

## LATE MODERN

- THINKERS → TRIES REFINING RATIONALISM, BY ADDING "WE NEED TO HAVE RATIONAL VALUES IN OUR THINKING"
- THINKING → DIDN'T REJECT INDIVIDUALISM, IT TEMPERED IT, BY INCLUDING COMMUNITARIANISM (PEOPLE DELIBERATE, RATIONALLY & COLLECTIVELY TOGETHER)
- PHILOSOPHERS → DIDN'T REJECT SCIENTIFIC WORLDVIEWS, THEY JUST NO LONGER LOOK FOR IT, IN METAPHYSICAL IDEAS, BUT THROUGH DEDUCTION, ANALOGY, PRECEDENTS, SOCIAL POLICIES & HISTORY

## ROALD DWORKIN

→ HOW DO JUDGES DECIDE CASES?

- CONCERNED ABOUT
  - POSITIVIST → THERE LAW TO SELECT → LAW OF CONVENTIONALISM
  - REALIST → THERE LAW TO SUBJECT THE (CASE TO OBJECT) → LAW OF PRAGMATISM

→ TRIES TO FIND BALANCE BETWEEN ABOVE 2

↳ CONSTRUCTIVE INTERPRETATION → READING AUTHORITY LEGAL SOURCES, IN LIGHTS, MAKING IT THE BEST, IT CAN BE

- USES A METHOD
  - FIT → WHICH RULE FITS
  - WEIGHT → WHICH 2 RULES MOST WEIGHT
  - PRINCIPLE → LOOKING AT ITS PRINCIPLES
  - TRADITION → FOUND IN CASE LAW
- WHEN THERE'S A HARD CASE, A JUDGE CAN FOLLOW THIS METHOD & DECIDE WHEN ANSWER IS UNCLEAR (HOW JUDGES DECIDE CASES)
- BAD EFFECT OF THIS
  - TO PREVENT, CHIEF MUST USE METHOD TO FIND ANSWER
  - TRADITION (RD LAW, DARK SIDE)

## JOHN RAWLS

- WHAT IS LAW?
- HOW DO WE STRUCTURE SOCIETY?
- WHAT WE DO, TO GET ACCESS TO RESOURCES, WE LOWER A VEIL OF IGNORANCE, PUTTING US IN THE "ORIGINAL POSITION"
- I DON'T KNOW, THAT I'M HUNGRY & WHEN THIS VEIL IS LIFTED, I'M GOING TO WANT HAVE ACCESS TO RESOURCES (FOOD)
- UNDER THIS VEIL, WE WILL DECIDE ON 3 PRINCIPLES OF JUSTICE
  - GREATEST EQUAL LIBERTY
  - SOCIO ECON INEQUALITIES
  - FAIR EQUAL OPPORTUNITIES
- EQUAL ACCESS TO RESOURCES, BUT MAKE ACCOMMODATION TO SPECIAL NEEDS, THIS IF YOU'RE POOR, YOU'LL GET GREATER ACCESS TO RESOURCES THAN A RICH PERSON
- EQUAL OPPORTUNITY TO HOLD POSITIONS OF POWER
- THIS LAW & SOCIETY STRUCTURE SHOULD BE ACCORDANT TO THE 3 PRINCIPLES, WHICH SA HAS IN HIS CON
- DECIDING CASES
  - ↳ RATIONAL REASONS ENGAGED IN RATIONAL DELIBERATION & THEN WILL ARRIVE ON 3 JUSTICE PRINCIPLES

## CASE LAW (APPLICATION)

↳ SUS MARENTHANE → HOW VALUES MUST BE UNDERSTOOD

THE MODERN W

→ 20<sup>th</sup> CENTURY / SMALL & HOMOGENEOUS / SHARING SAME BASIC VALUES, IDEAS & PRACTICES (PUNING SYMONEI MINISTRI)

