see, hear, feel.
- metaphysics: all things have natural purpose, a goal that it's striving towards
- all things have a natural purpose (teles)
- all things have matter & form
  - matter = actuality of thing
  - form = potential of thing
- justice (form) is used to transform laws (matter) into their real purpose all to achieve justice.
- there is natural justice (form), and conventional justice (matter)
- natural justice is universal & unchanging
- conventional justice based on agreement & can be changed.

- 2 kinds of conventional justice = distributive & corrective justice
- distributive: if two are equal should be treated equally, vice versa.
- corrective: used by courts to correct an imbalance that occurred.
- created hierarchy among others
- discrimination was justified by his views on telos of things
Medieval philosophy

St Thomas Aquinas

took Aristotle's ideas and combined them with traditional Christian ideas about law and society.

Christians believed a divine God created the universe and everything in it.

- God gave everything a place or purpose
- God's rules ensure harmony of his creation by means of eternal law.

- Universe consists of a hierarchy from God downwards, with being most final in society.
- Natural purpose of a man is to be a social and political thing.
- Further developed idea of natural law: God is pure form of cause of all that exists.

- Universal law flows from God's reason, and can be known through reason and natural law.
- God created eternal law = revealed through divine revelation & natural law.
- Natural law recognized by rational human nature becomes general norm of behaviour; human law is conflict with natural law is not law.

- He Christianized Greek thinking.

- Natural law can be known through human reason & rationality.

Problems with his theory: Ideal State
- Gov: is office of trust for common good of community.
- Ruler of anything contributes to common good of society & universe
- Everything ruled by eternal law of God.
- Virtue is a virtue, but needs to be trained.
- Trained to be perfect by instruction to act by fear of punishment (law).
- Law is means by which & is trained to become good &
- Reg gov that has moral function as promoter of good Christian life.
- Laws of state didn't have to correspond to will of God but to truth of word of God.
- True law gives expression to eternal law

- Perverted law lacks proper content, still law even if unjust 'cos power to promulgate law is derived from God.
African legal philosophy

Is Ap ex of pre-modern? Is (6'-12)

Kaphagawali: 3 typically African approaches to philosophy:

1. Ethnophiilosophy
   - described communal thought & collective thought orally transfered.
   - not a theory of logical thoughts of individuals.
   - relies on metaphysical assumptions of traditional Africa wisdom.
   - combine philosophy, mysticism & religion.
   - no reason for critical analysis.

2. Sage philosophy
   - represents the thoughts of individuals concerned with fundamental ethical issues of their society; can offer solutions to some of these problems.
   - a sage (wise 2) - custodian of the survival of his society.
   - represents a culture's world view.

3. Nationalistic-ideological philosophy
   - neither capitalist nor socialist, but African.
   - Africa philosophers have a political role to play.
   - should indicate best options of social & political organisation for Africa's conditions.
   - attempts to produce a unique political theory based on traditional African socialism.

A.p. regards sage philosophers as being responsible for addressing the fundamental issues relevant to their society.

have political role to play

must indicate best options of social & political organisation & Africa's conditions.

public sphere of social life is stressed which is the arena where all individuals pursue the common good as their individual good.
A.p emphasizes the common good. (10:10-11)

- considers conflict among members of a political community as destructive.
- conflict has to be settled.
- community is always regarded as more than the individual.
- African communal view: members of a society have to exercise their talents & skills to the benefit of the society.
- talents & abilities are seen as communal assets.
- emphasis on group solidarity with other members of the community rather than on the individuals autonomy.
- human nature can only be realized in a social context.
- dangers of unlimited communitarianism have been recognized by A.p.
- Gebyeke proposed a restricted communitarianism that allows & rights but doesn't grant them a pre-eminent or absolute status.
- when choice has to be made between values, priority will not be given to rights but to a higher ranked value.

Ubuntu: 10.2012

hhmc

means inter alia humanity, humaneness, morality & compassion.

- It stresses conciliation, harmony through social relations within the group.
- Self-fulfilment through taking part in collective whole, duties towards others, caring, warmth, empathy, respect for elderly, old communicatio.
- emphasizes group solidarity as opposed to individual interests.
- condemns dog-eats-dog competition & adversarial relations.
- in stead of confrontation it seeks co-operation.
- I am because we are.
- strongly connected to communitarianism, community defines the person.
- criticism: will principle prevail when interest of individual and the community is in conflict?
- vague term 1:6:0 community morality. --0 leads to conflicting interpretations in court cases.