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# Disparate Standpoints to Law: Analysing Views of Aristotle and Nietzsche

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## ABSTRACT

*This paper talks about how unique perspectives have arisen over time with respect to law in our society. Aristotle's view on Rule of Law is being discussed where people are taken the constant with congruency of laws revolving around them, rather than laws being constant with people satisfaction and adaptability to the same surrounding around the law. On the other hand, a concept closely related to Rule of Law is the practice of sanction in our society, which is studied in this paper. Although, it's the Austinian concept when it comes to sanction or punishments, Nietzsche takes a unique position when it comes to the same. Through the thinker's viewpoint, the researchers aim to dwell on the premise of punishments existing in the society. It brings the innate nature of human beings being connected to the theories and justifications of punishments being meted against the crimes that take place in the society. This brings us closer to the aspect that Rule of Law which is closely related to practice of law in a justified and fair manner in the society, the inert essence of punishment is contrary to the very nature of the same. Researchers aim to study both separately in order to bring analysis of the viewpoints in focus. Recognition of these aspects is the just and correct manner in which such discourse can be effectively started. With the aim of initiation of something grander in the scheme of literature and academic writing, this paper brings about closely knit aspects to law from different perspectives. The genius of the past would also foreshadow the consequence and results of the present system in place.*

## I. ARISTOTLE

Rule of Law is often seen as a tool used for limiting the excessive, overreaching human nature and desires. Rule of Law moderates the rule of the people i.e. the Rule of Men. Many philosophers like John Locke and H.L.A. Hart etc. have often used Rule of Law to put a limit to the power of almost everything else that tries to reach over the Constitution. They take Aristotle as their inspiration. But Aristotle understands Rule of Law a little differently than the common understanding.

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We will be using Rule of “Men” to generalize for the entirety of humans because Aristotle was not a feminist; and that is how he termed concepts<sup>3</sup>.

For Aristotle, Citizen Acquiescence and Obedience shapes the Rule of Law. Acquiescence means reluctantly accepting something without protest. So, an acceptance and the obedient abidance of laws by the citizens make up the Rule of Law. But people don't just follow laws. Aristotle believes that people use their *good judgment* in deciding which laws are to be followed. This good judgment is guided by *practical wisdom* – the knowledge and reason that people acquire through experiences –, which is, in itself, an intellectual and moral virtue.

So, People use their good judgment, which is guided by practical wisdom – an intellectual and moral virtue – to judge, which laws are to be followed. Aristotle does believe that people do have the right to protest against unjust laws, not follow them, and get them changed. This is how new laws come into being. This is how laws keep up with changing times.

But, people also develop a habit of obeying the law, which helps Rule of Law sustain. So how does one develop a habit of obeying laws if laws can be changed when considered unjust? Laws are *rarely* changed.

Again, People get habituated of obeying laws that they consider just by their good judgment, guided by practical wisdom. If they find a law unjust, they get it changed, and habituate to the new just law. This is the Rule Of Men. This helps moderate the excess sovereignty of the Rule of Law.

The Constitution is the source of all law of the land. A constitution is a draft that tells us about a polity's arrangement of offices and its ends or *telos*. Aristotle has used Telos as the end or the ultimate goal that a constitution aspires to achieve for the people of its State. The end or telos or the ultimate goal of any constitution, for Aristotle, is providing people freedom, and a good, happy life<sup>4</sup>.

A constitution needs to be good itself to provide people freedoms and a good life. Now, what is a good constitution? It is a mix between Democracy and Oligarchy – having components of both, but reducible to neither. Aristotle doesn't like Democracy – it gives freedom to people like they are licenses to do whatever they choose, it is too much freedom. He doesn't like Oligarchy either – it establishes a system of Slaver and Mastery (a master having absolute control), exploiting people. A mix between both the systems gives people freedom in the form

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<sup>3</sup>Frank, Jill. 2007. 'Aristotle on Constitutionalism and the Rule of Law'. Theoretical Inquiries in Law. (8.1)

<sup>4</sup> Vol. XLII No. 159. Leyden, W.von. (1967). 'Aristotle and the Concept of Law'. Philosophy- The Journal of the Royal institute of Philosophy.

of self-governance.

Since people can make and unmake laws, the Constitution, the source of all laws, gets a flexibility and stays updated to the present. The laws don't just exist in some abstract, but are a daily practice of the people. So, the Constitution is basically a way of life of the people.

*“Constitutions guide laws, and laws preserve constitutions”*<sup>5</sup>

So, constitutions and laws have a bi-directional relationship. Constitutions are the sources of laws and laws help to uphold constitutions. And the Rule of Men moderates any sort of excess sovereignty of the constitutions, and the laws that it sources.

In conclusion, Aristotle's argument is as follows:

Rule of Law is a daily practice of habituated obedience of the people. People also, vigilantly enough, use their good judgment and help unmake unjust laws and make laws good and just. This Rule of Men limits the overreaching excess sovereignty of the Rule of Law. The Constitution – which sources all laws, and is preserved because of the Rule of Law – also gets moderated and updated to the present, in turn.

