



# Civics Mosaic:

## Comparing Political Systems

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*Comparing political systems around the world*

# Table of Contents

Lesson 1 Why compare political systems?

## Unit I: What are the historical and philosophical foundations for politics and government?

Lesson 2 What is politics?

Lesson 3 What is government and why have it?

Lesson 4 What are the purposes and forms of government?

Lesson 5 Why is justice a universal ideal?

Lesson 6 Is democracy a universal ideal?

Lesson 7 What are observable kinds of democracy?

Lesson 8 How and why do authoritarian regimes operate as they do?

## Unit II: What are the sources of public authority and political power?

Lesson 9 What is the difference between power and authority?

Lesson 10 What are sources of political authority?

Lesson 11 How can political power be distributed?

Lesson 12 What roles do ideology and religion play in legitimizing government?

Lesson 13 What are constitutions and which purposes and principles do they embody?

Lesson 14 What is constitutionalism?

## Unit III: How does political culture influence institutions and practices?

Lesson 15 What is political culture?

Lesson 16 How are political beliefs, attitudes and values transmitted?

Lesson 17 What is the relationship between political culture and economic development?

Lesson 18 What factors and forces promote social change?

## Unit IV: What are the rights and responsibilities of individuals and groups in different political systems?

Lesson 19 How did the idea of rights develop over time?

Lesson 20 What are natural rights?

Lesson 21 How has the idea of human rights evolved over time?

Lesson 22 What are legal rights and how are they enforced?

Lesson 23 How are legal systems alike and different?

## Unit V: How do representation and participation vary?

Lesson 24 Who is a citizen?

Lesson 25 What are the major kinds of electoral systems?

Lesson 26 What roles do political parties play?

Lesson 27 What is civil society and why is it important?

Lesson 28 Why does leadership matter?

## Unit VI: How are nations governed and how is policy made?

Lesson 29 What are institutions and why are they necessary?

Lesson 30 How are legislatures organized to carry out the functions expected of them?

Lesson 31 How are executive institutions organized to carry out the functions expected of them?

Lesson 32 How are judicial institutions organized to carry out the functions expected of them?

Lesson 33 What is public policy and how is it made?

Lesson 34 What roles do bureaucracies and non-governmental organizations play in carrying out public policy?

## Unit VII: How and why is governance changing in a globalizing world?

Lesson 35 What is the role of the nation-state in today's world?

Lesson 36 What considerations shape foreign policy within nation-states?

Lesson 37 What is the role of the United Nations and of regional organizations?

Lesson 38 How do international non-governmental organizations (INGOs) influence policy-making?

Lesson 39 How is international law formed, applied, enforced, and adjudicated?

Lesson 40 What are the major challenges that globalization poses?

### *Auxiliary Materials*

Appendix

Glossary

Index

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Aim at an exact Knowledge of the Nature, End, and Means of Government.  
Compare the different forms of it with each other and each of them with their  
Effects on the public and private Happiness.

—John Adams, 1759

## Lesson 5: Is Justice a Universal Ideal?

### Purpose of lesson

In this lesson you will be introduced to how some of the world's foremost thinkers have wrestled with the question, "what is justice?" You will be asked to consider that centuries-old yet still relevant question so that you can come to a better understanding of justice and its relationship to good government. This lesson will introduce you to the three major types of justice: distributive, corrective, and procedural.

After completing this lesson, you will be able to:

- Discuss various conceptions of justice and the characteristics of justice in different cultures and historical periods.
- Define retaliatory justice and explain its relationship to a just society.
- Distinguish between the three major types of justice and analyze the relationship of each to good government.

