

THE REALITY OF JUSTICE AND THE BEAST THAT REIGN OVER US

The Deconstruction of Sovereignty in Jacques Derrida's Late Lectures

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1. Introduction

“Homo homini lupus” or “man is a wolf to man” this old adage is like a cynical truth shape our understanding of human nature or the reality of political life. In the political philosophy it was Thomas Hobbes who immortalized that saying in his work titled *De Cive*: “There are two maxims which are surely both true: Man is a God to man, and Man is a wolf to Man.”¹ According to the English political thinker’s anthropology the human life in its bare naturalness is “solitary, poor, nasty, brutish, and short”² and life is a war against each other.

It is a common saying that our political thought is greatly influenced by the anthropology that we utilize. The modern science depicts humans as an animal a living organism that is driven by some urges, but it has a self-consciousness that allows to operate on a whole different level than other animals. Humans live in society, can plan ahead, communicate with complex and layered systems of signs, and create rules on the interactions with its companions that we call law. But I won’t take this route to the animality of humans because the more we speak about humans in animalistic terms the less we can distinguish the borders of man and animal, more so the law is a human specific tool, so the confusing of man and animal only makes the concept of law more complicated. On this ground if we want to talk about the human nature as legal philosophers, we can’t evade the work of specifying the human nature by co-opting other scientific disciplines’ concept of humanity.

In my paper I want to discuss Derrida’s lectures on the Beast and the Sovereign and some problems came to my mind that were bugging me even then when I have read

¹ Thomas HOBBS: *On the Citizen*. Transl. Richard TUCK – Michael SILVERSTONE. Cambridge, Cambridge University Press, 1998. 3.

² Thomas HOBBS: *Leviathan*. Oxford–New York, Oxford University Press, 1998. 84.

the Force of Law. In my paper I want to reconstruct the meaning of justice in Jacques Derrida's Force of Law. On this reconstruction I want to establish an interpretation that is understandable in the eyes of legal theory. My thesis is that for Derrida justice is bound to the singular human relations and actions, in this sense it is real, practical and not a theoretical concept.

From this steppingstone I want to problematize this concept and test if it leads us to a better understanding of law and politics. With Derrida's insistence that justice is essentially a human action we must face the modern paradigm of rule of law. As John Adams said we must live in an empire of law and not empire of man.³ In this modern sense the tyranny is essentially rule by man: a just society should not be allowed to be ruled by the mere whim of a politician. Every state action should be bound by the legal and constitutional values. This is the theory, but it is contested by our desire for a great politician and also the philosophical roots of sovereignty as the sovereignty of the absolutist monarch shows that there is a strange dichotomy between free (bestly) and legal (human) actions. The founding fathers of the modern politics and state (namely Machiavelli and Hobbes) were telling a story of beast-man: the sovereign is the only human that has the right to act like beasts do: without predefined rules, freely.

In his late lectures Derrida draws comparison between the thing we call animal and the thing we call sovereign. In this world only humans are bound by the laws, the animals and the sovereign are not existing in the sphere of law. The sovereign stands high above the law the animals are standing below it. The law is essentially a human thing that regulates through force, faith and fear. Fear is an essentially human thing as Thomas Hobbes writes it in seminal work *Leviathan*.

There is a strange system that can be drawn from my research between law and politics: the Political Sphere that is defined by free action without rules (for there are no rules but force and violence), or the world of beasts and beast-man. And there is the Legal Sphere: here our actions are constrained by the bounds of the law-induced fear, man or civilian. Of these two spheres the political is always pre-existing to the legal, Law is always come to be from a political force or decision.

2. Reconstructing Derrida's Concept of justice

In his lecture's opening remarks Derrida articulates a very modern and positivistic view on law and justice. Law is an artificial and established textual strata that is created by political forces and grounded on pure violence. Law and justice cannot exist without enforceability: without force there is no possibility for and order to be. If we ask the how and why of the legal order we are facing a big wall of silence: there is no outside norm that can validate the law as just rule. According to Derrida the force that creates the law and state is a performative force that demand faith in its own justice.⁴ In itself,

³ John ADAMS: *Thoughts on Government*. In: *The Works of John Adams Vol. IV*. Charles C. Little and James Brown, 1851. 194.

