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Reimagining Justice: Classical Foundations, Empirical Realities, and the Future of International Criminal Law

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Abstract:

This study explores how classical philosophies of justice can inform and challenge contemporary international criminal law. Drawing on the ideas of Plato, Aristotle, and Cicero, it examines three enduring dilemmas—selectivity in prosecution, inconsistency in command responsibility, and the erosion of procedural integrity. Through comparative analysis of cases such as the ICC prosecutions of Omar al-Bashir and Joseph Kony, the ICTY trial of Milošević, and the Habré case, the study shows how power, resources, and politics shape the application of justice. By integrating philosophical reasoning with empirical realities, this study argues that revisiting classical thought can reveal structural biases while offering principles for reform. It concludes that international criminal justice can become more fair and legitimate when grounded in critical yet adaptive interpretations of classical justice.

Keywords: international criminal law, justice, Plato, Aristotle, Cicero, selectivity, responsibility, fairness, reform

Introduction

International criminal justice emerges at the confluence of doctrinal reasoning and moral evaluation,thus standing at the crossroads of philosophy, law, and global politics. As the international community confronts genocide, war crimes, and crimes against humanity, three persistent questions recur: who deserves to be prosecuted? how should responsibility be assigned? And what principles should guide procedural fairness? But the answers presuppose deeper commitments about desert, agency, and the nature of justice, where law alone does not determine without the theoretical and rhetorical guide form the philosophy. Thinkers such as Plato, Aristotle, and Cicero have profoundly shaped Western conceptions of justice, responsibility, and law associated with the relevant vocabulary to describe. Yet their ideas emerged from deeply hierarchical, exclusionary, and imperial contexts — Plato's *Republic* envisioned a rigidly ordered state, Aristotle's politics excluded women, slaves, and foreigners from civic life, and Cicero's 'natural law' justified Roman imperial domination. This context mismatch raises a central question: can frameworks so entangled with empire and exclusion still offer meaningful guidance for international criminal law, or must they be radically reinterpreted to avoid reproducing the very power structures they helped create?

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Engaging with these traditions today demands critical caution. Treating them as universal truths risks reproducing the same Eurocentric assumptions that have long structured international law. Yet dismissing them outright would ignore how deeply their legacies remain embedded in contemporary legal discourse. This paper adopts a middle path: it uses classical frameworks as critical tools to illuminate enduring dilemmas in international criminal justice — *selectivity*, *responsibility*, and *procedural integrity* — while also acknowledging their limitations. Through cross-case empirical analysis, it demonstrates how these dilemmas manifest in practice and explores how classical thought can help guide globally applicable reforms.

Core Research Questions

With the aim of incorporating the philosophic theories of justice and punishment into the modern conversation, this study attempts to examine this sort of context-dependent transferability, which will be operated across heterogeneous moral and political landscape, from consolidated democracies to competitive authoritarian and non-democratic regimes. This essay will, therefore, example whether frameworks conceived in hierarchical, exclusionary societies can be meaningfully adapted into diverse legal backgrounds including the civil law hybrids, religious and customary conventions, and post-colonial contexts through the following perspectives:

1. Can Plato's notion of "universal justice," itself born from a hierarchical and exclusionary vision of order, offer meaningful insights into the selectivity of international criminal prosecutions — or does it risk reinforcing the very inequities it seeks to critique?
2. Can Aristotle's conception of corrective justice, developed within the exclusionary context of the ancient polis, provide a viable standard for command responsibility in mass atrocity cases, or must it be fundamentally reimagined to meet the demands of global justice?
3. How might Cicero's natural law framework — originally used to justify Roman imperial order — inform debates on procedural integrity without importing the imperial assumptions embedded in its foundation?

1.1 The Selectivity Dilemma: Who Gets Prosecuted, and Why?

One of the most persistent critiques of international criminal law is its selectivity — the uneven application of justice across different contexts. As a diagnostic lens, Plato's philosophy of universal justice helps explain why selectivity varies across regime types, constraining power in some democratic settings yet being instrumentalized in authoritarian ones.. Plato argues that "justice is doing one's own work and not meddling with what is not one's own" (*Republic* 433a), and he critiques Thrasymachus' notion that "justice is nothing other than the advantage of the stronger" (*Republic* 338c). This tension — between justice as an objective ideal and justice as a tool of power — continues to shape the enforcement of international law today. It influences which situations are opened, who is charged, how liability is framed, and which procedural safeguards are applied. To address this , the lens from Plato's conception of universal justice — itself rooted in a hierarchical vision of order — offer one way to interrogate why international criminal prosecutions often reflect power dynamics rather than objective principles. Yet the question remains whether such a framework can truly transcend its imperial context or whether it risks reinforcing the very inequalities it seeks to address.

