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# Power and punishment in Nietzsche

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# **POWER AND PUNISHMENT IN NIETZSCHE**

**BY**

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**BA, PHILOSOPHY & POLITICAL SCIENCE, UNIVERSITY OF NEW HAMPSHIRE, 2004**

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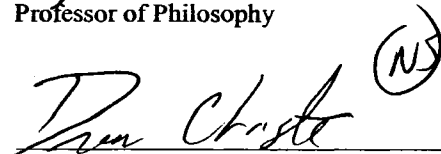
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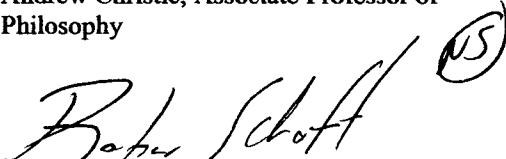
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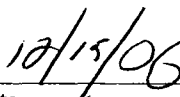
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**ABSTRACT**  
**POWER AND PUNISHMENT IN NIETZSCHE**

by

Jacob Skinner

University of New Hampshire, May, 2006

Nietzsche appears to hold contradictory views about punishment. Uncompromising in his commitment to noble ideals, Nietzsche often decries punishment as small-minded resentment and implores readers to look away. Though at times he describes it as an exalted flexing of the will, making the case that punishment plays a necessary role in social life. This paper argues that Nietzsche's views are not incompatible and that he holds a coherent theory of punishment which permits these clashing positions.

I argue that Nietzsche's theory of punishment is predicated as follows. Power is the objective measure of value. The single justification for punishing is the empowerment of power. By breaking down the concept of punishment into two basic elements, Nietzsche shows that the essential function of punishment is the exercise of power and control over others, while the equivocal element is the particular end which a given exercise of punishment aims to empower. When the end is deemed noble, punishment empowers power and is thus justified as valuable. When the end is deemed corrupt,

**punishment effectually empowers weakness, or disempowers power, and is thus evaluated as unjustifiable.**



## CHAPTER I

### NIETZSCHE & THE PHILOSOPHY OF PUNISHMENT

#### Introduction

Theories of punishment are generally considered of two types: the deterrence theory of punishment and the retributive theory of punishment. More precisely, deterrence and retribution describe the functions of modern penal practices: the moral justifications for punishing are grounded in consequentialism and deontology.<sup>1</sup> Those remotely familiar with Nietzsche know he is an outspoken critic of both consequentialism (utilitarianism) and deontology, and thus it should come with little surprise that throughout his writing modern penal practices are attacked for being complicit with corrupt, life denying ideals. In place of this criticism, however, Nietzsche neither offers an explicit theory of his own nor commits to an alternative theory of punishment. What, then, is his ultimate position on the practice of punishment? Is he denying its justification as a social institution outright? Does he implicitly align with some alternative theory? Is his work on the topic incomplete? Although fairly limited in number, there exist several different scholarly interpretations of Nietzsche's position.<sup>2</sup> I believe what is offered to be incorrect. The purpose of this paper is to add to the discussion by putting forth a competing interpretation of Nietzsche's theory of punishment.

Nietzsche's opposition to punishment is often quite overwhelming. At times he likens the practice to a nauseating denial of life which ought to be banished. "...Let us eliminate the concept of sin from the world," he cries, "and let us soon dispatch the concept of punishment after it! May these exiled monster live somewhere else henceforth and not among men—if they insist on living and will not perish of disgust with themselves!"<sup>3</sup> Elsewhere Nietzsche depicts punishment as a more offensive sight than the crime itself: "A strange thing, our punishment. It does not cleanse the criminal, it is no atonement; on the contrary, it pollutes worse than the crime does."<sup>4</sup> He explicitly accuses the practice of punishment as disguising expressions of cowardly violence, resentment, and revenge. It sanctifies ugly emotions and excuses reprehensible behaviors by feigning "a good conscience for itself with a lie."<sup>5</sup> Through his mouthpiece, Zarathustra, Nietzsche thus councils us to "Mistrust all in whom the impulse to punish is powerful,"<sup>6</sup> for more often than not those who call themselves just and advocate punishment conceal pleasure in the sight of suffering and desire to wield power over others. Drawing from these numerous diatribes, many have interpreted Nietzsche's theory of punishment as primarily critical in orientation. Michael Moore and Robert Solomon, for example, argue that Nietzsche's uncompromising commitment to the ideals of nobility translates into a wholesale rejection of punishment.<sup>7</sup> Punishing others is never a virtuous action. "Let us not become darker ourselves on their [criminals'] account, like all those who punish others and feel dissatisfied," writes Nietzsche. "Let us sooner step aside. Let us look away."<sup>8</sup>

While an abundance of evidence supporting this interpretation is found in Nietzsche's writing, drawing the conclusion that Nietzsche is an unequivocal opponent of punishment is difficult to accept for two reasons. First, complete opposition to punishment conjures an image of society that would appear more anarchist in constitution than noble, and Nietzsche makes no secret of his belief that social order is *necessary* and anarchy *corrupt*.<sup>9</sup> After all, without punishment how could the noble impose their will over competing wills? Second, the sheer strength of Nietzsche's opposition to punishment seems to overshadow the supportive remarks for punishment which are also found in his writing. Nietzsche, for instance, describes certain individuals as biological members of "the race of criminals" and implores society "to wage war against him even before he has committed any hostile act [first act as soon as one has him in one's power: his castration]."<sup>10</sup> Elsewhere claims that "If punishment and reward were abolished the strongest motives for performing certain acts and not performing certain acts would be abolished; mankind's utility requires their continuance."<sup>11</sup> In fact, throughout the second essay in "On the Genealogy of Morals" entitled "Guilt, 'Bad Conscience,' and the Like," Nietzsche engages in his most sustained discussion of punishment, presenting a balanced and comprehensive analysis which treats punishment as necessary but also potentially inimical to human flourishing.<sup>12</sup> His criticism, of course, targets the latter. Two alternative interpretations of Nietzsche's theory of punishment have emerged.

The first, put forth by Aaron Small, argues that Nietzsche's competing views on punishment are evidence that Nietzsche holds no coherent theory of

punishment at all.<sup>13</sup> The reasons we punish have, according to Nietzsche, become thoroughly entangled, blurring what might be considered justifiable motives for punishing with the unjustifiable, or at least rendering them incompatible with reality: "Today it is impossible to say for certain *why* people are punished: all concepts in which an entire process is semiotically concentrated elude definition; only that which has no history is definable." According to Small, Nietzsche's recognition that punishment is "overdetermined by utilities of all kinds"<sup>14</sup> is his great insight into the philosophy of punishment. Small concludes that "any attempt to assign a single meaning to the concept of punishment is misguided,"<sup>15</sup> because Nietzsche's insight indicts the coherency of all theories of punishment. I disagree with Small's conclusion because in interpreting Nietzsche's theory of punishment I don't assign importance to punishment's specific utility as Small does. I believe that Nietzsche has something more fundamental in mind when he evaluates the practice of punishment, and will discuss this objection in conjunction with my positive conception of Nietzsche's theory of punishment in detail toward the beginning of chapter four .

The second alternative argues that while Nietzsche is often a powerful opponent of punishment, his opposition is qualified by a positive theory of punishment. A consequentialist, for instance, should loudly object to punishment in a world which only practices cruel punishment, for it thus creates disproportionate amounts of pain and negates the moral justification to punish. That is, her objections don't imply a universal rejection of punishment, for here criticism actually affirms her underlying commitment to the consequentialist

theory of punishment, which values the maximizing of some overall good. Kyron Huigens takes a similar position, arguing that what Nietzsche opposes is not punishment altogether, but the modern institution of punishment as predicated upon the moral theories of consequentialism and deontology.<sup>16</sup> Both, Huigen argues, are products of what Nietzsche considers slave morality. As opposed to the values master morality espouses in its affirmation of life, the values of slave morality originate out of hatred for and exhaustion with life. They are nihilistic, ascetic, overly rational, and have the affect of suffocating instead of stimulating human flourishing. Their reflection in penal practices, Huigens believes, creates a distorted picture of criminal fault and an “austere conception of truth” based on unrealistic accounts of human agency and happiness.<sup>17</sup> Thus, Huigens believes that Nietzsche’s overall criticism is intended to criticize penal practices for hindering rather than promoting human flourishing. In contrast, Huigen argues that virtue ethics—currently unrepresented in modern legal theory—stress the notion of human flourishing in ways close to Nietzsche’s notion of master morality. Despite his wrathful opposition to punishment as currently practiced, Huigen believes that Nietzsche would endorse an aretaic legal theory as a relatively unproblematic version of master morality. The aretaic legal theory is “premised on virtue ethics,” which, according to Huigens, offers “an alternative to both the deontological theory and the consequentialist theory of punishment.”<sup>18</sup> By altering underlying ethical assumptions, social institutions shaped in the image of slave morality could be supplanted by those shaped in the image of master morality. In turn, the positive component of Nietzsche’s theory of

punishment would justify punishment for playing a role in “the process of habituation to virtue” by instantiating the rules, displaying the rules publicly, providing “an incentive to abide by the rules until they are internalized,” and securing the “peace against those who cannot acquire virtue in order to enable those who can to do so.”<sup>19</sup> Punishment, in other words, is justified as an instrument for the development of virtue.

I agree with Huigens’ position that Nietzsche’s critical orientation ought to be interpreted as an extension of positive commitments. As I later argue, there is overwhelming evidence to conclude that while Nietzsche certainly despised modern penal practices, he did so with an alternative theory of punishment in mind. However, my thesis is that this alternative is not in the habituation to virtue, but in the empowering of power. Huigens’ argument fails to capture the breadth of Nietzsche’s theory of punishment which extols power, not virtue, as the ultimate justification for punishing. Life is affirmed through active reaching for power; punishment is justified when it serves this end alone.

### **Thesis**

Focusing on the relationship between power and punishment is essential to understanding Nietzsche’s theory of punishment because power informs both his conceptual definition of punishment as well as the criterion for determining its justification. I argue that Nietzsche’s theory of punishment identifies the essential function of punishment to be an exercise of control, an expression of power, and that he grounds the question of justification in an analysis of what end is thereby empowered. When wielded for noble ends, power is empowered, thus justifying

the practice of punishment as having value. When wielded for corrupt ends, weakness is empowered and thus punishment becomes inimical to power and has disvalue.