⁴ Jacques DERRIDA: *The Force of Law. „The Mystical Foundation of Authority”*. *Cardozo Law Review*, Vol 11., 1990. 941–943.

without legitimacy it is pure power and violence only with and act of faith we can establish it as a just order. „Law is always and authorized force, a force that justifies itself or it is justified in applying itself [...] It is the force essentially implied in the very concept of justice as law (*droit*), of justice as it becomes *droit*”⁵

But if it is grounded by an authorized force we must face an important dichotomy: „How are we to distinguish between the force of law of a legitimate power and the supposedly ordinary violence that must have established this authority and that could not itself have been authorized by an anterior legitimacy, so that, in this initial moment, it is neither legal nor illegal – or, others would quickly say, neither just nor unjust?”⁶

This *law as justice* is essentially deconstructible, for it is grounded on itself.⁷ Acting according to the rules of law is not justice in its fullest sense. Derrida’s first aporia (epoché of rule) tells us that to act justly we must be free and we must meet the Other (with capital “O”) as a human being. Justice belongs to the Other, so when we act according to the legal rules we act in conformity with law but not out of respect to the Other.

Let’s see this first aporia: to be just or unjust and to exercise justice we must be free and responsible for our actions. But If we follow the rules and other predefined procedures we cannot say that we are just (in the sense of justice) out actions only could be called legal: “there is never a moment that we can say *in the present* that a decision *is* just (that is free and responsible), or that someone is a just man – even less »I am just«, we could say legal or legitimate, in conformity with a state of law”.⁸ According to Derrida deconstruction is justice, which means that justice is always unique to the given situation: that’s why he rejects that deconstruction can be a method or can be applied described as a usage of some sort of scale.⁹ Law implies an element of calculation, but the Other as an infinite being cannot be objectified and reduced as a mere object of my will.

The concept that he calls “fresh judgement” is a unique moment in time when two subjects meet and have something to do with each other.¹⁰ The fresh judgement sees this situation decontextualized: we must decide as if there were no rules, so we must listen to what the Other wants from us:

„To be just, the decision of the judge, for example, must not only follow the rule of law or a general law but also assume it, approve it, confirm its value, by a

⁵ Ibid. 925.

⁶ Ibid. 927.

⁷ Ibid. 943.

⁸ Ibid. 961–963.

⁹ On the question of deconstruction as legal method cf. Jack BALKIN: Deconstructive Practice and Legal Theory. *The Yale Law Journal*, Vol. 96., 1987.; There are many critics of Balkin’s approach cf. Pierre SCHLAG: „Le Hors De Texte, C’est Moi”. The Politics of Form and the Domestication of Deconstruction. *Cardozo Law Review*, Vol. 11., 1989–1990.; Peter GOODRICH – Florian HOFFMANN – Michel ROSENFELD – Cornelia VISMANN: Introduction: A Philosophy of Legal Enigmas. In: Peter GOODRICH et al. (eds.): *Derrida and Legal Philosophy*. Basingstoke–New York, Palgrave Macmillan, 2008.

¹⁰ DERRIDA (1990) op. cit. 961.

reinstating act of interpretation, as if ultimately nothing previously existed of the law, as if the judge himself invented the law in every case.”¹¹

The generality of the legal rules are products of violence that breaks down the possibility of justice. But the judge cannot do this, if one would act disregard to the laws he or she would be penalized as breaking the law and being unjust (in the sense of *justice as law*).¹²

In the present we cannot say that we are just, justice cannot be predefined. Justice is an *avenir* it is always coming.¹³ Justice is a performative act that defies law and legal order. In this sense Derrida’s concept of justice is first and foremost a driving force for every action that tries to make our social life better, because deconstruction as justice never satisfied with the given situation: there is always a chance for betterment. This aspect of Derrida’s concept of justice was further developed by Dricilla Cornell who in his work *The Philosophy of the Limit* was argued for a justice that opens up the structures that define our social reality.¹⁴

This is one way of looking on Derrida’s justice: as a grounding theory of every activist legal action and philosophical argument for an activist court. In this sense justice is not a legal concept but more of a political one. Political in the sense that it exists outside the normal/legal world of living: before or outside the state and law as a pure act and decision without normative constrains. A world that is very close to the world what he latter calls *beast and sovereign* and the modern theorists’ concept on the state of nature.

But before elaborate this two concept (*beast and sovereign*) I want to offer a much more valid approach and one that makes Derrida’s concept much more valuable for us legal theorists. In my doctoral thesis I argued that (despite how amongst the American legal scholars it was viewed) the French philosopher was not argued for some political activism but for equity. I think this would be much richer approach (and I believe closer what Derrida tried to say).

Equity as justice?

I would like to propose a different interpretation of Derrida’s concept of justice. Justice is closely linked with actions and decisions for Derrida: it is not a theoretical question but a very practical and existential one. “Intant decision is madness”¹⁵ I’m facing with an other human being who demands from me to be just. I must act, I must decide no matter what an ordeal it is to me. In this sense it is real, it must appear in the physical world, and also my mind must assume the spirit of justice or my actions would be only legal or in conformity of rules. Justice is *pure action* of a human being. This is the core

¹¹ Ibid.