CHARACTERISTICS

- NATURAL ORDER / APPLYING TO SOCIAL LIFE & LAWS
- COMMON GOOD / OR ASSUMPTION / A COMMUNITY / IS MORE IMPORTANT / THAN A PERSON (COMMUNITARIAN)
- METAPHYSICAL ASSUMPTIONS / ON REALITY / LED TO NATURAL LAW THEORY DEVELOPMENT
  - NL / IDEA THERE'S A REAL; PRE POLITICAL SET OF RULES / PROVIDING THE PARADIGM / ON WHICH LAWS ARE MEASURED
  - NL / IS EXPRESSION OF LAWS / AS IT OUGHT TO BE
    - PRE POLITICAL
    - METAPHYSICAL
    - HANDS OFF
    - AGAINST WHICH WE MEASURE HUMAN CONDUCT

GREEK PHILOSOPHERS (PLATO & ARISTOTLE)

→ PLATO

- IDEAS / LINKED TO HIS KNOWLEDGE THEORY
- WANTED TO UNDERSTAND
  1. THE MEANING / OF HAVING KNOWLEDGE
  2. HOW TO TELL / WHAT'S TRUE OR FALSE
- CARE STATE (IDEALIST) → IDEAS / IS THE ONLY REALITY (THINGS EXISTED METAPHYSICAL, IDEAL REALM)
- \* → EVERYTHING WE SEE / ARE SHADOWS / OF REAL THINGS (KNOWN AS IDEALS OR IDEAL FORMS)
  - OUR SENSES / ARE SENSITIVE & UNRELIABLE PERCEPTIONS (HOW DO WE KNOW / WHAT WE SEE / IS REAL)
- \* → WE MUST FIND THE IDEAL / THAT WE CAN MEASURE THINGS AGAINST (IDEAL TREE (MODEL OF PERFECTION))
- \* → HUMAN LAWS / ARE SHADOWS / OF DR IDEAL JUSTICE
  - CAN BE TESTED / AGAINST THIS IDEAL / BUT
  - ONLY PHILOSOPHER KINGS / CAN OBSERVE THIS / WHO'S TRAINED TO DO SO

PLATO'S IDEA OF A STATE (IMPLICATIONS)

- IDEA OF PRE-DETERMINED RULES & LAWS / MEANT CHANGE & TRANSFORMATION / WITHOUT POSSIBLE
- CONSIDERED CHANGE / WITH CHAOS & DEATH / AS THINGS WERE CHANGING AROUND HIM (24 / WPA WITH SPARTA / GREEK)
- THOUGHT / THERE HAD TO BE SOMETHING / THAT NEVER CHANGED / THIS BECAUSE / OF HIS ETERNAL FORMS (IDEAL THEORY)
  - IN METAPHYSICAL WORLD / NOTHING CHANGES / AS IDEALS ARE ETERNAL, UNIVERSAL & UNCHANGING (IDEAL CITY)
- FIXED UNCHANGING SET OF RULES (ESSENTIALISM → THINGS HAVE / UNCHANGING / ESSENTIAL MEANINGS (PLATO'S THEORY)
  - WE CAN'T SEE IDEALS / AS SOMETHING ABSTRACT (OF THE MIND - NOT REAL OBJECT)
  - IT WAS MORE REAL TO HIM / THAN THE CONCRETE WORLD / AS ITS HIDDEN ESSENCE, OF THINGS
  - IDEALS / CAN'T BE DESTROYED
  - ESSENTIALISM / REAL OBJECTS / HAVE INFINITE / UNCHANGING MEANINGS (FOR PLATO)
  - JUSTICE / MEANS THE SAME / IN 21<sup>st</sup> CENTURY AFRICA / AS IT DID 2000 YRS AGO / IN GREECE
- PLATO'S IDEALISM
  - KIND OF BELIEF / WHERE REALITY / CONSIST OF IDEALS / & OBJECTS ARE SHADOWS / OF THIS ABSOLUTE IDEAL
  - HERE / HE DEVELOPED A NL THEORY / WHERE IDEALS / FORMS NL
  - IDEAL / HUMAN LAWS / MUST BE MEASURED / AGAINST THE "IDEAL JUSTICE" (UNIVERSAL; UNCHANGING & ABSOLUTE)