### Terms to Know

apostasy	<i>lex taliones</i>
capacity	need
codified	procedural justice
corrective justice	retaliatory justice
distributive justice	retribution
justice	

### What is Justice?

The idea of justice appears by name in all societies. Justice has been acknowledged for thousands of years to be one of the legitimate goals of government. Political thinkers of all persuasions have ranked it as one of the primary—if not *the* primary—goals of government. As James Madison declared in *The Federalist No. 51*:

*Justice is the end of government. It is the end of civil society. It ever has been, and ever will be pursued, until it is obtained or until liberty is lost in the pursuit.*

Alexander Hamilton, author of *The Federalist No. 17*, spoke of justice as "this great cement of society." He contended that "the ordinary administration of criminal and civil justice...to which the sensibility of individuals is more immediately awake, contributes more than any

other circumstance to impressing on the minds of the people affection, esteem and reverence toward the government."

Some political thinkers have accorded such importance to justice that they sometimes see it as an all-encompassing good. They regard the good society and the just society as one and the same. And they equate a good person with a just person.

Basic fairness is at the heart of any conception of justice. Psychologists of today and political philosophers of long ago contend that everyone, even a very young child, has an innate sense of justice that s/he expresses as a demand for fairness or as an outraged cry that something is "not fair."

Although peoples over time and in all cultures have expressed concerns about justice, there is no one generally accepted meaning of that term. One definition that still finds favor is that of the Roman Emperor Justinian (483-565). He characterized justice as "the constant and perpetual wish to render to everyone his due."<sup>1</sup>

St. Augustine, a Roman Catholic Bishop and philosopher who helped to merge Greek philosophy and Judeo-Christian religious traditions, endorsed that conception, writing in *The City of God* (completed in 426), "Justice is that virtue which gives everyone his due."<sup>2</sup>

When Justinian, St. Augustine, and others ask what is "due" each person, they question what should be the appropriate benefit or burden that ought to be accorded to him or her. Or, to put it another way, justice is what a person deserves or is entitled to.

The early Greek philosophers took a broader view of justice. The Greek word for justice includes much more than the concept of legal or political fairness and equality. It also means righteousness or the exercise of virtue rather than simply refraining from vice. When Plato wrote his most important and comprehensive single work, *The Republic* (360 B.C.), his purpose was to answer the question,

<sup>1</sup> Justinian, *Institutes* I, 1, reprinted in *The Oxford Dictionary of Quotations*, 3<sup>rd</sup> ed. (New York: Oxford University Press, 1979), p. 267.

<sup>2</sup> St. Augustine, *The City of God*, Book XIX, 24, reprinted in *The Great Political Theories*, vol. I, Michael Curtis ed. (New York: Avon Books, 1981), p. 156.

“What is justice?” Socrates, who is the narrator, concludes that justice is a balance or harmony, both in the polity and in each individual. Reason is governor. Justice is concerned not with the “outward man,” but with the “inward man” who sets his own inner life in order. When he has become “one entirely temperate and perfectly adjusted nature” he:

*proceeds to act, if he has to act, whether in a matter of property, or in the treatment of his body, or in some affair of politics or private business; always thinking and calling that which preserves and cooperates with this harmonious condition, just and good action, and the knowledge which presides over it, wisdom, and that which at any time impairs this condition, he will call unjust action, and the opinion which presides over it ignorance.*<sup>3</sup>

### What are the Hallmarks of Justice?

William Penn, the English dissenter who later came to America and founded the colony of Pennsylvania (1681), had first-hand experiences with injustice. He was imprisoned repeatedly during the English civil wars, not for any criminal acts. He was imprisoned for championing his belief in freedom of religion. As a member of the Society of Friends, popularly known as Quakers, he refused to swear oaths of allegiance or to show social deference. Penn put his several imprisonments to good use. During one of them he wrote a tract in which he identified what he believed were the essential attributes of justice.

*Justice is justly represented blind, because she sees no difference in the parties concerned. She has but one scale and weight for rich and poor, great and small. Her sentence is not guided by the person, but the cause. Impartiality is the life of justice, as that is of government.*<sup>4</sup>

Those attributes that Penn identified over 300 years ago have continued to be used in countless drawings, paintings, sculptures, and editorial cartoons.