I develop this thesis in 4 stages. In chapter II I establish power as the source of value and establish Nietzsche's distinction between noble and corrupt. Chapter III analyzes Nietzsche's conception of punishment and establishes its essential function as control and power. In chapter IV I perform an exegesis of the second essay in *Genealogy* entitled "'Guilt,' 'Bad Conscience,' and the Like," making a case for my claim that Nietzsche evaluates punishment as a practice wielded by both the noble (justifiable) and corrupt (unjustifiable). Chapter V concludes with my heuristic outline of Nietzsche's theory of punishment as he envisions it supplanting modern penal practices in some *possible future state of affairs*.

## CHAPTER II

### POWER & VALUE

Like consequentialist and deontological theories of punishment, Nietzsche's theory of punishment hinges on a conception of value. For deontologists, punishment is justified as a moral obligation. For consequentialists, punishment's justification lies in the capacity to promote some overall measure of social welfare. For Nietzsche, value is understood in terms of Power generation, and thus the value of punishment hinges on the promotion of Power.

With the death of metaphysics as a source of truth, Nietzsche draws the conclusion that all value "has long been created."<sup>20</sup> Power is its objective determination, a claim Nietzsche defends through an investigation into value's origins where the value of value(s) is determined. According to Nietzsche, the basic values of "good" and "bad" originated through the "good" themselves, "that is to say, the noble, powerful, high-stationed" who established "good" out of their own image and "bad" out of the contrasting image of the common people.<sup>21</sup> Nietzsche sees this idea captured in the Greek term *esthlos*, the ancient name bestowed upon someone to signify "one who is, who possesses reality, who is actual, who is true."<sup>22</sup> Power is understood in terms of human flourishing and



overcoming, and this is the universal measure of value: "What is the objective measure of value? Solely the quantum of enhanced and organized power."<sup>23</sup>

The value contrast between "good" and "bad" is thus grounded in relation to power's capacity to expand:

What is good? Everything that heightens the feeling of power in man, the will to power, power itself. What is bad? Everything that is born of weakness. What is happiness? The feeling that power is *growing*, that resistance is overcome. Not contentedness but more power; not peace but war; not virtue but fitness. The weak and failures shall perish: first principle of *our* love of man. And they shall be given every possible assistance.<sup>24</sup>

In a universe without metaphysical truth, why does Nietzsche feel entitled to claim that power has any real priority? From an empirical standpoint Nietzsche believes that striving for power constitutes the essence of the core of all being: "out of the esteeming itself speaks the will to power."<sup>25</sup> All beings want power, even as they deny and sacrifice themselves. "In all events a *will to power* is operating," which strives to create "greater units of power" by overcoming restrictions and becoming master.<sup>26</sup> Will to power is so basic that even the definition of power is contained in this idea: power is conceived through the manifestation of *will to power* as power over some previous level of power followed by the renewed yearning to overcome this level of power and continuously transcend limitations. Life is "*that which must always overcome itself.*"<sup>27</sup> Power is enjoyed only in the experience of more power: "there is no law; every power draws its last consequence at every moment."<sup>28</sup> Power is thus actively created, and in this respect the process through which the values "good" and "bad" implies their continuous recreation: "Driven on by themselves, they must overcome themselves again and again."<sup>29</sup>

Nietzsche considers the ultimate value in terms of attaining human greatness, or self-overcoming. Man, according to Nietzsche, is a bridge between ape and overman. By overcoming the animal in ourselves we, in essence, transform ourselves into super-humans, and it is this transformation that eradicates nihilistic withdrawal and justifies the universe.<sup>30</sup> The value of human association, therefore, is neither moral nor utilitarian in measure, but rather a question of “what type of man shall be *bred*, shall be *willed*, for being higher in value, worthier of life, more certain of a future.”<sup>31</sup>

Nietzsche envisions the overman as the embodiment of self-perfection characterized by both physical and psychological mastery over oneself and over one’s circumstances. In Dionysian harmony, the lion’s physical prowess combines with the saint’s inner strength of control sublimating our most violent animal passions into the most elevated forms of greatness and beauty: The “Strength of a Roman Caesar and the soul of Christ.”<sup>32</sup> This is Power, and to this end alone Nietzsche sees the practice of punishment justified. It is also to this end, or rather as opposed to this end, that Nietzsche sees the practice of punishment as most objectionable.

## CHAPTER III

### THE CONCEPTUAL ANALYSIS OF PUNISHMENT

In this section I explain how Nietzsche conceptualizes punishment in terms of form and meaning, that the form is enduring while the meaning changes, that the form of punishment existed prior to punishment itself and was sublimated when a meaning was associated with it giving it some specific purpose, and that for these reasons the form of punishment reveals what is essential about the practice—control and power over others for now this and now that purpose. I also briefly discuss these numerous associated ends as they are the focus of next section and the question mark in determining punishment's value.

#### **The Concept of Punishment**

Nietzsche intends for this generalization to apply not only to the political practice of punishment, but to the concept of punishment in general. A parent punishes a child to gain control over their behavior. Gang members punish disloyalty to establish code while military officials punish insubordination to uphold strict rank and file procedures. Teachers punish students to instill fear and reinforce their control over the classroom. The weak punish in order to revel in the feeling of power over others. Even self-punishment is an expression of

compulsion reverberating through an internally divided individual. Consider, for example, Tiger Woods, who, sickened after missing his first cut in a Major Tournament, locked himself up in a room to endure the most painful thing imaginable: watching the remainder on television. Needless to say, Woods emerged from this torture chamber to win his next six tournaments, just as punishment in general serves to empower some particular end.

In order to define something knowledge of its essence is essential. Nietzsche deconstructs the concept of punishment into what he believes are two basic elements: an *enduring* element which we'll refer to as the **form** of punishment (the formal acts and procedures) and the *fluid* element which we'll refer to as the **meaning** behind punishment (the purposes and expectations associated with the form). The form is "a certain strict sequence of procedures" which involves inflicting pain, removing freedom, and causing harm.<sup>33</sup> Nietzsche considers the form the enduring aspect in punishment because the practice has, throughout history, consistently involved the infliction of suffering. The meaning, however, is considered the fluid aspect because the purpose and "expectation associated with the performance of such procedures" has consistently undergone changes throughout history.<sup>34</sup> Together, these two elements satisfy our concept of punishment.

If we consider each in isolation, the form and meaning no longer seem distinctively penal. For instance, injury, pain, harm, loss, (i.e. the form of punishment) can be inflicted upon a person in many different situations which aren't considered punishment. I could fall into a well and be confined to nasty

conditions similar to the ones prisoners face, but this wouldn't be considered punishment since the form is inflicted accidentally (i.e. absent an agent's intentions). I could, however, punish myself by locking myself up and inflicting pain if I felt I had broke my own law and needed to be punished. Or consider, for example, a person in the woods who is trampled by a pack of wild horses and must suffer an excruciatingly painful death. Now consider Nietzsche's description of the same event, only this time as a form of punishment: "Consider the old German punishments; for example...tearing apart or trampling by horses."<sup>35</sup> We certainly wouldn't call the former an act of punishment, although we do the latter when it's performed in the middle of a town on a recently captured murderer. In both examples the associated expectation is purposive, and this purposiveness satisfies our conception of punishment: we recognize the associated meaning as a necessary part of the definition of punishment.

The meaning associated with forms of punishment (be it deterrence, revenge, sadism etc.) is unthinkable if the form is removed. In the absence of some formal procedure it's impossible to imagine the association of meaning. After all, how can there be an association, or even an expectation, without a predication? It's perfectly reasonable for me to expect that student lateness, for example, would decrease if I held students 10 minutes after class for every 1 minute they came in late. But what would I base these expectations on if some kind of underlying action was lacking? Suppose I expressed to my students that lateness upsets me personally, but didn't enforce any kind of material penalty. I could still ground expectations that lateness will decrease in the fact that I had a

conversation with my students in which I conveyed the message that being late will cause me to be upset and therefore believe, or at least certainly hope, being late would hurt them because they would be upset to upset me. Formal procedures can be thought of without meaningful expectations; meaningful expectations cannot be thought of in a vacuum.

Nietzsche's draws the concept of punishment apart in order to better understand the nature of its inner constitution. This inner constitution, I believe, reveals both the essence of punishment as well the source determining whether or not the practice itself has value. The essential function of punishment is captured through its form, and I discuss this in detail below. Punishment's value, the question of its justification, is determined by examining the meaning towards which the practice is applied, and I discuss this in detail next section.

### **Form & Meaning**

Nietzsche analyzes the meaning associated with punishment, its fluid element, into numerous different purposes or utilities which have been "*projected* and interpreted *into* the procedure" throughout history and which today, in a culminating stew, "possess in fact not *one* meaning but a whole synthesis of 'meanings.'"<sup>36</sup> While it was once possible to pinpoint some single specific meaning, due to the long history behind punishment and the growing tendency for associations made in previous employments to overlap and carry into later ones, any specific explanation of why today we punish is impossible to determine: "Today it is impossible to say for certain *why* people are punished: all

concepts in which an entire process is semiotically concentrated elude definition; only that which has no history is definable.<sup>37</sup>

To illustrate just how fluid the meaning has been, Nietzsche juxtaposes several different purposes which have all been associated with the same procedure. Punishment is enacted for “rendering harmless” and “preventing further harm,” while at other times it becomes a way to compensate “the injured party for harm done.” Punishment might function to isolate the “disturbance of an equilibrium” so that no further spread of disorder occurs. Punishment can be used as a means of “inspiring fear” of the political authorities in the minds of the public, or it might be employed because society wants to pay back criminals for the advantages they experienced as a result of their criminal activity. At times punishment is a cleansing of perceived cancerous elements from a society, while other times it’s a social celebration and festival in the form of a “rape and mockery of a finally defeated enemy.” Punishment is used to burn into people memories, whether it’s “for him who suffers the punishment...or for those who witness its execution.” Punishment is also enacted as a type of compromise with the victim’s desire for personal revenge, and other times as the repayment that society demands when it punished in order to “protect the wrongdoer from the excesses of revenge.” Punishment may be a society’s formal declaration of war “against an enemy of peace, of the law, of order, of the authorities.”<sup>38</sup>

This is not, according to Nietzsche, a complete list, but rather serves to illustrate just how many different purposes have been attached to punishment and achieved with the same procedure. It also draws our attention to a

substantial number of purposes, none of which stretch the imagination, competing in the modern punishment machine and potentially operative in any decision to punish. But if punishment consists of two aspects, one being all these different purposes and the second being the procedure they are projected into, and if, as we discussed earlier, it's not reasonable to speak of purposes without first having a procedure of some sort in mind from which to base these expectations, then the question must be asked: which is older, the procedure or the purpose, form or meaning? Expectations, it would seem, must be derived from observing the results of actions, and therefore associated meanings seem posterior to empirical observations. Are the procedures which constitute the form of punishment older than the meaningful practice itself? If so, does the projection of meaning into form make the concept of punishment a sublimation of something? Is the essence of punishment a question of more than simply punishment and some particular outcome like deterrence or retribution?