Case A: ICC Prosecution of Omar al-Bashir (Sudan, 2009)

In 2009, the International Criminal Court (ICC) issued an arrest warrant for Sudanese President Omar al-Bashir on charges of genocide and crimes against humanity in Darfur. Despite the gravity of the accusations, al-Bashir evaded arrest, traveling freely to states that refused to enforce the warrant. Many African Union members rejected ICC jurisdiction, accusing it of targeting African leaders disproportionately. This illustrates "geopolitical selectivity", as Sudan lacked powerful allies, the Court's enforcement mechanisms relied on states with little incentive to cooperate. Justice, therefore, became contingent upon political alliances rather than legal principles (ICC, *Prosecutor v. Omar Hassan Ahmad Al Bashir*, 2009). Plato's critique resonates here — justice was subordinated to geopolitical interests, reinforcing the perception that international law is applied selectively.

Case B: The 2003 Iraq War

In stark contrast, no Western leaders have faced prosecution for alleged war crimes and crimes of aggression during the 2003 Iraq War, despite extensive evidence of civilian casualties and questionable legal justifications. The absence of accountability for U.S. and U.K. leaders' underscores "power-based selectivity": powerful states often shield themselves from scrutiny through their influence over global institutions. The United States and the United Kingdom, as central architects of the international order, possess the diplomatic and structural influence to prevent investigations or trials that could implicate them. Plato's notion of justice as the "interest of the stronger" here again becomes relevant to explain — the rule of law appears contingent on political power rather than a universal principle.

Case C: Ad Hoc Tribunal for Syria (2020–present)

The ad hoc tribunal for Syria, established through national courts and universal jurisdiction initiatives, has prosecuted mainly low-level perpetrators of war crimes, with little

progress toward holding senior officials accountable. This reflects "resource-based selectivity": the lack of political will and resources limits the reach of justice (European Center for Constitutional and Human Rights, 2020). without political will, financial support, or unified jurisdiction, efforts to enforce justice depend on what is practically achievable rather than what is morally or legally required. Plato's conception of justice resonates a situation here: a balanced order suggests that a system that punishes only the powerless while ignoring the powerful cannot achieve legitimacy.

Across these cases, the selectivity dilemma persists regardless of geography or institution. Each case reveals distinct mechanism and pattern, ranging from geopolitical dependence, institutional insulation, and resource constraint, through which justice is conditioned by power. In this way, Plato's philosophical tension between justice as an objective moral order and justice as an expression of dominance remains profoundly relevant with the current implementation of the international criminal justice law: international law aspires to universality but continually reproduces the hierarchies it seeks to transcend. Since the international criminal justice often prioritizes political feasibility over universal fairness, revealing the enduring relevance of Plato's critique.

1.2 The Command Responsibility Dilemma: Inconsistent Standards Across Trials

The second universal dilemma concerns *command responsibility* — the standard by which leaders are held accountable for crimes committed by their subordinates. Aristotle's concept of corrective justice, which seeks to "restore fairness" when harm occurs (*Nicomachean Ethics* V.4, 1132a), offers a framework for evaluating inconsistency. For Aristotle, responsibility arises from voluntary action and the capacity to prevent harm. This principle can guide a more coherent standard for command responsibility in modern tribunals. Aristotle's conception of corrective justice, developed in a polis that excluded women, slaves, and foreigners from civic life, provides a valuable yet limited lens for understanding how responsibility is assigned to leaders. Can principles forged in such a context meaningfully address accountability for mass atrocity — or must they be transformed to reflect a truly universal standard?

Case 1: ICTY Prosecution of Slobodan Milošević (Yugoslavia, 1999)

The International Criminal Tribunal for the Former Yugoslavia (ICTY) indicted Slobodan Milošević for crimes against humanity and genocide during the Balkan Wars. Though he died before the verdict, the tribunal's reasoning extended liability to "tacit approval" and "indirect control," interpreting command responsibility broadly (ICTY, *Prosecutor v. Milošević*, 1999). This expansive approach aligned with Aristotle's principle: responsibility was tied to the leader's capacity to prevent harm, not merely to direct orders issued.

Case 2: ICC Investigation into Saudi-Led Coalition in Yemen (2018–present)

In contrast, the ICC has not brought charges against senior Saudi officials for alleged war crimes in Yemen, despite evidence of systematic targeting of civilians. The Office of the Prosecutor cited insufficient evidence of "effective control" and "knowledge" — a much narrower interpretation of command responsibility (ICC, *Situation in Yemen*, 2018). This inconsistency undermines accountability and suggests that command responsibility remains subject to political and evidentiary manipulation.