<sup>3</sup> Plato, *The Republic*, Book IV, reprinted in *Dialogues of Plato*, Jewett translation, edited with Introductory notes by J. D. Kaplan (New York: Pocket Books, 1955), p. 301.

<sup>4</sup> William Penn, *The Fruits of Solitude* 71 (11<sup>th</sup> ed. 1906; 1693). Reprinted in *The Oxford Dictionary of Legal Quotations*, Fred R. Shapiro ed. (New York: Oxford University Press, 1993), p. 229.

### What Do You Think?

1. Compare and contrast Emperor Justinian’s concept of justice with that of Plato’s.
2. What are some examples of benefits that you believe are “due” to you? What are some examples of burdens that you think are rightfully yours? Why?
3. Do you agree with those who claim that all human beings have an innate sense of fairness? What are your reasons? What evidence can you offer in support of your answer?
4. Do you agree with Alexander Hamilton that the ordinary or everyday administration of criminal and civil justice is the “cement of society?” Under what circumstances might it foster “affection, esteem and reverence toward government?” Under what circumstances might it foster opposite feelings?
5. How would you explain William Penn’s criterion that “her sentence is not guided by the person, but the causes”?
6. If you were to evaluate justice in your own community using Penn’s standards, what would be your judgment? What evidence can you offer in support of your judgment?

### How was Justice Perceived in the Earliest Known Laws?

The earliest known written rules or laws of justice were based on practices of tribal societies. They first were codified, or arranged systematically, in the civilizations of the Middle East more than 4,000 years ago. The most famous of these codifications was the Code of Hammurabi.

Hammurabi was the sixth king of the first Babylonian dynasty. The exact date of his ascension to the throne is uncertain, but scholars believe it was some time between 2056 and 2342 B.C. More certain is Hammurabi’s concern for justice.

The Code which bears his name begins by saying that God:

*Called by name me, Hammurabi, the exalted prince, who feared God to bring about the rule of righteousness in the land, to destroy the wicked and the evil-doers; so that the strong should not harm the weak; so that I should rule*

*over the block-headed people...and enlighten the land, to further the well-being of mankind.*<sup>5</sup>

The Code consists of 282 legal rules which set forth what were considered to be just relationships, depending upon the class in society to which one belonged. There were three classes. The *amelu* were the patricians who had full civil rights and aristocratic privileges. The *muskinu* were free men and women of lesser stations in life. The *ardu* were slaves.

Hammurabi's Code represented some advances over tribal customs. It did not recognize blood feuds, private retribution, or marriage by capture. It, did, however, retain some tribal traditions of family solidarity, trial by ordeal, and the *lex taliones* (the law of retribution) or an eye for an eye, a tooth for a tooth.

The Code made law and its enforcement the province of the state. The king was a benevolent autocrat easily accessible to all his subjects. The king was to be both willing and able to protect the weak against the highest-placed oppressor. The royal power, however, could only pardon when the offended parties were appeased. Judges were to be strictly supervised and appeal from their decisions was allowed. Women were afforded some legal protections.

### **How was Justice Perceived in Mosaic and Islamic Law?**

Justice also was the goal of other early peoples. According to the Hebrew Bible, Moses received the Ten Commandments and the laws governing justice among individuals as a divine revelation on Mt. Sinai in the 13<sup>th</sup> century B.C. They included laws governing just treatment of servants, family property and personal behavior. They also prescribed just punishments for injuries inflicted by one person on another. "But if any harm follow, then thou shalt give life for life, eye for eye, tooth for tooth, foot for foot, burning for burning, wound for wound, stripe for stripe" (Exodus 21:23).