The answer is yes: Nietzsche locates the essence of punishment running deeper than any socially contingent meaning.

Yet a word on the origin and the purpose of punishment—two problems that are separate, or ought to be separate: unfortunately, they are usually confounded. How have previous genealogists of morals set about solving these problems? Naively, as has always been their way: they seek out some “purpose” in punishment, for example, revenge or deterrence, then guilelessly place this purpose at the beginning as *causa fiendi* of punishment, and—have done. The “purpose of law,” however, is absolutely the last thing to employ in the history of the origin of law: on the contrary, there is for historiography of any kind no more important proposition than the one it took such effort to establish but which really ought to be established now: the cause of the origin of a thing and its eventual utility, its actual employment and place in a system of purposes, lie world's apart; whatever exists, having somehow come into being, is



again and again reinterpreted to new ends, taken over, transformed, and redirected by some power superior to it; all events in the organic world are a subduing, a becoming master, and all subduing and becoming master involves a fresh interpretation, an adaptation through which any previous “meaning” and “purpose” are necessarily obscured or even obliterated. However well one has understood the utility of any physiological organ (or of a legal institution, a social custom, a political usage, a form in art or in a religious cult), this means nothing regarding its origin: however uncomfortable and disagreeable this may sound to older ears—for one had always believed that to understand the demonstrable purpose, the utility of a thing, a form, or an institution, was also to understand the reason why it originated—the eye being made for seeing, the hand being made for grasping. Thus one also imagined that punishment was devised for punishing.<sup>39</sup>

Nietzsche refutes the idea that punishment exists for the purpose of punishing—therefore excluding associated meanings from its essential definition—and offers instead a thesis attributing meaning to the flux in which competing wills to power exert their desire for Power by attempting to overpower previous powers and direct them towards their use. What’s essential in punishment is its sublimated form, and thus Nietzsche concludes the form must have been “something older, earlier than its employment in punishment, that the latter [meaning] is *projected* and interpreted *into* the procedure (which has long existed but been employed in another sense).”<sup>40</sup>

We’re left with an important question then: in what capacity did the procedure exist prior to being employed in punishment? Nietzsche claims the form is sublimated (or, more precisely, *aufheben*)<sup>41</sup> into the practice of punishment when meaning is associated. It is a “canceled” “preserved” and “picked up” form of barbaric, painful, warlike violence and cruelty characteristic of pre-socialized states of nature and instinctively recognized as a method of

control and power over individuals. Among the earliest practices of punishment the form originally replicated the return to what the social entity itself stood in opposition to.

...the community, throws him back again into the savage and outlaw state against which he has hitherto been protected...“Punishment” at this level of civilization is simply a copy, a *mimus*, of the normal attitude toward a hated, disarmed, prostrated enemy, who has lost not only every right and protection, but all hope of quarter as well; it is thus the rights of war and the victory celebration of the *vae victis!* in all their mercilessness and cruelty—which explains why it is that war itself (including the warlike sacrificial cult) has provided all the forms punishment has assumed throughout history.<sup>42</sup>

The essence of punishment is control and power. How this control and power is used—the question of its justification—is the topic of the next chapter.

## CHAPTER IV

### NOBLE AND CORRUPT PRACTICES OF PUNISHMENT

In this section I argue that Nietzsche determines the value of punishment by examining the associated meaning and classifying it as either noble or corrupt. When punishment is wielded by the noble, power increases and thus justifies the practice. As social power increases, the value associated with punishing undergoes fluctuation: the stronger the society, the less it finds the need to punish and the more nuanced its application of punishment. When punishment is wielded for corrupt ends, powers which are hostile to life increase, thus transfiguring punishment into an instrument of nihilistic recoil.

#### **Behind Meaning**

Robin Small argues that by uncovering how the meaning associated with punishment “is overdetermined by utilities of all kinds”<sup>43</sup> Nietzsche’s intention is to demonstrate that no single theory of punishment can provide adequate justification for the practice: “the distinction between punishment as a material practice and the further functions which it has or is believed to have implies that there is no single explanation of justification of punishment.”<sup>44</sup> In arriving at this conclusion I believe that Small is overlooking the possibility that what’s truly

important lies behind the various meanings. That is, the single, unified principle from which all meaning is evaluated is power.

Words, as Nietzsche put it, are pockets “into which now this, now that, now several things at once have been put!”<sup>45</sup> And just as words, things, and customs are constructions of power by now this and now that force, in Nietzsche we are confronted with a thinker who wants “to look now out this window, now out that.”<sup>46</sup> Whatever meaning or purpose happens to be associated with punishment is not, for Nietzsche, the central question. The central question is whether this meaning is of noble or corrupt origins.

Purposes and utilities are only signs that a will to power has become master of something less powerful and imposed upon it the character of a function; and the entire history of a “thing,” an organ, a custom can in this way be a continuous sign-chain of ever new interpretations and adaptations whose causes do not even have to be related to one another but, on the contrary, in some cases succeed and alternate with one another in a purely chance fashion. The “evolution” of a thing, a custom, an organ is thus by no means its progressus toward a goal, even less a logical progressus by the shortest route and with the smallest expenditure of force—but a succession of more or less profound, more or less mutually independent processes of subduing, plus the resistances they encounter, the attempts at transformation for the purpose of defense and reaction, and the results of successful counteractions. The form is fluid, but the “meaning” even more so...even a partial *diminution of utility*, an atrophying and degeneration, a loss of meaning and purposiveness—in short, death—is among the conditions of an actual *progressus*, which always appears in the shape of a will and way to *greater power* and is always carried through at the expense of numerous smaller powers...in all events a *will to power* is operating.<sup>47</sup>

The remainder of this section is broken into three parts dedicated to drawing out the idea of investigating behind punishment’s meaning and evaluating it as either an exercise of noble or corrupt origins. In the first section I

establish the delicate relationship between punishment's noble and corrupt practice. In the second section I use this basic distinction to build a more comprehensive account of the noble practice of punishment, focusing attention on how meaning fluctuates as social Power increases. Finally, in the third section I carefully examine Nietzsche's criticism of punishment as a form of corruption from three distinct perspectives. The first involves an account of resentment and punishment's moral-religious implications. The second discusses Nietzsche's criticism of utilitarian justifications of punishment. I conclude with a discussion Nietzsche's opposition to punishment as unadorned revenge.

### **Noble & Corrupt**

What is the most basic condition upon which social interaction is possible? Nietzsche's answer is the ability to make and keep promises. Without the ability to control our immediate impulses and interests, social arrangements and personal agreements would have collapsed the moment they were entered, thus making disadvantageous human association for anybody but the weak. The beginnings of social interaction, however, are not dictated by the weaker over the stronger. Furthermore, Nietzsche makes clear that without social frameworks, the highest type of power, the overman, is not possible. The establishment of a social framework, therefore, can be considered an act of creation, the overcoming of a will to power, through which the generation of greater power becomes possible, and it all begins with the human capacity to promise.

The human animal, once controlled entirely by impulsive drives and a regulating unconscious, as all other animals under the spell of nature are, and restricted by an “active and in the strictest sense positive faculty of repression” which preserves the health and vitality of the organism through the force of forgetfulness (forgetfulness, not memory, is normal and necessary), does not have a natural capacity to make promises.<sup>48</sup> So how did social arrangements become possible? How did the human animal break from nature’s thrall and internalize social regulation? This break, according to Nietzsche, was accomplished by the formation of permanent memory through which the normal force of forgetfulness could, in certain cases, be canceled, and the impulsive connection with nature then overridden. Only by breeding a memory to counteract the more natural course of human behavior is self-regulated action possible. To that end, punishment served an essential function as a form-giving force in this preparatory task that man performed “upon himself during the greater part of existence of the human race.”<sup>49</sup>

How is a memory created in humans to any greater degree than the basic kind of biological memory we might expect in animals, like a memory to avoid fire, or large falls, or stronger animals? Let’s start by looking at contemporary evidence. How are many dogs trained to stay in the yard when immediate restrictions like owners and leashes are taken away? One common method is the electrical fence, a device which operates, in essentials, by habitually associating painful memories with a dog’s “social” boundaries. According to Nietzsche, the human animal, as well, was formed at its most basic level through

pain, the result of a sublimated “instinct that realized that pain is the most powerful aid to mnemonics.”<sup>50</sup> Only when something is burned into the mind through a painful association, one which isn’t simply washed away by the force of forgetfulness, is memory first created, and only when such memories are manufactured to override impulses is nature broken. Thus promises attending primitive social agreements were first upheld through the active creation of memory, a task made possible by sublimating the most excruciating experiences of pain and cruelty in the form of punishment and executed for the purpose of creating certain indispensable memories necessary for social regulation.

What is behind the purpose of creating these initial indispensable memories? What explains this need? Power. The basis of all human interaction begins with power measuring itself against another power and from this evaluation arriving at agreements guided by the interests of power. As such, “setting prices, determining values, contriving equivalences, exchanging—these preoccupied the earliest thinking of man to so great an extent that in a certain sense they constitute thinking *as such*.”<sup>51</sup> Here “*promises were made*,” and it is thus here “that a memory had to be *made* for those who promised.”<sup>52</sup> Punishment, in this situation, is a sublimation of nature’s harsh cruelty for the purpose of upholding obligations and promises.