¹² Ibid.

¹³ Ibid. 971.

¹⁴ Druquilla CORNELL: *The Philosophy of the Limit*. New York–London, Routledge, 1992. 113.

¹⁵ DERRIDA (1990) op. cit. 967.

of Derrida's justice. 1. Justice has no limits and preexisting forms: pure action towards the other. 2. Law is the perversion of justice: closure, deciding once and for all. 3. In the present we can't be sure whether our action is just (*justesse*). 4. Justice is an action of a human being.

If we try to translate this attribute to a juristic concept I think we can correlate it with the concept of equity. In my approach I would like to link it to Aristotle's concept equity (*epieikeia*) which strangely resonates with Derrida's problem with the "law as justice" but with out the Derridean suspicion of the written man-made laws.

What is equity? According to Aristotle when we speak about justice it could mean justice according to the law and according to the nature. In his work titled Rhetoric he establishes that when we argue for justice we can argue in the name of written and unwritten justice:

„But as there were two species of things right and wrong; for one was of written prescript, the other of unwritten law; now those on the subject of which the laws speak a written language have been treated of; and of those arising from unwritten law there are two kinds. [...] And equity is an idea of justice, which contravenes the written law. And this contradiction happens partly indeed against the will and partly with the will of the legislator" Rhetoric (Book I. XIII.11.)¹⁶

Equity is justice but not according to the legal rules but in opposition to it. It is a classic example: a law orders that one should be penalized if he hurts other person's body with iron. But what about in a situation when one gives slap with an iron ring on its finger. Aristotle argues that the lawgiver was not tried to describe every possible metal object that can hurt others so he used a general language. But when this case goes to the court one can argue for his defence that the lawgiver's goal was not to penalize a slap but to punish an attack with an actual weapon or weapon like object.¹⁷ So one can argue on the grounds of equity that he should not be penalized at all or only for culprit or physical libel. Equity does not say that the laws are bad or the lawgiver made a mistake, it is just the nature of human relations that we cannot prepare our legal texts for every situation so they can only solve the problems of the majority or average persons.

Let's see what Aristotle said in his Nicomachean Ethics: Equity is justice but it is superior to the legal justice because it is a justice that demands us to make just actions for a singular person in a unique situation:

„For what is equitable, though superior to one kind of what is just, is nevertheless just, and it is not by being a different genus that it is superior to justice. The same thing, then, is just and equitable, and while both are good, what is equitable is superior. What makes for the puzzle is that what is equitable

¹⁶ ARISTOTLE: *The „Art" of Rhetoric*. Translator: John Henry FREESE. London–New York, William Heinemann–G. P. Putnam's Sons, 1926. 145.

¹⁷ ARISTOTLE (1926) op. cit. 147

is just, but not what is legally just – rather a correction of it.” Nicomachean Ethics (Book V.10. 1137b.)¹⁸

The laws use general language to regulate a wide variety of situations that are common in a society. For Derrida this means that laws are indifferent for the unique situation and efface the Other whose ethical dignity is infinite and cannot be reduced to a particular set of contingent rules. However, Aristotle is not so critical to this approach:

„So when law speaks universally, and a particular case arises as an exception to the universal rule, then it is right - where the law-giver fails us and has made an error by speaking without qualification – to correct the omission. This will be by saying what the lawgiver would himself have said had he been present, and would have included within the law had he known. What is equitable, therefore, is just, and better than one kind of justice. But it is not better than unqualified justice, only better than the error that results from its lacking qualification. And this is the very nature of what is equitable – a correction of law, where it is deficient on account of its universality.” Nicomachean Ethics (Book V.10. 1137b.)¹⁹

Justice and equity are belong to the same genus but a different species of it. It would be worthwhile to reconsider this activity called justice as an action that can be appealed to the deconstruction that is always a singular and unique reading to current situation. Equity is a superior form of justice but not “the true justice”. Equity means that we give the *justum* (the just thing) to the other in a well defined unique situation.

„The nature of what is equitable, then, is clear, as is the fact that it is just and superior to one kind of justice. It is also evident from this who the equitable person is. He is the kind of person who chooses rationally and who does equitable things; he does not stand on his rights in a bad way, but tends to accept less than his share, though he has law on his side. This is the equitable person, and his state of character is equity, which is a sort of justice, not some distinct state.” Nicomachean Ethics (Book V.10. 1137b.)²⁰

Equity corrects the laws but does not destroy them: it is an exception. Equity is a justice that cannot be given without human interference: without human actions there can be no equity. In my opinion this is the justice that Derrida is mad about but he didn't address this issue. I may be wrong, and He would said that this is still not the justice that he was looking for but for me this is the only way that I can make some sense of it.