Mosaic law also was concerned with fairness and impartiality. Moses admonished his followers saying:

*I charged your judges...saying, Hear the causes between your brethren and judge*

*righteously between a man and his brother, and the sojourner that is with him. Ye shall not respect persons in judgment; ye shall hear the small and the great alike; ye shall not be afraid of the face of man; for the judgment is God's; and the cause that is too hard for ye, ye shall bring unto me, and I will hear it. (Deuteronomy 1:16).*

Like Moses, the Prophet Muhammad, who was born in Mecca about the year A.D. 570, said that he received revelations from God through the Angel Gabriel. Those revelations are contained in *The Koran*. For Muslims it is the infallible Word of God. Over the years Islamic scholars have interpreted and enlarged the teachings of *The Koran* to form *Shari'a*, the traditional Islamic law. Like Hammurabi's Code and Mosaic law, it is concerned with justice and just behavior. The *Shari'a* warns of a "last day" of judgment:

*When death comes to a wrongdoer, he will say: 'Lord, let me go back, that I may do good works in the world I have left behind.'*

*Never!...*

*Those whose good deeds weigh heavy in the scales shall triumph, but those whose deeds are light shall forfeit their souls and abide in Hell forever. The fire will scorch their faces and they will writhe in anguish. (The Koran, The Believers 23:93)*<sup>6</sup>

Like Mosaic law, *Shari'a* is concerned with fairness. The Koran says, "God commands you...when you pass judgment among men to judge with fairness." (The Koran, Women 4:57). Islamic law is also very specific about punishment. It prescribes death for highway robbery and apostasy or defection from Islam. Death by stoning is the penalty for adultery. A specified number of lashes are assigned for other offenses and for drinking alcoholic beverages. Various branches of Islam have placed different interpretations on these stern rules of justice. Today some Muslim groups still adhere strictly to them, while others have modified them and become more lenient.

### **How was Justice Perceived in the Far East?**

Prince Gautama Siddhartha ("Buddha"), born about 536 B.C. in Nepal developed another code of conduct setting forth rules for what constitutes justice and just personal conduct. In addition to the

<sup>5</sup> *The Code of Hammurabi*, translated by L. W. King, the Avalon Project: Code of Hammurabi (Yale Law School, New Haven, CT; [www.yale.edu/lawweb/avalon/medieval/hamcode.htm](http://www.yale.edu/lawweb/avalon/medieval/hamcode.htm)).

<sup>6</sup> Note: All selections from *The Koran* are taken from *The Koran*, translated with notes by N. J. Dawood (London: Penguin Books, 1999).

Eightfold Path to “right” living, Buddha also taught Nine Incapabilities. They identify those things that the just person should make himself incapable of doing. Among them are these:

- *He is incapable of deliberately depriving a living creature of life.*
- *He is incapable of taking what is not given so that it constitutes theft.*
- *He is incapable of deliberately telling lies.*
- *He is incapable of taking a wrong course through partiality.*
- *He is incapable of taking a wrong course through hate.*<sup>7</sup>

In China, codes of conduct setting forth conceptions of justice were developed as early as 220 B.C. Ideas about justice and the attributes of just men and women also were expounded in the works of Chinese philosophers. Confucius, the most widely known of the philosophers, lived approximately 551–479 B.C.

Confucius emphasized the importance of education and self-cultivation. He insisted, however, that self-cultivation was not only a matter of scholarship, but also a commitment to learning how to behave and to become “noble-minded.” The essential quality was *jen*, a term that meant reciprocity or dealing with other human beings as one should. Confucius expressed the essence of *jen* in his famous “golden rule”: “Do not impose on others what you yourself do not desire.”

Mencius, who lived between 372 and 289 B.C., gathered a group of disciples around him, just as Confucius did. Mencius taught that what set men apart from animals was the heart, by which he meant the essential moral nature of man. He said, “Human nature is good, just as water seeks the low ground. There is no man who is not good; there is no water that does not flow downwards.”<sup>8</sup> Even so, Mencius believed that the young needed to be imbued with moral values and that government needed to conform to them.

