

My aim, in this writing, is to demonstrate how Aristotle's dichotomous concepts of Distributive and Commutative Justice have been adopted in modern Criminal Law.

Distributive and Commutative justice are two jurisprudence theories that have influenced the drafting of all legal documents in history. This is because the judicial system only has legitimacy because the population gives it the mandate to administer justice. Distributive and commutative justice are theories that both address redress to citizens; if the citizens did not have a recourse, or see sensible allocation of resources as administered by the court, then there would be no mandate for the judiciary to operate.

Commutative (or Corrective Justice) seeks to restore the victim to the status he or she enjoyed previous to the wrong having been committed. For example, there is an element of Commutative Justice in modern Criminal Law. When I was a Prosecutor, I often sought restitution for the victim. For example, if I prosecuted a Battery case and the victim had medical bills, I asked the court to order the defendant to pay the victim directly for the medical costs incurred. If I prosecuted a Criminal Mischief case and the victim had measurable damage to their property (car, house, computer, etc.), I asked the court to order the defendant to pay the victim directly to compensate for the property loss (as a term of the sentence). Restitution seeks to place the victim financially in the same position he or she was in before the defendant committed the crime.

Modern Criminal Law is a combination of Commutative and Distributive Justice.

Modern Criminal Law is composed of statutes (each state is different) that enumerate elements of crimes. There is also a concept (in Florida at least) called 'mandatory minimums'. These are mandatory sentences that a defendant must serve in prison if adjudicated guilty by the court. There is a 'score sheet' that is attached to each felony case file where the Prosecutor notes the criminal history of the defendant. For example (and this is broad), if a defendant already has two guilty adjudications for Aggravated Battery, a third adjudication would require a minimum of three years in prison. They are bright-line rules which are not often found in statutory construction; statutes are normally written to breathe and account for individual situations. These mandatory minimums fall under the concept of Commutative Justice. The 'people of the state of Florida' are compensated (redressed).

This leads us to Distributive Justice in Criminal Law. There is a wide berth of possible sanctions that I had available to me when I prosecuted a case. For example, in Florida, a first time Driving While Intoxicated charge (.08 - .15 Blood Alcohol Level) under Florida Statutes 316.193 has the penalty of-

\* The following provide minimums and maximums to be considered by the court. This follows the concept of Distributive Justice.

1. Up to six months in jail.
2. A fine from 500 - 100 dollars.

3. Driver's License is suspended for at least 180 days yet no more than one year.

\* The following are further penalties, yet are bright-line and provide no discretion by the Court and are required by statute. This follows the idea of Commutative Justice because the penalties are supposed to compensate 'the people of Florida' for the offense and provide a deterrent to future infractions.

4. DUI school.

5. Fifty hours community service.

6. Ten day vehicle impound.

The first three listed above provided me a berth of discretion to tailor my plea bargain to each case. This also provided the judge sentencing discretion after a jury found the defendant guilty.

This leads us to how this wraps up in daily prosecution. Prosecutors often offer the minimums (in one through three above) in the plea offer. If the defendant maintains his or her innocence and insists upon a trial (which is a right provided by the Constitution), then the Prosecutor withdraws the plea offer in court and seeks the maximums. What does this truly mean?

"Look- if your client takes the plea, I will offer the minimums. If your client goes to trial and is convicted, I will seek and get the judge to order the maximums. Does your client want to risk jail time?"