The worse man’s memory has been, the more fearful has been the appearance of his customs; the severity of the penal code provides an especially significant measure of the degree of effort needed to overcome forgetfulness and to impose a few primitive demands of social existence as *present realities* upon these slaves of momentary affect and desire.<sup>53</sup>

Those without memory, without the capacity to self-regulate, are *slaves* insofar as weakness describes a will which is the spastic will of competing impulsive drives. Here the purpose associated with punishment is to expand Power beyond this level; and as this Power increases the value of punishment is altered.

The "creditor" always becomes more humane to the extent that he has grown richer; finally, how much injury he can endure without suffering from it becomes the actual *measure* of his wealth...the health of a society...how many parasites it can stand.<sup>54</sup>

On one rung of the ladder punishment has value, but the value of this value is only valuable insofar as it enables a power to overcome this stage of development and climb to a higher rung, upon which it can be said that this previous value was a means to its own devaluation. In other words, as power increases the tendency to punish decreases, though punishment is itself necessary for power's increase.

It is this precise process of overcoming that I shall argue is characteristic of the positive value associations Nietzsche dichotomizes the history of punishment through, and which therefore distinguish it from another, dark history through which weak, corrupt motivations dominate. True, in the service of power punishment was once practiced to create conditions in which promises could be made, and thus it is also true that without punishment inevitable disadvantage and instability would have precluded qualitative developments in social relations. However, Nietzsche makes a seamless transition from this application of punishment to one which, upon first appearance is similar enough to be overlooked, though upon closer examination has a completely distinct meaning:



punishment executed as a form of compensation. The notion of justice which balances injury with the infliction of pain is, to modern ears, almost axiomatic. We are captivated (literally) by “Law and Order.” Nietzsche, however, links these scales of justice back to the practice of punishment which originated for the purpose of compensation, and ultimately chastises it as the creation of the weak. Punishment as compensation? as way of balancing scales? But how can punishment undo a deed? While Nietzsche appears to intentionally blur some initial details, he explicitly suggests that this idea originated because certain creditors were, above all other considerations, seduced by the sheer pleasure of being able to inflict pain and suffering upon debtors. In exchange for the injury of losing some actual material possession, the creditor accepted as compensation the “pleasure of being allowed to vent his power freely upon one who is powerless...the enjoyment of violation.”<sup>55</sup> Indeed, cruelty is, according to Nietzsche, a deep source of pleasure for human beings: “To see others suffer does one good, to make others suffer even more.”<sup>56</sup> No longer in the wild where humans once freely vented desires, social animals are forced to create different channels and outlets through which cruel instincts can be humored, thus explaining ancient festivals involving public torture and execution and right through modernity’s more “humane” celebration of cruelty on talk shows hosted by ring leaders like Jerry Springer. And so too in punishment, Nietzsche proclaims, “there is so much that is *festive!*”<sup>57</sup>

Yet Nietzsche is by no means glorifying such an end, be it for the pleasure of the executor or the audience. In fact, he links these origins to weakness: the

compensation of a will to power that reacts to the frustration of some perception of impotence by seeking out victims it can rise above. The more enjoyment one finds in suffering, the lower this person's power and social standing, for it is of the essence of weakness to seek pseudo feelings of power by looking down on the helpless, suffering, powerless. So, too, when punishment is sought as compensation for an injury, and is no longer a genuinely creative activity as I argue it is in other cases, is the practice a reflection of weakness. To what extent is the history of punishment implicated? To the extent that from very early on legal evaluations were created between the creditor's injury and the amount of pain to be inflicted upon the debtor. Here material compensation is ignored. Instead the creditor punishes for the pleasure of participating "in a *right of the masters*...the exalted sensation of being allowed to despise and mistreat someone as 'beneath him'...The compensation...consists in a warrant for and title to cruelty."<sup>58</sup> Hence Nietzsche locates, although confusingly if not seen in this context, a counter movement to this practice among the noble.

I consider it an advance, as evidence of a freer, more generous, more *Roman* conception of law when the Twelve Tables of Rome decreed it a matter of indifference how much or how little the creditor cut off in such cases.<sup>59</sup>

Using this framework to distinguish between noble and corrupt, Nietzsche expands his discussion to larger contexts.

### **Noble**

Social development tends to progress in the same direction it originated. The normative element of power behind the value measurements and subsequent ways of interacting established during initial creditor/debtor relations

is again and again transferred into all higher arrangements of social development.<sup>60</sup> With power as the primary and ever evolving end, justice, was, at its inception, “the good will among parties of approximately equal power to come to terms with one another, to reach an ‘understanding’ by means of a settlement—and to *compel* parties of lesser power to reach a settlement among themselves.”<sup>61</sup> As power increases so will the concept of justice change. In a truly powerful state, after a long battle of overcoming, the same justice which maintained delicate social connections with not so delicate measures, exhibits the refined and rare privilege of mercy.

Nietzsche illuminates this idea in the description of a healthy community’s overcoming. The community, a tremendous advantage for human prosperity, one which Nietzsche is critical of thinkers like Rousseau for dismissing, serves to protect those under it from the outside world of violence.<sup>62</sup> In power terms, the community is similar to the creditor in that it provides for those it protects, the debtors, power in the form of shelter and protection from an otherwise hostile environment. The community’s power, and subsequent ability to survive, is, however, the reflection of a collective idea shared by its debtors, an idea which is therefore initially weak (otherwise why would there be a need for the community) and in potential danger of collapse. When the community is young and its power not yet stabilized, it treats members who break the law as it does any external threat leveled at the whole. “The lawbreaker,” writes Nietzsche, “...has actually attacked his creditor,” and his punishment, because he threatens the survival of the community, consists in being thrust back into the violent wild as a symbolic

reminder of just why the community is so important in the first place.<sup>63</sup> Initially, punishment is practiced as a way of stabilizing the power of the community (the direct object of damage is no concern), and it is for this reason that, as we previously discussed, the forms of punishment have historically been linked with war practices. As the community establishes a stable power, however, the meaning of punishment undergoes a major change and is directed toward different purposes: higher purposes, to be more precise. Punishment now assumes the purpose of minimizing the damage which occurs in response to the crime after the crime. To this end punishment serves, among other functions, as a “compromise” with the injured party’s desire for revenge, as a way of “localizing” the transgression and preventing its spread, or in order to determine compensation and “settle” the matter completely.<sup>64</sup> What’s crucial is that the associated meaning is altering with the changing power:

As the power and self-confidence of a community increase, the penal law always becomes more moderate; every weakening or imperiling of the former brings with it a restoration of the harsher forms of the latter.<sup>65</sup>

Under the auspices of strength, the practice of punishment, its value, alters—and thus contributes to the altering—in the fluctuating context of power. Law, punishment, and justice, all of which originate in the sphere of the “active, strong, spontaneous, aggressive,” are practices through which now this application, now that application, serve to generate greater units of power. The meaning associated with punishment was never and is never the controlling end. In fact, the most common target of these associations, destruction, exploitation, injury, violence, are at bottom essential, and in the strictest sense, vital functions

of life; opposing conceptions of justice were actively created—thus not as responses to violence predicated on notions of higher law—in order to channel these essential processes, to control, direct, sublimate them toward higher ends, but not eliminate them altogether. As such, Nietzsche considers a practice like punishment an “*exceptional condition*,” since its inherent function is to restrict the “will of life,” though when instrumentally deployed in broader developmental context it is “subordinate to its total goal as a single means: namely, as a means of creating *greater* units of power.”<sup>66</sup> In the process of overcoming, punishment is once again necessary and valuable in certain stages of power development. Increasing power correlates with an increasing degree of tolerance and humaneness. Just as Nietzsche proposes that we measure the wealth of a person by the amount of financial injury they can incur without suffering, so too does he propose that we measure the power of a society by the amount of harm it can withstand without feeling threatened. In a weak society dissent is treated as parasitic, but in a powerful and healthy society such parasites are not only tolerated, they’re accommodated.

It is not unthinkable that a society might attain such a *consciousness of power* that it could allow itself the noblest luxury possible to it—letting those who harm it go unpunished.<sup>67</sup>

The same justice which once sought to control behavior, compel conformity, and enforce terms “ends by winking and letting those incapable of discharging their debts go free: it end, as does every good thing on earth, by *overcoming itself*.”<sup>68</sup> Empowerment, not moral or utilitarian concerns, is the end to which all justice strives. Ultimate power points beyond punishment: “This self-overcoming of justice: one knows the beautiful name it has given itself—*mercy*; it

goes without saying that mercy remains the privilege of the most powerful man, or better, his—beyond the law.<sup>69</sup> What Nietzsche envisions for a new concept of punishment, one that comes to replace the old one once society is strong enough for it, is later developed in the final section.

### Corruption

Ressentiment & Morality. “I don’t like him.”—Why?—“I am not equal to him.”—Has any human being ever answered that way?<sup>70</sup> I briefly sketched Nietzsche’s positive conception of justice in the sphere of nobility above. In this sphere the practice of punishment, I argued, is subservient to the goal of creating greater units of power, and thus must fluctuate accordingly. According to Nietzsche, however, the modern idea of justice is grounded in the response to moral wrongdoing. Just as we commonly associate guilt with the experience of suffering, moral appeals to retribution construct notions of justice out of penal responses to violations of the moral law. Punishment is held to be an end in itself, and suffering the source of atonement. It’s no secret that Nietzsche rejects all theological assumptions and practices, but in rejecting these prejudices some natural explanation for their existence must be offered, for something about God’s existence exists when billions of people worship: Nietzsche must provide a natural explanation for why it is that we’ve come to so readily associate punishment with so many aspects of life. Why do we see punishment as the proper moral response to wrongdoing? No other animals punish. Why do many people interpret life as a form of punishment through which atonement for irremovable imperfection is possible? Why has the predominant world belief

been that in death one is either eternally punished or rewarded? Nietzsche explains these connections as historical developments that evolved through a basic psychological reaction to suffering called resentment.