Taking issue with Mencius was Xunzi who lived in China between 298 and 238 B.C. He argued that the nature of man is evil; goodness is acquired. Laws and codes of conduct are essential to justice and to order in society.

<sup>7</sup> *The Nine Incapabilities*, words ascribed to Gautama Buddha in *The Portable World Bible*, Robert O. Ballou, ed. (New York: The Viking Press, 1944), p. 115.

<sup>8</sup> *Mencius*, translated and edited by D. C. Lau (Harmoundsworth: Penguin Books, 1970), p.160.

*Crooked wood needs to undergo steaming and bending by the carpenter’s tools; then only is it straight. Blunt metal needs to undergo grinding and whetting; then only is it sharp. Now the original nature of man is evil, so he must submit himself to teachers and laws, before he can be just; he must submit himself to the rules of decorum and righteousness before he can be orderly.*<sup>9</sup>

### Why Reject Retaliatory Justice?

In his famous Sermon on the Mount, Jesus of Nazareth flatly rejected retaliatory justice. He said:

*Ye have heard that it hath been said ‘an eye for an eye and a tooth for a tooth.’ But I say unto you, ‘Resist not evil: but whoever shall smite thee on the right cheek, turn to him the other also....’ Ye have heard that it hath been said, ‘Thou shalt love thy neighbor and hate thine enemy.’ But I say to love your enemies, bless them that curse you, do good to them that hate you, and pray for them which despitefully use you and persecute you; that ye may be the children of your Father which is in heaven, for he maketh his sun to rise on the evil and on the good, and sendeth rain on the just and on the unjust.... Therefore all things whatsoever ye would that men should do to you, do ye even so to them: for this is the law and the prophets.*<sup>10</sup>

Jesus’ message of mercy, forgiveness and love did much to modify reliance on retaliatory justice as it was spread throughout the world by his followers.

One modern-day follower, Martin Luther King, Jr., exhorted participants in the American civil rights movement in the 1960s “to accept blows without retaliating” and “to endure the ordeal of jail” in their efforts to secure justice. When he was asked how he could advocate breaking some laws and obeying others, he replied:

*...There are two types of laws: just and unjust. I would be the first to advocate obeying just laws. One has not only a legal but a moral responsi-*

<sup>9</sup> W. J. DeBary, ed., *Sources of Chinese Tradition*, 2 vols. (New York: Columbia University Press, 1960), vol. 1, p. 104 and reprinted in J. A. G. Roberts, *A Concise History of China* (Cambridge, MA: Harvard University Press, 1999), p. 18.

<sup>10</sup> Sermon on the Mount from *The Gospel According to Matthew* as reprinted in *The Bible Designed to be Read As Living Literature*, arranged and edited by Ernest Sutherland Bates (New York: Simon and Schuster, 1936), pp. 941 and 944.

*bility to obey just laws. Conversely one has a moral responsibility to disobey unjust laws. I would agree with St. Augustine that 'an unjust law is no law at all....'*

*I hope you are able to see the distinction I am trying to point out. In no sense do I advocate evading or defying the law.... That would lead to anarchy. One who breaks an unjust law must do so openly, lovingly and with a willingness to accept the penalty. I submit that an individual who breaks a law that conscience tells him is unjust and who willingly accepts the penalty of imprisonment in order to arouse the conscience of the community over its injustice, is in reality expressing the highest respect for law.<sup>11</sup>*

### What Do You Think?

1. In what ways are the early codes of justice alike? In what ways do they differ from one another?
2. How is the concept of fairness related to the concept of justice?
3. Compare the attitudes toward judges expressed in the early codes of justice. How are they like and different from expectations of judges today?
4. How would you explain the idea of *lex taliones*? Is it a just principle? Why or why not?
5. How did Martin Luther King, Jr., distinguish between just and unjust laws? Do you agree or disagree with his distinction? Why?

