

African

→ Ethno philosophy

- thoughts

→ Sage philosophy

- ethical issues
- custom

→ Nationalistic- Ideological

- unique political theory
- Political role
- best options

→ Common good.

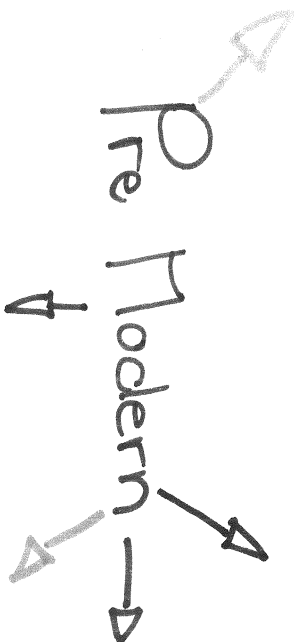
- Humility → social context.
- communitarianism
- choice right or value

→ Ubuntu.

- conciliation
- co-op

→ Characteristics.

- unanimity - thought
- critical reflection & assessment
- not - self critical, objective, rational
- colonialism. → stereotypical.



- homogenous
- not pluralistic
- not value judgment.

Plato

→ theory knowledge

→ cave

→ idealism

→ metaphysics = dual world

Aristotle

→ realism

→ matter & form

→ conventional & natural justice

Aquinas

→ Christianised

→ not law = $\frac{1}{2}$ reason & rationality

→ eternal law

Plato

- Seen in hierarchical nature of ideal city
- Political Power = in philosophers hands, they know ideal of good.
- Everyone specific role, stay same
- denial of individual freedom
- laws = not correspond with popular will of \mathbb{I} , but \mathbb{Z} stem. law.
- good \mathbb{I} = laid down by Gods, contained ideals - determined \mathbb{P} will.
- no individual choice i.r.t good life.
- Justice result if every \mathbb{I} is given his due.

ideal state

Aristotle

- Most NB = extent \mathbb{Z} which citizens develop the virtues.
- Hierarchy among \mathbb{I}
- Only some capable of full human develop.
- moral edu. of citizens = NB
- \mathbb{I} in state to make moral, good life possible.
- good life = reserved \mathbb{I} make Great citizens
- Purpose of \mathbb{I} = cultivate the virtues needed \mathbb{I} good ethical life.
- happens where deliberation \mathbb{I} judgment about common good of city takes place always make great citizens

Aquinas

- State = office of trust \mathbb{I} common good.
- Everything ruled by eternal law of God.
- \mathbb{I} aptitude \mathbb{I} virtue - some trained
- train = fear or punishment
- \therefore discipline of law
- gov. = moral Function of promoter of good Christian life.
- law = not correspond will of \mathbb{I} but to word of God
- True law gives expression to eternal law, if deviate = unjust

Pre-modern philosophy

Compare Ap with 1 other premodern - 20. 10'09

- 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 criticised.
 - belief in common good
 - community more NB than individual
 - no conflict btw community & individual.
 - metaphysical assumption - reality beyond world, separate set of law exist.
 - the order is God given
 - cannot be seen or felt & exists beyond physical world.
 - natural social order originating from belief in God
 - natural law = pre political, existed before formation of human societies.
- not a value judgment.
- not pluralist in nature
- small homogeneous society - same values, idea & principles.

Greek philosophers what is nature of reality 30. 6'11

compare - 20 6'10

1. Plato

- ideas of law are linked to his theory of knowledge
- wanted 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 a 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 & routines of everyday life.

- essentialism = objects have innate unchanging core of meaning.
 - immortal
- metaphysics = dual world.
 - hidden essence
 - shadows
- respect & obedience to law is more ^{NB} than personal convictions
- saw ideals as concrete essentialism
- he provided \mathbb{Z} with a fixed unchanging set of rules
- everyone had a role in the state, can't be changed ever.
- its a dangerous theory as change & transformation becomes difficult if people can't change and no progress is possible.
 - ideal state.

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 (telos).
- \therefore all things have matter & form
 - \rightarrow matter = actuality of thing
 - \rightarrow form = potential of thing

acorn = acorn is the matter and oak tree form.
- justice (form) is used to transform laws (matter) into their real purpose n.l to achieve justice.
- there is natural justice, form, and conventional justice, matter.
- natural justice is universal & unchanging
- conventional justice based on agreement and can be changed.
- 2 kinds of conventional justice = distributive & corrective justice
- distributive = \mathbb{Z} who are equal should be treated equally & vice versa
- corrective = used by courts to correct an imbalance that occurred.
- created hierarchy among \mathbb{Z}
- discrimination was justified by his views on telos of things

Medieval philosophy

St Thomas Aquinas ¹⁰⁻²⁰¹² 25

- took Aristotle's ideas & combined them with traditional Christian ideas about law & society.
- like Christians believed a divine God created the universe & everything in it.
 - God gave everything a place or purpose
 - God's rules ensures harmony of his creation by means of eternal law.
- Universe consists of a hierarchy from God downwards & every being must find its place in society.
- natural purpose of a man is to be a social & political thing.
- further developed idea of natural law: God is prae form & cause of all that exists.
- universal law flows from God's reason, & can't know this universal law.
- eternal law = revealed through divine revelation & natural law.
- natural law recognised by rational human nature, becomes general norm of behaviour, human law in conflict with natural law is not law.
- He Christianised 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 do anything = contributes to common good of society & universe
- everything ruled by eternal law of God.
 - aptitude & virtue, but needs to be trained.
 - trained to be perfect by instruction to act by fear of punishment / law.
- law is means by which we are trained to become good & req. gov that has moral function as promoter of good Christian life.
- laws of state didn't have to correspond to will of we but to truth of word of God.
- true law ^{promulgated} gives expression to eternal law
- Perverted law, lacks proper content, still law even if unjust 'coz power to promulgate law it derived from God.

African legal philosophy A.p

is A.p ex of pre-modern? IS (6-12)

→ Kaphagawani: 3 typically African approaches to philosophy:

1. Ethnophilosophy

- described communal thought & collective thought = orally transferred.
- not a ~~body~~ of logical thoughts of individuals.
- relies on metaphysical assumptions & traditional African wisdom.
- combine philosophy, mysticism & religion
- no reason & critical analysis.

2. Sage philosophy

- represents the thoughts of individuals ^{who are} concerned with fundamental ethical issues of their society & can offer ^{insightful} solutions to some of these problems.
- a sage (wise \bar{z}) = custodian of the survival of his society.
- represents a culture's world view.

3. Nationalistic-ideological philosophy

- neither capitalist nor socialist, but African.
- African 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 & addressing the fundamental issues relevant to their society.

- have political role to play
- must indicate best options of social & political organisations & 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 emphasises the common good. 10-(10-11)

- considers conflict among members of a political community as destructive.
- conflicts has to be settled.
- Community is always regarded as more NB than the individual.
- Africa communal view: members of a society have to exercise their talents & skills to the benefit of the society.
- talents & abilities are seen as common assets.
- emphasis on group & solidarity with other members of the community rather than on the individuals autonomy.
- More humanity can only be realised in a social context.
- dangers of unlimited communitarianism have been recognised by A.p.
- Geyeke proposed a restricted communitarianism that allows 4 rights but doesn't grant them a pre-eminent or absolute status.
- when choice has to be made btw values, priority will not be given to rights but to a higher ranked value.

Ubuntu: 10-2012
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hhmc

- means inter alia humanity, humanness, 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 4 elderly, and communication.
- emphasises 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 i.e. community morality. -> leads to conflicting interpretations in court cases