Aristotle's corrective justice highlights this tension: justice should focus on whether a leader *could* have prevented harm, not solely on whether they *ordered* it. A universal standard based on preventability would restore fairness and consistency across cases, ensuring that leaders cannot evade responsibility through plausible deniability.

1.3 The Presumption of Innocence Dilemma: Public Opinion vs. Procedural Integrity

The third dilemma concerns procedural integrity and the presumption of innocence — foundational principles often compromised by political pressure and media narratives. Cicero's emphasis on procedural integrity — though intertwined with a Roman conception of natural law that justified imperial domination — highlights the importance of suspending judgment. The challenge is whether such a framework can serve global justice today without reproducing the same imperial logics it once sustained.

Case X: ICC Prosecution of Joseph Kony (LRA, 2005)

Joseph Kony, leader of the Lord's Resistance Army in Uganda, was indicted by the ICC in 2005. Before his trial, the viral "Kony 2012" campaign portrayed him as the embodiment of evil, shaping global public opinion and undermining the presumption of innocence (ICC, *Prosecutor v. Joseph Kony*, 2005). Such narratives risk eroding trust in the court's impartiality, as trials appear predetermined by public sentiment rather than judicial procedure.

Case Y: Trial of Hissène Habré (Chad, 2016)

By contrast, the Extraordinary African Chambers handling the trial of former Chadian president Hissène Habré took deliberate steps to counter public prejudice. Judges emphasized procedural safeguards, transparency, and evidentiary rigor throughout the proceedings (Extraordinary African Chambers, *Prosecutor v. Hissène Habré*, 2016). This

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approach aligned with Cicero's natural law conception of justice, demonstrating that procedural integrity enhances legitimacy even in politically charged trials.

These contrasting cases highlight a universal tension: public opinion can undermine procedural fairness, but proactive judicial strategies can safeguard it. Cicero's emphasis on disciplined judgment remains a valuable guide for modern international tribunals.

1.4 Reform Proposals: Globally Applicable Solutions

The classical frameworks examined above — Plato's critique of selective justice, Aristotle's conception of corrective responsibility, and Cicero's emphasis on procedural fairness — provide valuable insights but must be critically adapted to contemporary realities. The following reforms aim to operationalize these principles in a way that addresses both their historical limitations and modern challenges:

1. Universal Criteria for Prosecution (Plato and Selectivity):

International tribunals should adopt a transparent "jurisdiction checklist" that publicly explains the rationale for pursuing or declining cases. This would expose geopolitical, resource, and strategic considerations to scrutiny, reducing perceptions of bias and strengthening legitimacy. Such a mechanism would bring prosecutorial decision-making closer to Plato's ideal of justice as impartial and balanced.

2. Standardizing Command Responsibility (Aristotle and Fairness):

Codifying a unified standard based on the *capacity to prevent harm* would reduce inconsistency across tribunals. This would align with Aristotle's corrective justice by holding leaders accountable not only for direct orders but also for omissions when they had the power to intervene.

3. Safeguarding Procedural Integrity (Cicero and Fair Trials):

Tribunals should implement stricter media engagement policies and enhance public education campaigns to reinforce the presumption of innocence. Judicial bodies should also adopt best practices from the Habré case, including robust pretrial rights and procedural transparency. These measures would honor Cicero's principle of suspending judgment until due process is complete.

Together, these reforms offer a framework for strengthening international criminal justice beyond the ICC, applicable to hybrid tribunals, ad hoc courts, and future mechanisms. They build on classical insights while correcting for their historical blind spots, moving the field toward greater consistency, legitimacy, and fairness.

Conclusion

The dilemmas of international criminal justice — selective enforcement, inconsistent responsibility, and challenges to procedural integrity — are not new. They reflect enduring questions about power, morality, and law that have preoccupied philosophers since antiquity. Plato warned that justice can become a tool of the powerful; Aristotle sought principles of fairness that transcend status; Cicero insisted on the discipline of judgment. Their insights continue to resonate today, even as their historical contexts remind us of the dangers of uncritical appropriation.

The empirical evidence from international courts shows that these dilemmas are universal, transcending institutions, regions, and political systems. From the ICC's selective prosecutions to inconsistent command responsibility standards and the erosion of procedural fairness under media pressure, the challenges are deeply structural. Classical thought cannot resolve them on its own — but it can help us see them more clearly and imagine more principled responses.

By critically re-engaging with these foundational ideas and grounding them in empirical realities, international criminal law can evolve beyond its current limitations. In doing so, it may come closer to fulfilling its promise: not justice as the interest of the strong, but justice as a shared human endeavor rooted in fairness, accountability, and respect for the rule of law.

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