### What Is Distributive Justice?

Justice today is still classified into categories that Aristotle set out some 2,400 years ago. For the sake of convenience and understanding, they have since been divided into three forms: distributive justice, corrective justice, and procedural justice. It is interesting, however, to note that peoples all over the world, who never heard of Aristotle, have used folktales for thousands of years to teach the concepts of distributive, corrective, and procedural justice.

*Distributive justice* concerns the fair distribution of something among various people or groups. Whatever is distributed can be a benefit

such as food or land. Today benefits may be such things as pay for work or the right to an education or to vote. Whatever is distributed also can be a burden. Burdens today would include such things as paying taxes or the obligation for military service.

Accepted standards for distributing benefits and burdens include the principles of need, capacity and desert. *Need*, as the word implies, is a condition of want, which requires relief or provision of some kind. *Capacity* implies that a person has the physical, intellectual, or economic capacity to handle whatever is being distributed. *Desert* concerns the degree to which an individual or group is deserving of whatever is to be distributed. This standard is embodied in the popular expression, "he got his just desert."

A fable, "The Ant and the Grasshopper" has been used for centuries to teach the concept of distributive justice. It was written by Aesop, born a slave in Greece about 620 B.C., and famous for his wit and his insights into human nature.

*An Ant was spending a frosty winter's day drying grain he had collected during the summertime. A Grasshopper, dying of hunger, passed by and earnestly begged for a little food. The Ant inquired of him 'Why did you not stock up on food during summer?' He replied, 'I had no time. I passed my days singing.' The Ant then said in derision, 'If you are foolish enough to sing all summer, you'll dance supperless to bed in winter.'*<sup>12</sup>

### How Can Corrective Justice Be Described?

The task of *corrective justice* is to correct a wrong or injury by returning the aggrieved person to his *status quo ante* or the position he enjoyed before the injury. That may mean returning items that were stolen or paying for damages. Corrective justice also includes making a person who has wronged or injured another suffer some form of punishment. As Aristotle put it, "Justice in transactions between man and man is a sort of equality indeed and injustice a sort of inequality...[Therefore] the judge tries to equalize things by means of the penalty, taking away from the gain of the assailant."<sup>13</sup>

<sup>12</sup> *The Fables of Aesop* (New York: Book of the Month Club, 1995), p. 6.

<sup>13</sup> Aristotle, *The Nichomachean Ethics*, translated by W.D. Ross at 1132 a. Reprinted in George R. Fletcher, *Basic Concepts of Legal Thought* (New York: Oxford University Press, 1996), p. 88.

<sup>11</sup> Martin Luther King, Jr., "Letter from Birmingham City Jail," reprinted in *We the People: The Citizen and the Constitution* (Calabasas, CA: Center for Civic Education, 1997), pp. 251-254.

Corrective justice requires two things: the “corrective” component of compensating the victim for his loss and the “justice” of returning the parties to the equality or condition that existed prior to the accident or harmful incident. An ancient folktale told and retold in India illustrates how corrective justice returned the parties to their preexisting equality or condition. Once upon a time, a man who was walking along a road, came upon an iron cage in which a tiger had been shut up by the villagers who caught him.

The tiger called out “Brother, brother have pity on me. Let me out of this cage just to drink a little water. I’m dying of thirst.”

“No,” said the man. “If I let you out of the cage you will eat me.”

“Oh, father of mercy! I swear I will not eat you. I would never be so ungrateful.”

The man took pity on the tiger and opened the cage door. The tiger bared his teeth and said, “I will eat you first and then drink my water.”

“Don’t kill me in such haste,” the man cried. “Let us ask the opinion of a wise judge and if he says it is just and fair that you should put me to death, I am willing to die.”

“Very well,” said the tiger and they went to the jackal known as an exemplary judge.

The jackal said “I can’t decide who is right and who is wrong until I see the exact positions you were in when the dispute began. Take me to the place where this all started.”