## II. NIETZSCHE

A very famous line said by Nietzsche is “God is Dead”. His work focused on the cultural morality and religious morality that enveloped the Christian Europe in his time, around 1870s and 1880s. He studied psychology, ontology and many more disciplines like such, as he wanted to bring a cultural renewal, and he also wanted to revolutionize the then ideas that surrounded Modernity.

Nietzsche gave a theory on why do we punish. His theory focuses on renewing the whole idea of punishment, as people know it. He tells us the psyche behind punishing people and how power dynamics come into play into this.

Writers of the 19<sup>th</sup> century were just starting with modernity. Every theorist can be seen focused on the idea of how mankind started as a society. There is a starting point to every society, and the time before that, society-less times, is referred to as the ‘State of Nature’. This is opposed to just simply ‘State’, that we all live in today. That people formed when they came together to form a society, then added law and order and rules and regulations to it and formed a State.

In the State of Nature, without civilization, humans were cruel and had an animal-like habit of forgetfulness. Society started forming when humans could make promises with people and

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<sup>5</sup> Frank, Jill. 2007. ‘Aristotle on Constitutionalism and the Rule of Law’. Theoretical Inquiries in Law. (8.1)

fulfilling them, instead of forgetting them. Fulfilling promises shows people being thoughtful and considerate towards other people, and not just acting on whims, fantasies and animal-like instincts. It is very important and needs to be followed through to sustain civilization<sup>6</sup>.

Thus, to rectify the human habit of forgetting their promises, punishments were made to keep the human memory intact. So punishments, according to Nietzsche, are a measure to ingrain certain things to the human memory. Promises, norms, standards, rules, laws etc. This is how a standard of behaviour comes to be, which makes up a society, a culture, and its cultural practices.

But humans are inherently cruel. So not only punishment acts as setting standard norms for the society, it is also a compensation for the person who had to bear losses because of the promise-breaker. Punishment acts as justice. There are so many laws that state punishment for the guilty people. When the punishment is given, people say 'justice has been served to the victim'. Nietzsche explains that it is not like what is lost can be gained back by punishing the guilty. But it surely appeases the cruel and primitive instincts in humans. This instinct gives people pleasure in the suffering of others. And thus, we punish<sup>7</sup>.

Punishment is a form of power assertion, which always aids the creators of the society. As the society begins to establish, there is a need to establish more and more power to set the society and its norms in stone. So, any kind of transgression is treated in a very harsh manner. People are more and more punished so that they internalize the authority and respect it (mixed with fear). Law breaking can be seen as a broken-promise towards the State.

As the society gets settled itself, the punishments become lesser and much more humane. There is no need to assert power, but only keep the people in line, a little. The crimes that are punished are more about localizing the harm and preventing them from spreading further and harming the society. The civilizing of humans, necessary in order to form the society, has already achieved.

So, there is a proportional relationship between how established the society is and the humaneness of the punishments. The newer the society, crueller the punishments – the people are just coming into civilization and need to establish a society. The more well-established a society is, the more humane the punishments – the people are already civilized and just need

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<sup>6</sup> Hascal, Erik Jay. (2013). An explication of Nietzsche's views on Punishment. College of Arts and Sciences Senior Honors Thesis. Paper 51.

<sup>7</sup> Nietzsche, Friedrich. (1996) '*On the Genealogy of Morals*' (Douglas Smith, Trans. and Ed.). Oxford University Press. (Original work published in 1887)

to maintain the society already in place<sup>8</sup>.

This is how it happens in an ideal Society. If the conditions are such, the society is Noble. It uses punishments only as ways of maintenance. Any kind of dissent and difference is accommodated. The society strives for justice and shows mercy.

But it does not always happen that way. Many societies strive only for power, punish cruelly to establish their power, dissent and difference are not tolerated and people are silenced by way of punishments. Such societies are Corrupt Societies. These are still dwelling in the past uncivilized and instinctual cruelty.

To summarize, for Nietzsche, we are all inherently cruel and animal-like. We become civilized when we rise above from our cruelty, and are able to consider other people. These are signs of Noble values, which make us civilized. So, when we punish people for any wrong, we simply do it to rectify the society's fabric, and the guilty person's rehabilitation. If people grow more and more cruel, rather than humane, even after entering a society, only to gain power, they are Corrupt. People are punished only for their suffering and to put them in their place. It is more about ego and power assertion rather than doing anything for the society<sup>9</sup>.

In conclusion to this article, it is pertinent to note that in both the theories by these ancient legal/social science thinkers, PEOPLE take the centre stage when it comes to Rule of Law or meting out punishments. It is the society, made of people, that influences how laws of the State shape up to be. Apart from this, it becomes increasingly important that legal concepts are studied from the standpoint of the public in order to ascertain a lot of key developments in the society. It can foreshadow and explain criminal behaviour, as well as the essence of application of law.

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<sup>8</sup> Nietzsche, Friedrich. (1966) 'On the Genealogy of Morals and Ecce Homo' (Walter Kaufmann, Trans. and Ed.). Vintage Books, A Division of Random House Inc., New York. (Original work published in 1887).

<sup>9</sup> Skinner, Jacob. (2006). 'Power and Punishment in Nietzsche'. Master's Thesis and Capstones. 35.