Ressentiment describes a psychological state of mind which Nietzsche attributes to the corruption and revaluation of the noble values “good” and “bad” into “good” and “evil”. Under resentment the purpose of punishment is radically transformed into an instrument of violence to achieve the “submerged hatred, the vengefulness of the impotent.”<sup>71</sup>

Ressentiment, according to Nietzsche, is behavior that is fundamentally the reactive response to some perceived feeling of suffering, and its aim, not to be confused for a means of preventing further harm, is to relieve or “*deaden pain by means of affects.*”<sup>72</sup> Its object, whoever the victim happens to be, is thus not causal. Resentment is therefore action that can be reduced to reaction: “No is its creative deed.”<sup>73</sup> Lack of power underlies resentment, its increase is never a consequence. All resentment which cannot be discharged and overcome, spreads like a poisonous cancer through the body. Best thing: to be above all feelings of resentment. Second best thing: to discharge any feelings through an immediate, honest response. That humans, as animals trapped within the repressive structures of society, develop feelings of resentment from time to time is not the major target of Nietzsche’s concern. That these feelings of resentment can grow to such proportions that entire lives, entire epochs of history, entire systems of values are created as a result *is*.

The expansion of resentment into a creative force is explained by Nietzsche in the story of the historical battle for power between two ruling classes: Rome's warrior nobility and the physically weaker Jewish Priesthood, a battle which left the Priests defeated and thus without recourse to the real physical revenge of "true reaction, that of deeds."<sup>74</sup> With their will to power still intact, suffering deeply from disempowerment, overrun with the desire for vengeance but prevented from acting, obsessed with the fate of their evil enemy, the repressed hatred, the overwhelming, natural, instinctive desire to overcome these Roman conquerors and exact suffering, grew and grew, until finally the Priests compensated for physical impotence by devising a clever form of revenge: a replication of the conditions of revenge through a radical revaluation of the noble values of "good" and "bad". In short, a slave rebellion against master morality to convince the world that, in their state of repression, the slaves were the happy ones and the masters were the ones who suffered.

How do the slaves revolt? "The slave revolt in morality begins when *ressentiment* itself becomes creative and *gives birth to values.*"<sup>75</sup> Unable to retaliate physically and satisfy the root of their anguish, the Priests label the Roman's an evil enemy and target the very values upon which the conditions of their oppression and suffering exist. The noble values, a creative act first involving the correlation of power with "good" and then, only afterwards, the inversion with "bad," is exploited by the priests who arrive at a new concept of "good" through the inversion of the concept "evil" that they created in the act of saying no to Roman strength and hostility. Nietzsche sees this as the beginning



of a revaluation of values because, in essence, that associated with the original, noble “good” is now called “evil” and that with the original, noble “bad” now, out of the habit of opposites, assumes the station of “good.” But the feelings associated with “good” (happiness, fortune, Power, etc) and “bad” (misery, misfortune, suffering) don’t just follow with this inversion, and what the priests want is revenge against the Romans and thus for the Romans to experience the misery associated with bad and to perceive of the Priests as the blessed and fortunate good.<sup>76</sup> To this end they must alter the conditions upon which the very psychological associations of “happiness” and “unhappiness” rest, and here punishment takes on a radically different purpose.

How can naturally occurring emotions be psychologically re-associated with other naturally occurring emotions so that under the objective conditions which first gave birth to each emotion a different emotion eventually comes to be the one psychologically activated? The answer is by no means simple, although it has, according to Nietzsche, occurred. While abbreviated, below I’ll examine two important ideas associated with this transformation which are intimate to the practice of punishment.

First, free will, the belief that there is a responsible agent behind action, a subject, a soul, must evolve to such an extent that the Priests and all who they value as “good” (the weak, powerless, etc.) can rationalize their inaction and social standing as somehow a choice that they actively make, one that they could choose not to be making, in common language a “moral” decision.<sup>77</sup> This same notion of choice must also be used to develop the belief that strength can

somehow not be expressed through acts of strength and overcoming to so great an extent that the weak may in turn hold “morally” responsible the strong and powerful for acting with strength and power: “thus they gain the right to make the bird of prey *accountable* for being a bird of prey.”<sup>78</sup> Doing so, however, involved an extreme act of self-deception on the part of its inventors; what the priests aim to attack is not strength, power, and vitality itself, but their own “irremovable reality,” which is to say their inability to overcome some greater strength, power, and vitality, and thus, for the sake of their threatened strength, power, and vitality, their need to sanctify this original lie. “Verily,” chuckles Zarathustra, “I have often laughed at the weaklings who thought themselves good because they had no claws.”<sup>79</sup>

Second, the attending notions of pleasure, happiness, power, originally connected with the noble “good”, must be attached to the new value of “good” (which again is being weak, powerless, unhappy, etc.) while the attending notions of suffering, revenge, unhappiness, originally connected with the noble “bad,” must be attached to the new value of “evil” (which again is strength, power, happiness, etc.) Here the concept of punishment, in conjunction with reward, becomes problematic in a whole new way and to a much more significant degree in almost all facets of social activity. The Priests target those they are still capable of exerting power over: the suffering, unhappy masses (the noble conception of bad). Christ’s sacrifice is intellectualized to reinterpret the mass’s experience of suffering as a duty to God, and thus as a means to bliss: “It was suffering and incapacity that created all afterworld.”<sup>80</sup> Individuals are to choose

between “good” or “evil” as they do between eternal reward in Heaven, or eternal punishment in Hell. The absurdities of the revaluation’s possibility are no longer as apparent as Nietzsche explains how previous mental associations between suffering and pleasure (like pleasure in causing others to suffer) are exploited and re-associated by those who suffer of themselves and now derive pleasure in this suffering with the thought that it will one day pay off in their redemption.<sup>81</sup> Thus the priests found a way to exact ultimate revenge on the noble by reevaluating the values of “good” and “bad” into “good” and “evil”. The “good” who are now “evil” and the “bad” who are now “good” shall one day be reconciled by God’s eternal command: “The blessed in the kingdom of heaven will see the punishments of the damned, *in order that their bliss be more delightful for them.*”<sup>82</sup> Thus Nietzsche accuses Christianity’s revaluation of noble values of insidiously exploiting punishment into the most fundamental ideas of existence: life as a form of punishment and guilt and an afterlife or eternal punishment for those not reconciled on earth.

Nietzsche also claims that this phenomenon has created the basis of our secular forms of justice. Why do we automatically associate punishment as the proper response to wrongdoing? Where did the concept of moral guilt with the back and forth connection between the suffering experienced through punishment and the redemption for wrongdoing originate? According to Nietzsche: from the material conditions that began in the creditor/debtor relationship and were then exploited by resentment. Nietzsche traces the etymological history of our moral concept *guilt* “Schuld” and links it with the

primitive material concept *debts* “Schulden.”<sup>83</sup> In primitive times punishment was not, as it is today, a moral decision “imposed *because* one held the wrongdoer responsible for the deed.”<sup>84</sup> For the ancients such cruelty was an “enchantment of the first order, a genuine seduction to life,” though today we have the tendency to deny away any interest in seeing others suffer even as we cause them to.<sup>85</sup> This is symptomatic of resentment because moral justifications are invoked in order to act upon deeply repressed desires to vent revenge and hatred on others. In moral individuals the strongest desires to hurt and rule are often concealed: “when they call themselves the good and the just, do not forget that they would be Pharisees, if only they had—power.”<sup>86</sup> Thus we have our revenge which calls itself punishment: “it feigns a good conscience for itself with a lie.”<sup>87</sup> Thus Zarathustra counsels us to “Mistrust all in whom the impulse to punish is powerful,” and who “talk much of their justice,” for in the background lurks the secret ambitions of a tyrant.<sup>88</sup>

With the advance of Christianity, these new conceptions of justice and guilt are increasingly secularized and come to displace the more basic, noble practices of justice. “Whatever exists,” writes Nietzsche, “having somehow come into being, is again and again reinterpreted to new ends.”<sup>89</sup> One such example is illustrated through Nietzsche’s accusation that Duhring, a German philosopher and rabid anti-Semite, writes to “sanctify *revenge* under the name of *justice*—as if justice were at bottom merely a further development of the feeling of being aggrieved.”<sup>90</sup> The social institution of justice, which previously came to be as a means to ending the “senseless raging of resentment among the weaker

powers,<sup>91</sup> is exploited and transformed by the ambitions of resentment, and Nietzsche sees this clearly in the penal institutions of the late 19<sup>th</sup> century.

Predictably, his response is to attack the spirit of his age:

At present, to be sure, he who has been injured, irrespective of how this injury is to be made good, will still desire his *revenge* and will turn for it to the courts—and for the time being the courts continue to maintain our detestable criminal codes, with their shopkeeper's scales and the *desire to counterbalance guilt with punishment*: but can we not get beyond this?...Let us do away with the concept *sin*—and let us quickly send after it the concept *punishment!* May these banished monsters henceforth live somewhere other than among men, if they want to go on living at all and do not perish of disgust with themselves!<sup>92</sup>

Utilitarianism. Nietzsche is explicitly critical of utilitarianism, particularly as a theory which stresses the welfare of the masses at the expense of the individual. “The magnitude of an “advance” can even be measured,” Nietzsche claims, “by the mass of things that had to be sacrificed to it; mankind in the mass sacrificed to the prosperity of a single **stronger** species of man—that **would** be an advance.”<sup>93</sup>

Punishment as an instrument of the utilitarian moral objective to maximize overall pleasure and eliminate pain, fear, and conflict is attacked by Nietzsche for being a weapon used by the weak to propagate over the strong. Such punishment originates in a community's reactive instinct for self-preservation, not in the active instinct for power. A community which develops out of fear of hostile, aggressive powers, combats these feelings of danger in a series of steps which begin by directing their own powerful individuals against outside sources of fear. For a time being, two sources of fear are neutralized as the dangerous

individuals within the community are exploited and directed against all outside threats, though once the “structure of society is fixed on the whole and seems secure against external dangers,” the community turns its attention and fight against the nobility.<sup>94</sup> Fear is driven inward as the community feels threatened by “everything that elevates an individual above the herd and intimidates the neighborhood.”<sup>95</sup> The herd instinct is to transform the war machine into a punishment machine to eliminate inner danger. Punishment within such a community serves to infinitely expand upon values of zero; what the community “overcomes” is everything fearful, great, dangerous and powerful within human beings. In short, everything Nietzsche believes is of value. Thus, what is honored as moral and virtuous by the herd is “mediocrity of desires,” until eventually the community becomes so peaceful and gentle that “every severity, even in justice begins to disturb the conscience.”<sup>96</sup> Out of fear the community adapts to the point where it has effectively suppressed all active sources of power, even its own, and eventually “imagining ‘punishment’ and ‘being supposed to punish’ hurts it, arouses fear in it. It sides with the criminal: ‘Is it not enough to render him *undangerous*? Why still punish? Punishing itself is terrible.”<sup>97</sup> Not out of strength is punishment overcome, but weakness. What does such progress want: “that some day there should be *nothing more to be afraid of!*”<sup>98</sup> That is nihilism. This, Nietzsche claims, is the outcome of utilitarianism.