¹⁸ ARISTOTLE: *Nicomachean Ethics*. Cambridge, Cambridge University Press, 2004. 100.

¹⁹ ARISTOTLE (2004) op. cit.

²⁰ Ibid. 100–101.

3. Modern idea of tyranny: rule by man

My first hypothesis that the main feature of the tyrannical rule is the disregard for the rule of law or evading it. In our modern democracies every human action must abide the law and the constitutional values, and in the legal and political actions one should preclude the possibility of any human interference that could corrupt the social order's just procedures (I mean just or justice as law). These human elements can be indicated as passions, emotions prejudices etc. The personality of the governmental officials should be secondary and their actions and decisions are restrained by the constitutional rules. Well this is not the end of the history but one of the most liveable for the majority of people.

The modern democracies came to be from the political experience of the absolutist monarchies: there were no equality in law, and even the legal order was the instrument of the political power. So the First and foremost political evil was the rule of man. As John Adams said we need an "empire of law and not empire of man".²¹ The guaranty against the rule of man (this modern sense of tyranny) was the rule of law.

The dichotomy of tyranny and rule of law constitutes my argument that will show that the derridean concept of justice is problematic. Tyranny is pure political rule by a man or men (in plural). In the hands of a tyrant even the law cannot be distinguished from a weapon, a striking hand or a piece of paper. A law is a masked power²², the political will's textual manifestation that has no ethical reasons. In comparison the rule of law is a system that is above the contingent human wills that distributes and restrains the power in the polity to protect the citizens and make the state efficient and responsible for its actions.

But if we investigate the Greek political thought we will find a very unpleasant thesis: if we looking for the best regime the key feature is not the legal order but the morals and knowledge of the leaders. Especially in Plato's works we find the commonplace idea that the polis should be ruled by wise philosopher kings.

We can say that they came from a different age and political culture, but I think that we can register some shift in our democracies that can be exemplified by the rising populism, the politicians who act like celebrities or going straight on becoming demagogues, and thirdly the Twitter's lynch mobs that really gives us some insight of how ancient Greek popular democracies may have worked. And this is the reason I find it interesting to have discussion on this matter.

3.1. Politics and Law: Man, Beast and Sovereign

It is very symbolic that the founding fathers of the modern political thought were Machiavelli and Hobbes. Derrida goes on a great length in analysing these two authors view on animality and politics and my approach will go along the lines of his because I

²¹ ADAMS op. cit. 194.

²² DERRIDA (1990) op. cit. 941.; CORNELL op. cit.

find the same problems in them that he addresses, and their views on politics and man in natural state is still in the genetic structure of our modern state.

I begin with Machiavelli whose work *Il Principe* is quite well known. Derrida's reading is very thorough in this chapter. For the sake of brevity I only want to establish a certain view of law and nature:

“Therefore you ought to know that there are two ways to fight: by using laws, and by using force. The former is characteristic of man; the latter, of animals. [...] Having a teacher who is half animal and half man can only mean that a prince must know how to use both natures; he who has the one without the other is not likely to survive. [...] Therefore since a prince must perfect his knowledge of how to use animal attributes, those he must select are the fox and the lion. Since the lion is powerless against snares and the fox is powerless against wolves, one must be a fox to recognize snares and a lion to frighten away wolves.”²³

According to Machiavelli we can fight with force or laws. Force is in this sense natural brute physical force that is not constrained by any rule, it is what Derrida called in the *Force of Law* as violence. A prince must be partly animal or to say partly violent in his actions, and in certain cases he must defy the rules. Machiavelli is a turning point in political philosophy: every other ancient and medieval authors political problems were ethical problems as well, a ruler cannot reign without at least ethical constrains (but I want to remark that Aristotle said that a king should follow the laws of his people). For Machiavelli the prince (or politician) is free to decide when and how he follows the rules. In certain cases it would be more beneficial to follow the rules but in other times it may be not and he can lie, break promises and the law But all this is his sovereign right how to act and decide.

A prince is autonomous I mean auto-nomos or we can call himself-governor and self-legislator. After Machiavelli politics became an autonomous field in political science: the politics is the art of decisions and actions without any normative constrains. This is the core of every modern political philosophy and this approach is the most clear in the works of Thomas Hobbes.

3.2. Hobbes and the naturalness of human condition

The founding myths of the modern society are established with the social contract theories. According to these theories people without state and civil society live in a natural state, that is too dangerous so they establish the state with a contract. This is a philosophical and not historical fiction so my analysis will be theoretical. The prototype of these theories is elaborated by Thomas Hobbes.

