

The Evolution of Law in Epicurus and Nietzsche

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I recently had the pleasure of reading the highly-recommended book by Nietzsche, [The Antichrist](#). Many of its paragraphs merely served to add depth and detail to some of the things I had previously come to understand from reading his [notes in Will to Power](#) and other sources, like [Zarathustra](#). Other paragraphs offered new insights either because of the way in which they were passionately and emphatically stated, or by virtue of their content. Paragraph 57 is one of the latter cases and caught my eye because usually, when Nietzsche discusses the origins of laws and mores, he employs a cynical tone and seeks the ulterior motives of the proponents. Here, he takes on the anthropologist’s tone that we find in Lucretius and Epicurus, and it might be interesting to compare how he views the primitive origins of moral and legal codes versus how the Epicureans viewed them.

In Nietzsche, the time when the laws are written down indicates a time when rules and contracts are standardized and experimentation is no longer encouraged as a result of certain legal precedents and practices becoming solidified in tradition. There are conservative and liberal interpretations of this process: to some—who are privileged by the existing laws—this creates a mythical “golden era” during which the population developed the best means to rule itself. To others, this imposes limits on how creative legislators allow themselves to be in adapting the legal code to new circumstances and keeping it relevant. Nietzsche, who is a staunch defendant of a type of [aristocracy](#), supports the first interpretation, but nonetheless sympathizes with the second one.

Quote

A book of laws such as the Code of Manu has the same origin as every other good law-book: it epitomizes the experience, the sagacity and the ethical experimentation of long centuries; it brings things to a conclusion; it no longer creates. The prerequisite to a codification of this sort is recognition of the fact that the means which establish the authority of a slowly and painfully attained *truth* are fundamentally different from those which one would make use of to prove it.

A law-book never recites the utility, the grounds, the casuistical antecedents of a law: for if it did so it would lose the imperative tone, the “thou shall,” on which obedience is based. The problem lies exactly here.—At a certain point in the evolution of a people, the class within it of the greatest insight, which is to say, the greatest hindsight and

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foresight, declares that the series of experiences determining how all shall live—or *can* live—has come to an end. The object now is to reap as rich and as complete a harvest as possible from the days of experiment and *hard* experience.

So the creation of a code of laws is an act of power by which the law-givers say: these matters are no longer up for discussion. Nietzsche then explains how the ruling classes, having decided that the era of legal experimentation is over, create what Marx would have called “the superstructure”, the over-arching set of narratives that the ruling classes use to preserve their power.

In consequence, the thing that is to be avoided above everything is further experimentation—the continuation of the state in which values are fluent, and are tested, chosen and criticized *ad infinitum*. Against this a double wall is set up: on the one hand, *revelation*, which is the assumption that the reasons lying behind the laws are *not* of human origin, that they were *not* sought out and found by a slow process and after many errors, but that they are of divine ancestry, and came into being complete, perfect, without a history, as a free gift, a miracle...; and on the other hand, *tradition*, which is the assumption that the law has stood unchanged from time immemorial, and that it is impious and a crime against one’s forefathers to bring it into question.

The authority of the law is thus grounded on the thesis: God gave it, and the fathers *lived* it.—The higher motive of such procedure lies in the design to distract consciousness, step by step, from its concern with notions of right living (that is to say, those that have been *proved* to be right by wide and carefully considered experience), so that instinct attains to a perfect automatism—a primary necessity to every sort of mastery, to every sort of perfection in the art of life.

To draw up such a law-book as Manu’s means to lay before a people the possibility of future mastery, of attainable perfection—it permits them to aspire to the highest reaches of the art of life. *To that end the thing must be made unconscious*: that is the aim of every holy lie ... – Nietzsche, [The Antichrist](#)

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He then goes on to justify the caste system, which does not concern us for the purposes of this essay. I mainly wish to note that, against the conservative analysis we find in Nietzsche—who seeks to remind us of the original advantages that certified the ancient laws—we can posit the case for adaptability, progress and evolution of the legal code according to mutual advantage in the ancient Epicureans—who advocate for a fluid legal system that allows for perpetual processes of experimentation and adaptation.

Quote

Among the things held to be just by law, whatever is proved to be of advantage in men's dealings has the stamp of justice, whether or not it be the same for all; but if a man makes a law and it does not prove to be mutually advantageous, then this is no longer just. And if what is mutually advantageous varies and only for a time corresponds to our concept of justice, nevertheless for that time it is just for those who do not trouble themselves about empty words, but look simply at the facts.

Where without any change in circumstances the things held to be just by law are seen not to correspond with the concept of justice in actual practice, such laws are not really just; but wherever the laws have ceased to be advantageous because of a change in circumstances, in that case the laws were for that time just when they were advantageous for the mutual dealings of the citizens, and subsequently ceased to be just when they were no longer advantageous.

Epicurus' [Principal Doctrines](#) 37-38

Notice that, first and foremost, it is clear that men create the laws and that men have, at any point, the power to change them. Epicureans never allow for a "*holy lie*" to even plant its roots in the soil of philosophy. While Epicurean doctrines seem to allow for an aristocratic code (things of advantage may or may not be "the same for all"), we also find in the Epicurean sources a lack of emphasis on the priorities of the ruling class, and instead an egalitarian, anarchic, and-most importantly-**pragmatic** focus on mutual benefit.

In Book 5 of *On the Nature of Things*, Lucretius mentions how "*neighbors began to form mutual alliances, wishing neither to do nor to suffer violence among themselves*", echoing again the indication that Epicureans believed contractarianism to be the earliest type of law.