IDEALISM

POLITICAL POWER

- HIS IDEAL THEORY / IS SEEN IN HIERARCHY NATURE / OF HIS IDEAL CITY
- POWER / EXCLUSIVE TO PHILOSOPHERS (ONLY THEY KNEW, THE ETERNAL IDEAL OF GOOD)
- CITIZEN RIGHTS / BE LIMITED / BY RULING GUARDIAN PHILOSOPHER (ENSURE BEHAVIOUR / CORRESPONDS WITH / METAP IDEALS)
- ALL HAVE SPECIFIC ROLE IN THIS STATE (PHILOSOPHER KING / WARRIOR / WORKER)
- IF WORKER
  - CAN'T BECOME ANYTHING ELSE
  - RULE WAS SET FOR EVERYONE / DUE TO NATURAL ORDER (HIERARCHY NATURE)
  - COMPLAINT ARGUE WITH IT
- NONE FOR NONE / NEVER EXPECTED / TO HAVE CHILDREN & GET
- \* → DANGEROUS IDEA / IF ALL SET PRE-DETERMINED RULES & LAWS / CHANGE; TRANSFORMATION & PROGRESS NOT POSSIBLE

ARISTOTLE → Realism

- ALSO TRYING TO FIND ANSWERS / TO <sup>1</sup> NATURE OF REALITY & <sup>2</sup> HOW DO WE KNOW
- THINKING IS CALLED REALISM (STATE OF BEING REAL → WHAT WE SEE / HEAR OR FEEL / IS "CORRECTEST REAL")
- HIS THEORIES / IS ALSO RELATED TO PLATO'S KNOWLEDGE OF TRUTH (PLATO'S IDEALISM)
- HE WAS NOT A DIFFERENT KIND OF / METAPHYSICAL THINKER
- \* BELIEVED / WE COULD TRUST OUR SENSES / AS THINGS HAVE NATURAL PURPOSE / STRIVING TOWARDS (EX: OAK STRIVING TOWARD A TREE)
- CAUSE OF NATURAL PURPOSE / EVENTUALLY IS <sup>TELEOS</sup> STRIVING TOWARDS / ITS NATURAL GOAL (ITS FORM)

LAWS (FOCUS A MATTER (EVIDENT FORMS))

- 1. FORM → IS THE <sup>TELEOS</sup> POTENTIALITY OF A THING
  - 2. MATTER → IS THE ACTUALITY OF A THING (STATE OF EXISTING)
- ESSENTIALIST
- HE WAS AN ESSENTIALIST (THINGS HAVE AN ESSENTIAL / UNCHANGING / MEANING)

LAWS (FOCUS A MATTER)

- \* → IN LAW / JUSTICE (FORM) IS USED / TO TRANSFER LAWS (MATTER) / INTO ITS "REAL PURPOSE" / TO "ACHIEVE JUSTICE"
  - 1. NATURAL JUSTICE / IS UNIVERSAL & UNCHANGING (FORM)
  - 2. CONVENTIONAL JUSTICE / IS BASED ON AGREEMENTS & CAN BE CHANGED (MATTER)
- THERE'S 2 CONVENTIONAL JUSTICE:
- DISTRIBUTIVE JUSTICE
    - USED WHEN / DISTRIBUTING WEALTH & HONOR
    - THOSE WHO ARE EQUAL / MUST BE TREATED EQUALLY
    - THOSE WHO ARE NOT EQUAL / MUST BE TREATED UNEQUALLY
  - CORRECTIVE JUSTICE
    - USED ON COURTS / TO CORRECT IMBALANCES / WHICH OCCURRED
    - EX: A BREACH OF CONTRACT
- THIS FORM / PLAYS SOME ROLE / IN HIS THINKING / AS IDEAS PLAYS / IN PLATO'S THEORIES
- SO / CONTINUATION OF HIS THEORY