According to Hobbes man is a wolf to man. What does it mean? In our natural state (in the meaning of condition, situation) we are free and equal both in physical and

²³ MACHIAVELLI op. cit. 281.

psychological prowess. We have the right (*ius*) to do and own anything that we desire and can protect it with any means that we got.²⁴

To be free is to act without constrains. There are no rules except for the self-interest of every person. This is the world that is dominated by pure force and pure actions (pure in ethical sense: there is no good or bad action in the natural state). To live like this is very frightening and this fear is very important, Derrida's reading on Hobbes shows very clearly that this is the key feature to understand the politics.²⁵ We establish the state out of fear of death. As we cross the threshold that demarks natural and civil state the common man lose every right and every freedom it had. In our natural state we have power we are free and capable of causing fear.²⁶

In civil state we create a sovereign that has nothing to do with our social contract, it is an artificial being that receives every power, every freedom and every capability of causing fear. The sovereign is greater than a single man: it can do whatever it wants. With the civil society every man-wolf becomes a civil-man and the natural wolfness is given to the sovereign: "For example, we shall come to this in moment, let us never forget the wolves and the werewolf. Not the Wolf Man, but the wolf-man, as werewolf. The beast is the sovereign who is the beast, both sharing (we paid some attention to this) a being outside-the-law, above or at a distance from the laws."²⁷ It is outside of the civil society: it is not constrained by its rules but it will use coercion on its citizens. The sovereign is not responsible for its actions, it doesn't matter that we as humans got out of the natural state to live without fear the sovereign was not in this contract, the ascension to power is just "happened" with him. Just like Derrida said in the Force of Law justice is created through the social contract, only after we created this consensus we can speak about just or unjust.²⁸

Let's see Hobbes' modernist approach to law: *ius* as right means freedom to act and power. *Lex* as law (*loi*) are commands of the sovereign that set the civil boundaries on its subjects.²⁹ In everyday political language the politician say when a decision must be made and there are two options from which we cannot choose simply pointing out the more valuable or just one: "Here we need a political decision." But what does it mean? I think that the natural state is a political state. Political pre-exist the legal: decision is primary for setting the rules. Every legislation has an element of a decision: this undecidable state that doesn't assume anything respectable for itself. As do Machiavelli said there is a certain animalistic freedom in the political sphere. But what does stops the politicians for not being evil or wolf as we might say?

²⁴ HOBBS (1998) op. cit. 86.

²⁵ Ibid. 198. see also Jacques DERRIDA: *The Beast & the Sovereign*. Vol. I. Transl.: Geoffrey BENNINGTON. Chicago-London, The University of Chicago Press, 2011. 39.

²⁶ HOBBS (1998) op. cit. 87.

²⁷ DERRIDA (2011) op. cit. 70.

²⁸ HOBBS (1998) op. cit. 95.

²⁹ Ibid. 86.

Freedom and fear is in complementary relationship with each other: in natural state we are free to do anything whatever we dare or desire.³⁰ If we fear of the other we may reconsider to do what he would like to do. More the political power fears the consequences of its action the less it dares to act (for it is paralyzed by fear), but the less the political power fear the more it dares to act (until it hits a wall or clashes with an opposing force).

In this sense: is there anything that we could call as rule of law? Does the law has a capacity of causing fear or is it hangs on pure faith? How can we save the rule of law from the rule of man? How can we philosophically protect the laws from this kind of sovereign (political) tyranny?

4. Ancient lessons: Rule of Man and Rule of Laws

If we reread the text of Plato and Aristotle on politics and law we find this dichotomy at work underneath their texts but their answers are slightly different. For Plato and Aristotle as well the best constitution or state is kingship and the worst is tyranny (for Aristotle this matter is much more complicated, it's the best but not the ideal). Between this we can find some other states and constitutions but I narrow down the matter to these two forms. The reason behind this decision is that the monarchical rule is the purest form of rule by man, when we look at the aristocracy, oligarchy democracy we find a lot of group dynamics that would make it harder to speak about this.

First: kingship is the rule of one man who is chosen by his or her virtues. For Plato this is paired with the philosophical knowledge of the forms.³¹ To Aristotle the kinship that is considered the best is paired practical wisdom.³²

4.1. Plato and the philosopher kings

Plato's three works (*Republic*, *Statesman*, *Laws*) indicates shift from the ideas to a more practical insight on how a state should be ruled in consideration of the reality of human nature.

In the *Republic* quest for the meaning of justice and happy life Socrates and Thrasymachus quickly reach the state as an über-person. The healthy state inner life mirrors the individual's inner life. Through the text we can always see that play between the singular person and the state. To live the life at its fullest is to have a look into the world of ideas and learning the true Good and Justice. And as an individual should be led by the true philosophical knowledge so the ideal state should be led by philosophers. I'm cheating a little bit because it's hard to distinguish the ideal state as a kingship or an aristocratic rule of philosophers.