Revenge. “For that man be delivered from revenge, that is for me the bridge to the highest hope, and a rainbow after long storms.”<sup>99</sup> What would be

wrong with punishing in order to exact revenge? Doesn't Nietzsche's denial of morality leave open this possibility? We can certainly imagine a practice of punishment that isn't entrenched in resentment's deceptive, cunning soup of emotions, or utilitarianism's timid, pleasure calculus. What about the more explicit, baggage free act of revenge that makes no reference to "morals" or "justice" or "utility"? Freud said that his idea of heaven was to sip lemonade on his porch and watch his five most hated enemies hang from a tree in his backyard. Homer called it "sweeter than honey." I like it. Even Nietzsche seems to glorify revenge on occasion as an essential and honorable practice of the noble: "...that enthusiastic impulsiveness in...revenge by which all noble souls have at all times recognized one another."<sup>100</sup> Revenge was, after all, one of the strongest customs of the powerful for a long time. Shouldn't we still seek revenge on the monsters that violate our children, murder our loved ones, mercilessly assault the weak, and senseless destroy what is most cherished!

While it may be tempting to consider Nietzsche' lack of moral focus an opportunity to trap his philosophy into a position that cannot challenge revenge, Nietzsche is vehemently opposed to revenge and his commitments to power allow him this position. Of course with Nietzsche nothing is black and white, and revenge is seen, as I will show, at times, to be a healthier response than remaining silent. In the end, however, it is essential for a strong society and the true "overman" to overcome any biological connections it has with revenge and the connections to punishment.

Nietzsche's vision of redemption is, in many ways, the opposite of that instinctual desire in revenge to seek out and destroy the cause of suffering. Our will, its ability to create the future and determine circumstances, is, for Nietzsche, the one and only form of liberation. Through revenge, the will seeks liberation from suffering through the redemption of a past event, an "it was," a fate that it would not will and thus wants to unwill. But the will is powerless against the past and cannot will back in time, thus it suffers and seeks to make suffer. "This," writes Nietzsche, "is what *revenge* is: the will's ill will against time and its 'it was.'"<sup>101</sup> Where there is revenge and suffering and desire for redemption, here too one finds punishment, but revenge and punishment only further strengthen the prison in which the will rebels against, for fighting the past as something that must be "undone" perpetuates the will's powerlessness to undo. "No deed can be annihilated," writes Nietzsche, "how could it be undone by punishment?"<sup>102</sup>

What Nietzsche offers in place of the futile attempt to redeem the past through revenge is a conception of redemption based on affirmation. "To redeem those who lived in the past and to recreate all 'it was' into a 'thus I willed it'—that alone should I call redemption." Only in the future can we, at every moment, be liberated by our will and its ability to create circumstances. In the future alone, therefore, we redeem the past by realizing the future through it. As painful and awful as a situation might be, our only redemption from it lies in eternal affirmation: moving forward with the understanding that it had to happen that way, you willed it to happen that way, you continue to will it that way and prove it eternally benefits you. Thus, when Zarathustra is bitten by the Adder he does



not, as the Adder anticipates, retaliate with punishment, but rather finds in the experience the benefit of being reminded to continue his journey, and rebuts any insinuation that something less powerful than he could cause in him ill will.<sup>103</sup> Justice is not presented as a cold, unassailable retaliation without which redemption is impossible, but rather a positive, and in the strictest sense forward-looking disposition which develops in oneself through the process of overcoming.

Revenge, however, isn't always a backward-looking activity, as is the case for the justice in individuals who are not rich and powerful enough to fully renounce revenge. Zarathustra counsils those who would be put to shame by another's actions to instead be angry and "join a little in the cursing."<sup>104</sup> Why? Because a "little revenge" can be the best medicine for someone to shake out of their system what would otherwise eat them away. But this is a real tempered endorsement of revenge, and it certainly isn't meant to be realized in any social practice of punishment. If society is to respond to a crime of some sort with punishment, the only justifiable purpose would be to do so in order to minimize any ensuing private revenge, certainly not promote it. Meanwhile, in the strongest, not only has revenge and punishment been overcome, but a new level of justice is attained. The most powerful are not only capable of declaring themselves wrong, but of doing so even when they are right, and thus bearing "not only all punishment but also all guilt."<sup>105</sup> This, according to Nietzsche, would truly be divine.

Absence of any outward desire for revenge, the personal restraint, emotional control, and calmness toward those assaulting us is, Nietzsche claims,

**“a piece of perfection and supreme mastery on earth.”<sup>106</sup> If we knew our attacker’s every circumstance, the social forces that have shaped them, the personal weaknesses that drive their insecurities, the lack of perspective in their decision making, in short all the factors contributing to their behavior, and then coupled these with our own overflowing sense of personal Power and achievement, then our sense of justice is most complete. Christ’s most venerable achievement was, in Nietzsche’s eyes, the freedom he experienced from all feelings of resentment and anger as he was crucified.**

**Tell me, where is that justice which is love with open eyes?...Would that you might invent for me the justice that acquits everyone, except him that judges!<sup>107</sup>**

**How does Zarathustra suggest we can be just and give to each their own? “Let this be sufficient for me: I give each my own.”**

**Such perfection, however, is rare in individuals, and to most a personal affront quickly causes the blood to boil and disrupts any sense of fairness. An individual’s psychological state of mind must be brought into question to determine whether power or weakness is generated in their response. Here restraint is not perfection, though perhaps it’s impotence and cowardice dressed in all too familiar phrases like “being the bigger man” and turning the other cheek. While delivering us from revenge and punishment may be Nietzsche’s highest hope, encouraging these behaviors when one is either not strong enough to act in such a way or when lack of response is the result of taming and weakening is not. Ultimate self-perfection does consist in perfect self-control and the mercy of a large soul, but the mere absence of retaliation, a calm approach, restraint from**

wanting to hurt, understanding, consideration, politeness, and every other disposition which distinguishes the ancient human from the modern one means nothing if incompatible with the individual's psychological state. "A little revenge is more human than no revenge," and we must therefore be careful not to confuse cowardly inaction with that rare achievement of strength sublimated into perfection.<sup>108</sup> In the flux of overcoming, "good" and "bad" represent values that evolve alongside the generation of power. A strong society mediates conflict when the instincts for revenge cannot be controlled among individuals.

Alas, then the tarantula, my old enemy, bit me... 'Punishment there must be and justice,' it thinks... Indeed, it has avenged itself. And alas, now it will make my soul, too, whirl with revenge. But to keep me from whirling, my friends, tie me tight to this column. Rather would I be a stylite, even, than a whirl of revenge. Verily, Zarathustra is no cyclone or whirlwind; and if he is a dancer, he will never dance the tarantella.<sup>109</sup>

## CHAPTER V

### FROM A POSSIBLE FUTURE

Nietzsche's criticism of punishment is the initial step in the act of creation; he envisions its return to nobility. The final section of this essay will be an attempt to develop a heuristic outline for what a noble practice of punishment which *empowers power* might look like today.

Let's begin by recapitulating Nietzsche's thoughts on punishment in the sphere of nobility. Power represents ultimate value, and such value is attainable through great individuals. Attainment of the highest individual type is only possible under social arrangements. Social power is therefore conceptualized in terms of accommodating the highest forms of individual achievement: "The *goal of humanity* cannot lie in the end but only *in its highest specimens*."<sup>110</sup> Penal laws develop with "an eye only for the degenerating."<sup>111</sup> Punishment is a sublimation of violent force with the goal of promoting favorable social conditions for the noble order; the role of punishment must fluctuate with every change in power. Observing this fluctuation is essential, for, paradoxically, the greatest danger to noble development is also the establishment of authority. A social arrangement's survival depends first on the overall stabilization of "force through the union of minds."<sup>112</sup> Its continuation, however, demands steady social progression through

the incorporation of new “types” into the norm, a process attained “through the occurrence of degenerate natures and, as a consequence of them, partial weakenings and injurings of the stabilizing force.”<sup>113</sup> The same stability under which ennoblement is possible can become the “dangerous companion” which ultimately resists it, in turn thwarting the development of individual greatness—“the church sends all ‘great men’ to hell, it fights *against* all ‘greatness of man.’”<sup>114</sup> The question we are left to answer is how a noble conception of punishment balances the need to maintain some level of social stability against the demand that individuals be able to break with social restrictions.