IDEAL STATE OF ARISTOTLE

- HIS IDEA OF STATE / LAWS & POLITICS / IS TIED TO HIS / METAPHYSICAL BELIEF / THAT THE
- \* → MAIN PURPOSE FOR HUMANS / IS PURSUING VIRTUES (MORAL EXCELLENCE) NEEDED / TO LIVE GOOD ETHICAL LIFE
- \* → SAID / PEOPLE BECAME A STATE / TO ENSURE SURVIVAL & HAVE GOOD LIFE POSSIBLE
- ONLY RESERVED (THIS "GOOD LIFE") FOR MALE CITIZENS (HIERARCHY & NOT FOR WOMEN; SLAVES OR NON-GREEK BARBARIANS)
- MORAL EDUCATION / OF CITIZENS (MAN) WAS IMPORTANT
- THE STATE / IS NATURAL OCCURRENCE
- LIFE / OF PARTICIPATING / IN PUBLIC AFFAIRS / IS HIGHEST ATTAINABLE LIFE / FOR MALES (SOCIAL / POLITICAL ANIMAL)

ARISTOTLE

- CONTINUES WHAT PLATO BEGAN
  - A BELIEF / IN A THEORY / THROUGH ESSENTIALISM (THINGS HAVE ESSENTIAL / UNCHANGING MEANING)
  - TO JUSTIFY / A DISCRIMINATION FORM / THROUGH NATURAL ORDER (HIERARCHY) / ORDER OF HUMANS (MEN)
- PLATO
  - IS USED / TO CREATE A THEORY (HYPOTHESIS) & MAINTAIN THE STATUS QUO (EXISTING STATE OF THINGS)
- ARISTOTLE
  - IS USED / TO JUSTIFY EXISTENCE OF THE THEORY
  - TO MAINTAIN THE STATUS QUO & TO CHANGE IT
  - HIS THEORY IS DANGEROUS & CAN BE USED TO UPHOLD OR CHANGE UNJUST LAWS

→ THOMAS AQUINAS → CHRISTIAN IDEAS

- ① → COMBINES <sup>①</sup> ARISTOTLE IDEAS / <sup>②</sup> WITH CHRISTIAN THINKING / <sup>③</sup> AND LAWS & SOCIETY
- BELIEVED (CHRISTIAN THEOLOGY)
  - A GRAND GOD / CREATED <sup>①</sup> UNIVERSE & <sup>②</sup> EVERYTHING IN IT (INCLUDING HUMANS)
  - GOD'S WILL / CAUSE EVERYTHING / <sup>PURPOSE</sup> ~~TO SERVE~~ PURPOSE
  - GOD'S RULE / ENSURES HAPPINESS / OF HIS CREATIONS / VIA ETERNAL LAWS

- ② → ARGUED (REGARDING LAWS)
  - NATURAL PURPOSE OF MAN / IS TO BE SOCIAL & POLITICAL ANIMAL (ANIMAL SOCIUM ET POLITICUM)
  - SOME KIND OF POLITICAL ORGANIZATION / IS NATURAL TO HIM
  - THE STATE / IS PART OF GOD'S DESIGN / FOR THE WORLD
  - IN THIS ORG / THERE'S A HIERARCHICAL ORDER / THAT'S "NATURAL" / AS LAWS OF NATURE (NATURAL ORDER)

3 → FURTHER DEVELOPED IDEA OF NATURAL LAW (EXPRESSION OF LAWS AS IT RIGHT TO BE)

4 → AGREED WITH ARISTOTLE / ~~ON IDEAS~~ / THE HIGHEST GOOD IS GOD (REASON EVERYTHING EXIST)

5 → UNIVERSAL LAWS / FLOW FROM GOD'S REASON / BUT <sup>①</sup> MAN CAN'T KNOW THIS LAW  
 ↳ ITS REVEALED VIA <sup>①</sup> DIVINE REVELATIONS & <sup>②</sup> NATURAL LAWS  
 ↳ LEX DIVINA & LEX NATURALIS

6 → BUT HUMAN LAW / IN CONFLICT WITH NATURAL LAW / IS NOT A LAW / BUT A "CORRUPTION OF LAWS"  
 ↳ POSITIVE LAW (AS IT IS)

⑦ → AQUINAS (IDEAL STATE)