³⁰ Ibid. 83.

³¹ PLATO: *Republic*. Translation: C. D. C. REEVE. Indianapolis–Cambridge, Hackett Publishing Company, 2004. 505a. 199.

³² ARISTOTLE: *Politics*. Translation: C. D. C. REEVE. Indianapolis–Cambridge, Hackett Publishing Company, 1998. 1277a. 71. [hereinafter: ARISTOTLE (1998b)]

“SOCRATES: I will tell you that one type would be the constitution we have been describing. However, there are two ways of referring to it: if one outstanding man emerges among the rulers, it is called a kingship; if more than one, it is called an aristocracy.

GLAUCON: That’s true.

SOCRATES: Well, then, that is one of the kinds I had in mind. You see, whether many arise or just one, they won’t change any of the laws of the city that are worth mentioning, since they will have been brought up and educated in the way we described.” 448d.³³

The role of philosopher and king should be merged into one person by

„SOCRATES: Until philosophers rule as kings in their cities, or those who are nowadays called kings and leading men become genuine and adequate philosophers so that political power and philosophy become thoroughly blended together, while the numerous natures that now pursue either one exclusively are forcibly prevented from doing so, cities will have no rest from evils, my dear Glaucon, nor, I think, will the human race. And until that happens, the same constitution we have now described in our discussion will never be born to the extent that it can, or see the light of the sun.” 473d.³⁴

But what makes a philosopher? The philosopher has a natural appetite for wisdom but not that partly but in its fullest. Knowledge (episteme) is to know how the world is, belief (doxa) is just an opinion but has nothing to do with the real knowledge. True knowledge can only be reached with the insight into the world of ideas. The ideas are the eternal essence of the world, if the one who could grasp these ideas can also construct the ideal state

„SOCRATES: Since the philosophers are the ones who are able to grasp what is always the same in all respects, while those who cannot—those who wander among the many things that vary in every sort of way—are not philosophers” 484b³⁵

„SOCRATES: So, won’t it be reasonable, then, for us to plead in his defense that a real lover of learning naturally strives for what is? He does not linger over each of the many things that are believed to be, but keeps on going, without losing or lessening his passion, until he grasps what the nature of each thing itself is with the part of his soul that is fitted to grasp a thing of that sort because of its kinship with it. Once he has drawn near to it, has intercourse with what really is, and has begotten understanding and truth, he knows, truly

³³ PLATO (2004) op. cit. 135.

³⁴ Ibid. 166.

³⁵ Ibid. 176.

lives, is nourished, and—at that point, but not before—is relieved from his labor pains.” 490a.³⁶

In this ideal state the citizens don't need law, as Socrates says:

„SOCRATES: I would have thought, then, that a true lawgiver should not bother with laws or constitutions of this kind, whether in a politically badly governed or in a politically well-governed city—in the one because it is useless and accomplishes nothing; in the other because some of them are discoverable by anyone, while the others follow automatically from the practices already described.” 427a.³⁷

And what about the evil twin of the king? Plato in the bad constitutions firstly doesn't speak about the state firstly but the tyrannical man. He approaching the character of the tyrant and its inner driving force. In the tyrannical man Eros, desire reigns. “There are appetites of a terrible, savage, and lawless kind in everyone”³⁸ – as Socrates say. In the tyrannical man the Eros reign so much as the tyrant rules over the polis. The appetite of the tyrant is insatiable for his own good, he took everything he desires. The tyrant doesn't respect the laws and morals and his dark personality magnetizes the most wretched of the community. Alone in a normal and orderly polity he may be a mere criminal, but when the society is in anomy he could easily rise to power (in such a society there could be many tyrannical man, but in the end who rises to the top is the one whose Eros is stronger). The tyrant is unjust man who has no friends. So here we are: philosopher as the lover of true knowledge and the tyrant who is the slave of desire. These issues developed further in Plato's two later works: *Statesman* and *Laws*.

In *Statesman* where the elean Stranger and the Young Socrates investigate the meaning of statesmanship they define that the other constitutions as the mere imitations of the one and true royal art, a rule by knowledge.

Other constitutions are just imitations of this true form of Polis: “And all the rest we speak of, we must say of them that they are not genuine (legitimate) and in their being are not, but they have imitated this one, and some, which we speak of as with good laws, have done it with more beautiful results, and all the rest with uglier.”³⁹ The ideal form of political rule is the reign of a philosopher or a statesman (who has knowledge on the matters of state), the other forms of state (kingship-tyranny, aristocracy-oligarchy, democracy with or without laws) re just flawed derivatives of this true form. The distinction between the relatively good forms (kingship, aristocracy

³⁶ Ibid. 183.