Without the will to punish there is, in Nietzsche’s view, no such thing as a criminal, for one is deemed “criminal” only in reference to the dominating social order. Given how sensitive the relationship between the individual’s task of self-determination and the necessity for social structure is in Nietzsche’s thinking, the concept of “criminal” and the value associated with punishment must be closely scrutinized. I thus propose differentiating the concept of “criminal” into six categories in order to examine the value of punishment in various circumstances. The categories I’ve created were inspired by synthesizing Nietzsche’s seemingly disparate reflections on punishment of criminals and interpreting them through six fundamental categories. They are as follows: (1) The weak, amoral criminal, (2) The weak, immoral criminal, (3) The weak, moral criminal, (4) The active, amoral criminal, (5) The active, moral criminal, and (6) The active, immoral criminal. The terms moral, immoral, and amoral should be non-controversial, for they correspond with assumptions basic to all moral systems: the exercise of

self-control. Without the ability to exercise self-control one is not capable of acting morally and thus is amoral. Since I am modifying the concept of "criminal", the terms "moral" and "immoral" refer specifically to the agent's state of mind: the capacity to make a choice was present and, in doing so, is compared with the criminal's personal sense of right and wrong; the immoral criminal breaks two sets of laws while the moral criminal only one. The terms active and weak further classify the criminal's action according to power. "What is active?" asks Nietzsche: "reaching out for power."<sup>115</sup>

In section 740 of the "Will to Power" Nietzsche distinguishes between criminals who are a part of the concept of "revolt against the social order" and what he calls "the race of criminals" ("die Rasse des Verbrechertums").<sup>116</sup> The classification of weak, amoral criminals is captured in Nietzsche's idea of "the race of criminals" conceived of in contrast with the "free spirits" discussed later. Among these biologically classified criminals the value of punishment is based on the perceived need to socially control certain types within a society who are incapable of sublimating their basic animal impulses and exercising self-control. Since value is created in individuals attaining greatness through self-overcoming, social deviance in those incapable of acting otherwise is an expression of irremovable reality, not social overcoming, and thus are a fair object of social control. In fact, against such criminals, Nietzsche implores that society "wage war against him even before he has committed any hostile act...first act as soon as one has him in one's power: his castration."<sup>117</sup> True, a deed cannot be undone, but we're capable of shaping our future. Why, after all, should we

respond to those predisposed to mindless violence after a loved one is senselessly assaulted? If we truly renounce the backward motivated objective imbedded within the practice of revenge as Nietzsche challenges us to, then it means punishment isn't necessarily justified on the basis of a criminal act alone, but rather only, among other considerations, by the disposition to commit acts in the future. Nietzsche is so serious in locating the value of punishment in forward-looking motivations that in these cases he is willing to take this logic to the extreme and call for punishing those who belong to the "race of criminals" *before* any criminal act has even occurred.<sup>118</sup>

The weak, immoral criminal classifies the slavish predispositions in mankind to act criminally in such a way that nothing of value could be thought to result. Petty crimes of selfishness and greed, the tendency to hang on to library books indefinitely, drinking and driving, littering, and a myriad of other base behaviors constitute these types of criminal acts which most of us are indeed likely to commit in the absence of consequences and regardless of our own sense of right and wrong. For Nietzsche, this criminal propensity is not, however, the selfish invariant of human nature as Bentham might argue, thought the accompanying pangs of conscience should not be attributed to some deeply rooted sense of moral agency as Kant might argue. Two issues must thus be considered. The first: what drives the individual's actions? The second: why does the individual subjectively acknowledge their decision is wrong? Nietzsche considers this criminal weak and immoral because their personal sense of right and wrong is socially generated, a trait experienced in slaves as a result of

vanity. Their inability to refrain from such activity without social compulsion signifies personal weakness and proof that their values are socially constructed. As a way of controlling the masses according to basic social standards, Nietzsche, in my opinion, would consider valuable some limited use of punishment as a deterrent:

If punishment and reward were abolished the strongest motives for performing certain acts and not performing certain acts would be abolished; mankind's utility requires their continuance...this same utility also requires the continuation of vanity.<sup>119</sup>

The weak, moral criminal is captured in Nietzsche's discussion of the pale criminal. Weak and moral may, in the present context, sound like contradictory terms, for Nietzsche frequently associates the conscious decision to break from social norms with notions of strength and self-determination. Here Nietzsche's psychological mind is, perhaps, at its sharpest. The pale criminal does break from the laws of society with a clear conscience; indeed, she is driven to criminal action by an inner sense of right and wrong. Upon closer examination, however, Nietzsche connects this inner sense of right and wrong to pathological weakness. Like Dostoevsky's Raskolnikov, two forms of madness betray the pale criminal's decision to murder: a madness before the crime and a madness after the crime. Overcome by the evil of the world she lives in, the pale criminal has become sick and now seeks "to hurt with that which hurts [her]."<sup>120</sup> The impulse to murder and the lust for blood are not deep animal passions stirring in this soul, but instead a reaction to influences she could not resist: "What it suffered and coveted this poor soul interpreted for itself."<sup>121</sup> Torn by the conflicting emotions which arise in this individual when the negative experience with hatred positively incorporates



itself into the psyche, the schema of rational thought attempts to unify her pathos by distorting moral reflection: "don't you want at least to commit a robbery?"<sup>122</sup> Confronted with the image of her deed, however, the mind experiences horror, and in doing so reveals that weakness and confusion, not strength and self-determination, were responsible for her ephemeral convictions. She is once again too weak to resist, only this time it's the sight of her own evil act and not the evil of others that paralyzes her thoughts and ultimately causes her unbearable remorse. Unable to shake off the moment, she suffers indefinitely from guilt: "A chalk streak stops a hen."<sup>123</sup> The pale criminal bears the worst signs of socialization, according to Nietzsche, and betrays an incurable disease in individuals which, in being indiscriminately vented on others, represents the "great contempt of man."<sup>124</sup> The only cure is death. Punishment is here an act of pity, a sadness in our hearts that longs for the coming of the overman.

The active, amoral criminal can be discussed in the context of Nietzsche's "doctrine of the derivability of all good drives from the bad."<sup>125</sup> Humankind's so-called evil drives and impulses are, in Nietzsche's view, the raw energy which, at bottom, is the same energy responsible for everything great and magnificent we experience in ourselves and in others. Every noble "morality" must therefore consist in the controlling and overcoming of these impulses through their sublimation, but never in their castration: "one must still have chaos in oneself to be able to give birth to a dancing star."<sup>126</sup> Often times criminal behavior corresponds with intellectual immaturity, and in these individuals unsublimated impulses find temporary expression. Greatness reveals itself in their potential

state of sublimation, and thus Nietzsche finds in many criminals more value than in a nation of law abiding castrates. As Kaufman explains, “there is more joy in heaven over one repentant sinner than over ninety-nine just men—if the latter are just only because they are too feeble ever to have sinned.”<sup>127</sup>

Conceptualizing the practice of punishment *for the promotion of power* means certain criminality, though certainly not best left to go on unchecked, ought to be rehabilitated. Again, in locating value in punishment’s influence over the future, punishing in order to determine what the criminal can someday become requires a radical reconceptualization of the *form* punishment takes. Historically speaking, the act of punishing, its form, “makes men hard and cold...it strengthens the power of resistance.”<sup>128</sup> For the active, amoral criminal Nietzsche proposes altering our formal methods of punishing. Why not consider certain criminals as we do the insane? By posing the question this way Nietzsche is first establishing that in this certain situation the “*usual* mode of moral thinking” is in fact what’s best, and that the criminal acts in the contrary to their own best interests.<sup>129</sup> Thus, there is essentially no difference between the criminal and the insane. Today we criticize previous generations for punishing the insane as they would the criminal. Could our treatment of criminals be just as reprehensible?

*Punishable, never punished*—Our crime against criminals consists in the fact that we treat them like scoundrels.<sup>130</sup>

How a society treats its criminals is a direct indication of its health, its attainment of Power. Are we rich enough to truly renounce revenge, to no longer feel the

need to respond with violence and hatred but instead pursue with complete honesty the best possible future with the best possible course of action?

He needs a change of air, a change of company, a temporary absence, perhaps he needs to be alone and have a new occupation—very well! Perhaps he himself may find it to his advantage to live for a time in custody, so as to secure protection against himself and against a burdensome *tyrannical drive*—very well! One should place before him quite clearly the possibility and the means of becoming cured (the extinction, transformation, sublimation of this drive), also, if things are that bad, the improbability of a cure; one should offer the opportunity of suicide to the incurable criminal who has become an abomination to himself.

One should neglect nothing in the effort to restore to the criminal his courage and freedom of heart; one should wipe pangs of conscience from his soul as a matter of cleanliness, and indicate to him how he can make good the harm done perhaps only to a single person, and more than make good, through benefits he could bestow on others and perhaps on the whole community. In all this one should show him the greatest consideration! And especially in allowing him anonymity, or a new name and frequent changes of residence, so that his reputation and his future life shall be as little endangered as possible.<sup>131</sup>

When sublimating is not possible, Nietzsche suggests the possibility of suicide. Whether this is a Euphemism for capital punishment or some drastic endorsement of castration or even the belief that the criminal might himself seek suicide is not clear. In the case of many convicted child molesters, for instance, the possibility of changing is, no matter how hard they try, simply unrealistic, though often times they express a desire to change. If the value of rehabilitation is found in sublimation of the energy responsible for an act, and sublimation is not possible, then suicide or some comparable measure of protection is valued as an alternative. In those capable of sublimation, the practice of punishment as

a form of rehabilitation is redemption for any past crimes, for in renouncing revenge and seeing to it that the individual is put on the right path we infuse value into punishing criminal acts by transforming them into the catalysts for greatness to come.

The active, moral criminal must, I believe, be conceptualized in two distinct ways. The first is conceived of as a philosopher type of "free spirit" regarded as "criminal" for breaking with laws respecting moral common sense because, as Nietzsche puts it, she "finds something in our society against which war ought to be waged – [s]he awakens us from slumber."<sup>132</sup> Insofar as history will judge, such a law-breaker is hardly a criminal at all, but rather one who advances society as well as the individual type. Rosa Parks is an excellent example of when historical reflection creates reverence for civil disobedience. There is no value in punishing this type of criminal, for her actions advance social notions of right and wrong and open opportunities for the individual to flourish.