- CHRISTIANISED, GREEK THINKING
- \* → INTRODUCED IDEA / OF "CONNECTION" / BETWEEN <sup>①</sup> NATURAL LAW & <sup>②</sup> RATIONALITY (HAVING SOUND JUDGMENT)
- DEFINING POINT / OF IT IS "STATE OF TRUST" / FOR COMMON GOOD OF COMMUNITIES
- \* → ALL / CAN DO ANYTHING / AS HE CONTRIBUTES TO COMMON GOOD / THIS TO UNIVERSE'S COMMON GOOD
- ALL IS RULED / BY GOD'S ETERNAL LAWS
- HUMANS PARTICIPATE / IN SUCH LAWS / VIA "LIGHT OF REASON" (THEY CALLED NL'S)
- HUMANS MUST GET TRAINING / TO ACHIEVE PERFECTION / VIA <sup>①</sup> INSTRUCTIONS / TO ACT VIRTUOUSLY OR FEAR OF PUNISHMENT
- STATE LAWS / SHOULD HAVE TO CONFORM / TO PEOPLE'S LAW / BUT TO TRUTH / REVEALED IN GOD'S WORDS
  - ↳ TRUE LAWS / GIVES EXPRESSION TO ETERNAL LAWS
  - ↳ PERVERTED LAWS / LACKS PROPER CONTENT (AS IT ONLY LOOKS LIKE LAWS)
- \* → BELIEVED / GOD RULES OVER <sup>①</sup> UNIVERSE & <sup>②</sup> HUMANS OVER NATURE

(SUMMARY)

→ BELIEVER  
 ↳ IN CHRISTIANITY / AS HE'S OF VIEW THAT / <sup>①</sup> ALL IN EARTH WAS PLACED BY GOD & THAT THERE'S A REASON FOR ALL  
 ↳ PUTS HUMANS / AT THE MELT / IN TERMS OF STATUS & ALL OTHER THINGS, CONTROLLED BY HUMANS  
 ↳ HUMANS ARE BEAN INTO A HIERARCHICAL STRUCTURE & IN THIS ERA, MEN WERE SUPERIOR

→ LAWS  
 ↳ CAME FROM GOD'S ETERNAL LAWS / WHICH WAS <sup>①</sup> UNIVERSAL & <sup>②</sup> UNKNOWN TO HUMANS / BUT KNOWN ABOUT IT / AS DIVINE LAWS  
 ↳ NATURAL LAWS / MUST BE OBEYED / TO SERVE GOD'S PURPOSE  
 ↳ MAN. WAS TO PARTAKE IN SOCIAL & POLITICAL ORG'S / BUT HERE A HIERARCHICAL STRUCTURE WAS PRESENT

→ IDEAL STATE  
 ↳ WAS WHERE / THERE'S AN ABSOLUTE RULER / ENSURING COMMON GOOD FOR ALL  
 ↳ RATIONALITY OF MAN / MADE IT POSSIBLE TO ENJOY ETERNAL LAW BENEFITS / AS EVIDENT IN NATURAL LAWS  
 ↳ RULER OR GOD WAS NECESSARY / ENSURING COMMON GOOD FOR ALL / TO REACH THEIR POTENTIAL  
 ↳ THUS, THE LAW, WHICH IS PREVALENT / WAS ETERNAL LAW / WHICH WAS TO BE OBEYED / EVEN IF NOT ENFORCED  
 ↳ TO HIM / DIVINE LAWS WAS TRUE LAWS / FROM WHERE NATURAL LAW CAME FROM  
 ↳ GIVES EXPRESSION TO ETERNAL LAWS

→ African Approach to Philosophy (KAPPAKAWANI SUTHERS 3 APPROACHES)