When they got there, Judge Jackal said to the man show me exactly where you stood.” The man took his place by the iron tiger cage.

The judge then turned to the tiger “And where were you?”

“In the cage” answered the tiger.

“I don’t quite understand,” said the judge. “Show me.”

The tiger entered the cage and said, “I was standing right here and my head was turned to the north.”

“Very good” said the jackal, “but I can’t give a decision until I understand the whole matter exactly. Was the cage door open or shut?”

“Shut and bolted” the man replied.

“Then shut and bolt it,” the judge ordered.

When the man had done this, the jackal said “You wicked and ungrateful tiger. This good man took pity on you and opened your cage door.

Your response was to eat him, therefore you are to stay in this cage for the rest of your life and no one will ever let you out again.”<sup>14</sup>

### What is Procedural Justice?

*Procedural justice* is concerned with how information is gathered and how decisions are made.

Procedural justice implies rules for the conduct of a trial or a hearing. One such rule is that an individual is given the time and the opportunity to present his side of the case. Another example is that a defendant has a right to call witnesses to support his claims.

Fair procedures are often called “due process of law.” Daniel Webster, the 19<sup>th</sup>-century American statesman, defined procedural due process as procedure that hears before it condemns, proceeds upon inquiry, and renders judgment only after trial.

Just as folktales have been used for centuries to teach distributive and corrective justice, so, too, have they been a vehicle for illustrating procedural justice. An old Arab tale described a king who oppressed his people. A dramatic event changed his life, and he vowed that henceforth he would rule with compassion. He even presided over the court of law in person to see that procedures were fair. Once when word reached him that a poor man had been prevented from coming into his presence with a grievance, the king had a bell hung above his head with a rope that hung down into the street. Thus, at the pull of a rope, anyone could have his case heard by the king—the poor as well and the rich.

The story goes on to tell about a bird in the kingdom who had built a nest in a tall tree. When her brood hatched, a thick snake attacked her young and devoured them before they could fly. The bird heard of the king’s commitment to justice, so when she next laid her eggs and the chicks were about the hatch, she flew to the palace and perched on the king’s bell rope. The guards went to see who wanted a case heard by the king. They reported that they found no one except a bird fluttering around the rope. “Follow that bird, for she may have a grievance,” ordered the king. The guards followed her and arrived at her nest just as the snake was

<sup>14</sup> Tale retold by Margaret Branson. Adapted from “The Brahman, The Tiger and The Six Judges” in *The Folktale Cat*, Frank de Caro, ed. (New York: Barnes & Noble Books, 1992), pp. 136-139. That retelling adapted from Mary Frere, “The Ungrateful Serpent Returned to Captivity,” *Old Deccan Days* (London: John Murray, 1870), p. 155.

about to swallow her chicks. They were able to kill the snake, and they brought this news back to the palace. The king rejoiced, and he reminded his court that justice requires that fair procedures be followed. Everyone with a grievance has a right to be heard and to have his or her complaints investigated. Justice also requires that wrongdoers be punished.<sup>15</sup>

### **Reviewing and Using the Lesson**

1. Explain the differences among distributive, corrective, and procedural justice. Compare how those three types of justice are embodied in both the codes of justice and the folktales discussed in this lesson.
2. Identify a current issue in your community for each of the three types of justice.
3. Why do you think that justice has been an ideal of peoples for centuries? What are some of the impediments to realizing justice for all? What are some means that can be employed to help realize justice for all?
4. Interview a judge in your community and ask how procedural justice is insured in her or his court. Follow up on your interview by observing the procedures being used in a trial or hearing in progress in your community.
5. Find an article or editorial from the newspaper that concerns justice. What conception of justice is portrayed in the article?

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<sup>15</sup> This tale abridged and adapted by Margaret Branson from “The King Who Changed His Ways” in *Arab Folktales*, translated and adapted by Inca Bushnaq (New York: Pantheon Books, 1986), pp. 297-298.