³⁷ Ibid. 111.

³⁸ Ibid. 572b. 271.

³⁹ PLATO: *Statesman*. Translation: Seth BENARDETE. In: Seth BENARDETE (ed.): *The Being and the Beautiful. Plato's Thaeetetus, Sophist and Statesman*. Chicago–London, The University of Chicago Press, 2006. 293e. III.46.

and democracy with laws) and bad forms (tyranny, oligarchy, democracy without laws) can be distinguished by if there are laws that maintain the order:

STRANGER: And then again whenever just one rules in conformity with laws, imitating the knower, we call him a king, without distinguishing by name between the one who rules alone with science from the one with opinion in conformity with laws.” 301a-b⁴⁰

We have here another definition of the tyrant:

„STRANGER: But what about when there’s just one ruler and he acts neither in conformity with laws nor in conformity with usages, and “After all,” he pretends, just as if he were the knower, “at least the best has to be done contrary to what has been written,” but there is a certain kind of desire and ignorance in charge of this imitation, mustn’t each one of this sort be then called a tyrant?”⁴¹

The laws are in this text seem like artificial knowledge, because in great number people aren’t crafted in the royal art of statesmanship these states need laws to have some kind of order to imitate the original an ideal state that is rules by a Statesman. The division between the good and bad constitutions are established by their relationship with their own traditions and laws: the king (rule by law~doxa) and tyrant; aristocracy-oligarchy; democracy with or without law. I think here we can see, that the law as a prosthesis helps out where the polity lacks philosophical knowledge. Because the laws are for the average citizen it can’t reach the full potential of justice.

In Laws Plato developed further this dichotomy between law and rule by man, but with some reservation. His main thesis remains intact:

“Of course, if ever some human being who was born adequate in nature, with a divine dispensation, were able to attain these things, he wouldn’t need any laws ruling over him. For no law or order is stronger than knowledge, nor is it right for intelligence to be subordinate, or a slave, to anyone, but it should be ruler over everything, if indeed it is true and really free according to nature. But now, in fact, it is so nowhere or in any way, except to small extent. That is why one must choose what comes second, order and law which see and look to most things, but are incapable of seeing everything.” 875c-d⁴²

The best reign is the reign with philosophical knowledge but because this is rare and it is better to rule over large populace with laws. I think Plato’s first and foremost thought that reason and knowledge should rule over passion. The key to understand

⁴⁰ PLATO (2006) op. cit. III. 54.

⁴¹ PLATO (2006) op. cit. III. 55.

⁴² PLATO: *The Laws of Plato*. Translation: Thomas L. PANGLE. Chicago–London, The Chicago University Press, 1988. 271.

the individual happy life and the god polis is to restrain the destructive passions in ourselves and in the community.

4.2. Aristotle and the rule of law

In the case of Aristotle for the sake of brevity I emphasize the main point. Amongst the six constitutions of Politics Aristotle considers the best is the kingship, and the worst is the tyranny. It is much more complicated, because his notions on the ideal state is threefold⁴³:

1. Best rule when the constitution maker faces no contingent obstacles on how to articulate the constitution (it is the ideal in the platonic sense) (Book IV. 1288b.21–24.)
2. The best for a certain actual community (second best constitution in consideration to the realities) (Book IV. 1288b24–7)
3. The preexisting constitution's reform and make it closer to the ideal. (Book IV. 1288b28–33.)

Aristotle doesn't believe in the platonic ideal state's philosopher-kings suitability to reign over a polis. He distinguishes between the philosophical knowledge of *sophia* and the practical wisdom of *phronêsis*. The later is an ethical virtue and knowledge in its theoretical sense but a *tekhnê* a practical knowledge on how to act justly. For Aristotle the good statesman should have great *phronesis* instead of theoretical knowledge.⁴⁴ The rulers should be wise but not philosophers.

I want to speak Aristotle's theory on kingship and tyranny only briefly because for my argument it is not that important. Aristotle also puts the kingship and the tyranny to the best and the worst places in his hierarchy of constitutions.

„For the deviation from the first and most divine constitution must of necessity be the worst. But kingship either must be in name only and not in fact or must be based on the great superiority of the person ruling as king. Hence tyranny, being the worst, is furthest removed from being a constitution;” 1289a.

Which is better the best statesman or the best laws? Aristotle remarks the laws imperfection a couple of time throughout his works. The abovementioned concept of equity is key to understand here. The law is speaking about the human actions in universal language, that can't realize the full justice in every single situation. Even the best laws are imperfect they always need human actions to realize the full potential of justice, this notion is the equity which it seems the first and foremost good of the rule by man.

