"ON JUSTICE AND JUSTICE IN LAW"

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THESIS

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ABSTRACT

The very first attempt of this study is to look at some of the different, though conventionally held views of justice. It is because of such different views that some people hold the position that justice is relative. We have looked at the arguments used to support this position and shown that they are mistaken. The position we find coherent is that justice is necessarily universal.

The next step is a critical examination of Plato's *Republic* which is basically a treatise on justice. In the book Cephalus, Polemarchus, Thrasyymachus, Glauc on and Adeimantus explicate their views about justice, which are conventional, and Socrates goes about to invalidate these views. Socrates' objective of invalidating these views is twofold. Apart from the general interest of showing the inadequacies of the views, he is also preparing the way for his eventual view of justice. To him justice (in the soul) is found, in so far as the three different elements of the soul are doing their own business; the rational part guiding, the spirited part assisting the rational element to enforce its guidance, and the appetitive part 'accepting' the discipline of the rational part.

For a better and clear understanding of Socrates' idea of justice, his metaphysics and epistemology is looked at.

After examining Plato's *Republic*, we have laid down
some basic principles of justice. Justice is a form of individual and social control and seeks to strike a balance within the soul and the society. The idea of harmony, thus, becomes a dominant aspect. Because justice as an individual or social virtue seeks to maintain or restore harmony, it is important that individuals abide in virtues.

We then turn to the topic of justice and justice according to law. In the very first place we have examined the issue of justice according to law as propounded by Niccolo Machiavelli and Thomas Hobbes. We have also examined the source of the professional legal ethics in Kenya and thereafter made a summary of the legal ethics which governs the lawyers in Kenya. We have looked at the very construction of the law courts and examined the nature and purpose of the prosecution and defence attorneys. In this endeavour we have studied some aspects of The Constitution of Kenya. After all this our position is that justice and legal justice are incompatible, though the plausible state of affairs is that this should not be the case. If anything, legal justice should be but a subset of justice. In other words, legal justice should fall within the sphere of operation of justice.

After showing the incompatibility between the two, our effort is channelled towards laying down the path which would lead towards justice, and which the legal system has to follow if the gap between justice and justice according to law is to
be bridged.

This thesis can very broadly be divided into two parts. Part one is a contribution to the understanding of the principles of justice, and the second part is an application of these principles to the legal system.