- 1 → ETHNO-PHILOSOPHY X3
- IS COMBINATION OF COLLECTIVE THOUGHTS / DEEPLY TRANSMITTED
  - NOT A PERSON'S / LOGICAL THOUGHTS
  - BASED ON METAPHYSICAL ASSUMPTIONS & AFRICAN TRADITIONS
  - CREATES A "COLLECTIVE PHILOSOPHY"
  - DOESN'T DISTINGUISH BETWEEN DIFFERENT AFRICAN CULTURES
- METAPHYSICAL ASSUMPTIONS
- 2 → SAGE PHILOSOPHY X3
- IS A PERSON'S THOUGHTS / CONCERNING HIS SOCIETY'S / ETHICAL ISSUES (CONCERNS)
  - PERSON HAS ABILITY / TO OFFER INSIGHTFUL SOLUTIONS / TO SOME ISSUES
  - SAGE / IS WISE PERSON / A CUSTODIAN / OF A SOCIETY'S SURVIVAL
  - REPRESENTS / SOVEREIGNTY OF A CULTURE
  - PLAYS A POLITICAL ROLE
- SIMILARITY TO PLATO'S PHILOSOPHER KING
- 3 → NATIONALISTIC IDEOLOGICAL PHILOSOPHY X4
- TRIES TO PRODUCE / UNIFORM POLITICAL THEORY / BASED ON TRADITIONAL AFRICAN SOCIALISM
  - THE POLITICAL PHILOSOPHY / IS NEITHER CAPITALIST NOR SOCIALIST
  - AFRICAN PHILOSOPHERS / HAVE POLITICAL ROLE TO PLAY
  - INDICATES BEST OPTION / OF SOCIAL & POLITICAL ORGANISATIONS / FOR AFRICAN CONDITIONS

→ DISCUSS COMMON GOOD

- IS IMPERIAL
- CONSIDERS ① CONFLICT / ② STRONG Political Community MEMBERS / AS RESTRICTIVE
- ① → CONFLICTS / MUST BE SETTLED
- \* → ITS EASY / AS MEMBERS HAVE SAME INTEREST; ① GOALS & ② VALUES (I → G → V)
- COMMUNITY / IS MORE IMPORTANT / THAN INDIVIDUAL (AFRICAN COMMUNITARIAN)
- ② → MEMBERS MUST EXERCISE THEIR TALENTS / FOR COMMUNITY'S BENEFIT
- TALENTS & ABILITIES / SEEN AS "COMMON ASSETS"
- ③ → INDIVIDUALS / STRONGLY BOUND TO COMMUNITY & STRONG SENSE OF COMMON LIFE / COLLECTIVE GOOD
- EMPHASIS ON GROUP SOLIDARITY / THAN ON INDIVIDUAL AUTONOMY (FREEDOM)
- PERSON FROM FAMILIAR / THROUGH GROUP MEMBERSHIP
- ④ → IDENTITY / DEFINED BY RELATIONSHIP / WITH OTHER GROUP MEMBERS
- CULTURAL MEMBERSHIP / GIVES VALUE / TO PERSON'S LIFE
- PERSON'S HUMANITY / ONLY REALISED / IN A SOCIAL CONTEXT
- PERSON / IS PRODUCT / OF HIS SOCIETY

→ DISCUSS UMBUTU (XENOPHOBIA?)

- Core ELEMENT of African Philosophy (① HUMANITY; ② HUMANNESS; ③ HUMILITY & ④ COMPASSION) H → H → M → C
  - STRESSES CONCILIATION / VIA SOCIAL RELATIONSHIPS / IN A GROUP
  - SELF-FULFILLMENT / BY PARTICIPATING IN COLLECTIVE DUTIES / TOWARDS OTHERS (CARING; WARMTH; RESPECT & EMPATHY)
  - RESPECT FOR ELDER / WITH MORE LIFE KNOWLEDGE / THAN YOUNG ONES
  - CONDEMS / DOC-ENT-DOC COMPETITION
  - SEEKS CO-OPERATION & NEVER CONFRONTATION
- DANGERS CAN ALSO BE REJECTED / BY PEOPLE / WHO DON'T BELIEVE IN H

→ African legal Philosophy / is based on METAPHYSICAL ASSUMPTIONS / FORMING PART OF THE "YAROSTICK" / BY WHICH WE CAN MEASURE & JUDGE HUMAN CONDUCT / SUCH AS UMBUTU (CAN'T SEE, FEEL OR HEAR IT) YET IT DIRECTS US / IN CHANGING HUMAN CONDUCT / TO FOLLOW STRAIGHT PATH OF LIFE