But this insight doesn't lead Aristotle to praise the rule by man because he finds it too tempting to become an autarchic. (NE 1134a.) The human reign must be restrained

⁴³ Fred D. MILLER Jr.: Aristotle on the Ideal Constitution. In: Georgios ANAGNOSTOPOULOS (ed.): *A Companion to Aristotle*. New York, Wiley-Balckwell, 2009. 541.

⁴⁴ ARISTOTLE (2000) op. cit. 1141b. 110.

by the laws because there shouldn't be anyone above the laws. By nature humans are equal so they have the right to be rulers and to be ruled. Aristotle clearly choose the rule of law (not simply by law:

„Thus it is more choiceworthy to have law rule than any one of the citizens. And, by this same argument, even if it is better to have certain people rule, they should be selected as guardians of and assistants to the laws. For there do have to be some rulers; although it is not just, they say, for there to be only one; at any rate, not when all are similar. Moreover, the sort of things at least that the law seems unable to decide could not be discovered by a human being either. But the law, having educated the rulers for this special purpose, hands over the rest to be decided and managed in accordance with the most just opinion of the rulers.” Politics Book III. 1287a⁴⁵

And here we have an interesting turn of events:

„Anyone who instructs law to rule would seem to be asking god and the understanding alone to rule; whereas someone who asks a human being asks a wild beast as well. For appetite is like a wild beast, and passion perverts rulers even when they are the best men. That is precisely why law is understanding without desire.” Politics Book III. 1287a⁴⁶

“Law is understanding without desire.” I think this excerpt would be worthy for a discussion by itself. I think this is something that we can reconsider as well, and clearly rhymes with the modern theories on rationality of the law. The reign of law is a constant quest for justice and restraint of our sinful nature. We cannot escape from this state (both in the meaning of political order and universal human condition). This is the reason that Plato even in it's most optimistic writing speaks about the education of the children, in parallel with the constitution making of the polis.

„SOCRATES: This is clearly the aim of the law as well, which is the ally of everyone in the city. It is also our aim in ruling our children. We do not allow them to be free until we establish a constitution in them as in a city. That is to say, we take care of their best part with the similar one in ourselves and equip them with a guardian and ruler similar to our own to take our place. Only then do we set them free.” 590e–591a.⁴⁷

We can see that these two Greek philosophers were clearly perfectionist: the individual's ethical advancement is paired with the *autarkheia* of the polis. The goal is

⁴⁵ ARISTOTLE (1998b) op. cit. 96–97.

⁴⁶ ARISTOTLE (1998b) op. cit. 97.

⁴⁷ PLATO (2004) op. cit. 295.

not the average or a “good enough” but the justice in its fullest. Especially Plato’s work indicates this notion that we cannot give less than the everything.

But nowadays we strive for a consensus. We don’t look for a perfect social order but an optimal for our singular political communities. Our democracies are pluralist, diverse in ethnical, political and religious sense. For the good and the existence of the political state we need inner harmony and peace, so we try to establish a system of democratic procedures and a stable legal order. That’s why in a democracy never one social groups interest reign supreme but a lot of groups’ interest together. In this sense we clearly living in a second-best political regime but it seems this is the best for any human being.

5. Conclusion: The Heart of the Paradox

According to the so called “political realism” those who wield the power (authority) in the framework of the legal rules can do anything. On national level the most important political force is the constitutional making power, because it is only constrained by the imperative norms of the international law. The constitution maker only needs to fear is the international public which is clearly a soft power, in comparison for the state’s own institutions. The constitution making is clearly runs in the sphere of politics there is a certain kind of poetic invention at work, an unbound authority both in political and creative sense.

If we put the political sphere above the legal sphere or we identify the law with politics (in the meaning of freedom of action) it could prove to be a dangerous tool. If the only boundary to the political action is the fear and our actions are only measured by our greed (be its object a physical or intellectual values) we must face the question of tyrannies and authoritarian states that are clearly resurging nowadays.

I think there is a great paradox that we must address today. Without free action there is no possibility of justice, but the free action is also the root of all evil. Freedom is a first and foremost value that should be protected for a happy life on individual and social levels, but the value of order demands common measures that cannot be corrupted by the human failings. This is a big question whether we should let the “culture of heart and human actions” rule (what I believe Derrida was proposed) or we should give the social control to some incorruptible machine that rationally calculates over our lives. I let this question unanswered, but It should be noted that Derrida’s position on justice as lawless action runs counter with our modern understanding of tyranny. Although I strongly believe in the rule of law and I believe that we should not let any political power to use laws as instruments of an elite’s self-interest, it should be important for the legislation and judiciary to imply a sense of justice that is close to the Aristotelian equity.