The second criminal type categorized as active and moral is the individual that is often times labeled wickedly evil but remains to us hopelessly intriguing. The Hannibal Lecter pathologies who murder with the clearest conscience and exact premeditation act morally and powerfully as they abide by their laws. This presents a problem for Nietzsche. Since Nietzsche adheres to no set of moral standards beyond those self-imposed, can he endorse social regulation of such criminals, or is this exactly the type of individual he's glorifying and trying to protect from punishment's destructive influence? The answer is yes and yes. Insofar as life is will to power, the battlefield will always be determined by will

against will. Advocating punishment against certain strong, moral criminals and, at the same time, maintaining the position that the value of punishing is determined through the creation of power shifts the focus of the question of value onto the response forced in the noble order which must overcome and destroy such an enemy. In society the nobility are, according to Nietzsche, kept in check by custom, acting respectful and courteous with each other. Though familiar in many other ways, in these ways the criminal is an outsider. Crime and punishment are, as Durkheim also argues, valuable insofar as they motivate society to stay strong, healthy, and powerful. They force the noble to earn and maintain their grasp over social direction and occasionally flex their muscles.

Broadly speaking, it is not fear of man that we should desire to see diminished; for this fear compels the strong to be strong, and occasionally terrible—it *maintains* the well-constituted type of man.<sup>133</sup>

The concept of an active, immoral criminal sounds contradictory in terms, for how can the idea of strength and power be associated with an individual who violates personal notions of right and wrong? Consider:

*From a possible future.* – Is a state of affairs unthinkable in which the malefactor calls himself to account and publicly dictates his own punishment, in the proud feeling that he is thus honoring the law which he himself has made, that by punishing himself he is exercising his power, the power of the lawgiver; he may have committed an offence, but by voluntarily accepting punishment he raises himself above his offence, he does not only obliterate his offence through freeheartedness, greatness and imperturbability, he performs a public service as well. – Such would be the criminal of a possible future, who, to be sure, also presupposes a future lawgiving – one founded on the idea ‘I submit only to the law which I myself have given, in great things and in small.’ There are so many experiments still to make! There are so many futures still to dawn!<sup>134</sup>

Again, an examination of such an individual's psychological machinery is necessary. In order for an individual to experience themselves in violation of their own set of standards and, in doing so, be considered active, the act of judging themselves immoral, and not the violation itself (though not without the violation), must be the source of power. This is only possible in individuals who create their own set of laws and also assume the role of judge and executioner, for in their experience of immorality a sense of personal power overflows from them. They have created and upheld their own law as noble men will. This self-autonomous individual represents the super-human Nietzsche envisions, and they are thus the end toward which every society strives. In a society where individuals hold themselves accountable before themselves, self-determination is rife and punishment an exercise of the highest power attained.

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<sup>1</sup> See Joshua Dressler, *Cases and Materials on Criminal Law* 21-35 (1994) (presenting only utilitarian and retributive justifications for punishment by means of selections from Bentham and Kant, respectively); Sanford H. Kadish & Stephen J. Schulhofer, *Criminal Law and Its Processes: Cases and Materials* 102-19 (6th ed. 1995) (same); Paul H. Robinson, *Fundamentals of Criminal Law* 32 (2d ed. 1995) (quoting K. Greenawalt, Legal Punishment, in 4 *Encyclopedia of Crime and Justice* 1337 (S. Kadish ed., 1983)) ("the dominant approaches to justification [of punishment] are retributive and utilitarian"); Richard G. Singer & Martin R. Gardner, *Crimes and Punishment: Cases, Materials, and Readings in Criminal Law* 84-124 (2d ed. 1996) (presenting only utilitarian and retributive justifications for punishment by means of selections from Bentham and Kant, respectively).

<sup>2</sup> See Michael Moore, *Placing Blame: A general theory of criminal law*. (Oxford: Clarendon Press, 1997); Kyron Huigens, "Nietzsche and Aretaic Legal Theory," *Cardozo Law Review* 24 (Jan., 2003): 563; Robin Small, "Ressentiment, Revenge, and Punishment: Origins of the Nietzschean Critique," *Utilitas* 9, no. 1 (March., 1997) 58; Robert Solomon; Friederich Balke, "FROM A BIOPOLITICAL POINT OF VIEW: NIETZSCHE'S PHILOSOPHY OF CRIME," *Cardozo Law Review* 24 (Jan., 2003): 705;

<sup>3</sup> Friedrich Nietzsche, *The Dawn*, ed. Maudemarie Clark & Brian Leiter (Cambridge: Cambridge University Press, 1997) 120.

<sup>4</sup> Friedrich Nietzsche, *Human, All Too Human*, tr. R.J. Hollingdale (Cambridge: Cambridge University Press 1986) 231

<sup>5</sup> Friedrich Nietzsche, "Thus Spoke Zarathustra," in *The Portable Nietzsche*, ed. Walter Kaufmann (New York: Penguin Books USA Inc. 1982)

<sup>6</sup> Friedrich Nietzsche, "Thus Spoke Zarathustra," 401

<sup>7</sup> See Michael Moore's *Placing Blame: A general theory of criminal law*. Moore claims that Nietzsche outright rejects punishment as inconsistent with the ideals of virtue ethics. Also see Robert Solomon

<sup>8</sup> Friedrich Nietzsche, *The Gay Science*, tr. Walter Kaufmann (New York: Penguin Books USA Inc. 1982)



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- <sup>9</sup> See essay 2 in *Genealogy*
- <sup>10</sup> Friedrich Nietzsche, *The Will To Power* para. 740, at 391 (Walter Kaufmann ed., Walter Kauffman & R. J. Hollingdale trans., 1967)
- <sup>11</sup> Friedrich Nietzsche, *Human, All Too Human*, 56
- <sup>12</sup> See Friedrich Nietzsche, "On the Genealogy of Morals," in *Basic Writings of Nietzsche*, ed. Walter Kaufmann (New York: Random House, Inc.) 493
- <sup>13</sup> Robin Small, "Ressentiment, Revenge, and Punishment: Origins of the Nietzschean Critique," 83
- <sup>14</sup> Friedrich Nietzsche, "On the Genealogy of Morals," 517
- <sup>15</sup> Robin Small, "Ressentiment, Revenge, and Punishment: Origins of the Nietzschean Critique," 86
- <sup>16</sup> Kyron Huigens, "Nietzsche and Aretaic Legal Theory," 563
- <sup>17</sup> Kyron Huigens, "Nietzsche and Aretaic Legal Theory," 565
- <sup>18</sup> Kyron Huigens, "Nietzsche and Aretaic Legal Theory," 566
- <sup>19</sup> Kyron Huigens, "Nietzsche and Aretaic Legal Theory," 576
- <sup>20</sup> Friedrich Nietzsche, "Thus Spoke Zarathustra," 139
- <sup>21</sup> Friedrich Nietzsche, "On the Genealogy of Morals," 462
- <sup>22</sup> Friedrich Nietzsche, "On the Genealogy of Morals," 465
- <sup>23</sup> Friedrich Nietzsche, "Will to Power," 674
- <sup>24</sup> Friedrich Nietzsche, "The Antichrist," in *The Portable Nietzsche*, ed. Walter Kaufmann (New York: Penguin Books USA Inc. 1982) 570
- <sup>25</sup> Friedrich Nietzsche, "Thus Spoke Zarathustra," 227
- <sup>26</sup> Friedrich Nietzsche, "On the Genealogy of Morals," 512
- <sup>27</sup> Friedrich Nietzsche, "Thus Spoke Zarathustra," 227

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- <sup>28</sup> Friedrich Nietzsche, "Beyond Good and Evil," 281
- <sup>29</sup> Friedrich Nietzsche, "Thus Spoke Zarathustra," 398
- <sup>30</sup> See Friedrich Nietzsche, "Thus Spoke Zarathustra," 362
- <sup>31</sup> Friedrich Nietzsche, "The Antichrist," 570
- <sup>32</sup> Friedrich Nietzsche, "The Antichrist," 575
- <sup>33</sup> Friedrich Nietzsche, "On the Genealogy of Morals," 515-517
- <sup>34</sup> Friedrich Nietzsche, "On the Genealogy of Morals," 515-517
- <sup>35</sup> Friedrich Nietzsche, "On the Genealogy of Morals," 498
- <sup>36</sup> Friedrich Nietzsche, "On the Genealogy of Morals," 516
- <sup>37</sup> Friedrich Nietzsche, "On the Genealogy of Morals," 516
- <sup>38</sup> Friedrich Nietzsche, "On the Genealogy of Morals," 516-517
- <sup>39</sup> Friedrich Nietzsche, "On the Genealogy of Morals," 512-513
- <sup>40</sup> Friedrich Nietzsche, "On the Genealogy of Morals," 515
- <sup>41</sup> Nietzsche's discussion on Sublimation and Aufheben
- <sup>42</sup> Friedrich Nietzsche, "On the Genealogy of Morals," 507-508
- <sup>43</sup> Friedrich Nietzsche, "On the Genealogy of Morals," 517
- <sup>44</sup> Robin Small, "Ressentiment, Revenge, and Punishment: Origins of the Nietzschean Critique," *Utilitas* 9, no. 1 (March., 1997) 58
- <sup>45</sup> Friedrich Nietzsche, "Human, All too Human," 316
- <sup>46</sup> Walter Kaufmann, "Nietzsche: Psychologist, Philosopher, Antichrist,"
- 329
- <sup>47</sup> Friedrich Nietzsche, "On the Genealogy of Morals," 513-514
- <sup>48</sup> Friedrich Nietzsche, "On the Genealogy of Morals," 493
- <sup>49</sup> Friedrich Nietzsche, "On the Genealogy of Morals," 495

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- <sup>50</sup> Friedrich Nietzsche, "On the Genealogy of Morals," 497
- <sup>51</sup> Friedrich Nietzsche, "On the Genealogy of Morals," 506
- <sup>52</sup> Friedrich Nietzsche, "On the Genealogy of Morals," 500
- <sup>53</sup> Friedrich Nietzsche, "On the Genealogy of Morals," 497
- <sup>54</sup> Friedrich Nietzsche, "On the Genealogy of Morals," 508
- <sup>55</sup> Friedrich Nietzsche, "On the Genealogy of Morals," 500-01
- <sup>56</sup> Friedrich Nietzsche, "On the Genealogy of Morals," 500
- <sup>57</sup> Friedrich Nietzsche, "On the Genealogy of Morals," 503
- <sup>58</sup> Friedrich Nietzsche, "On the Genealogy of Morals," 500
- <sup>59</sup> Friedrich Nietzsche, "On the Genealogy of Morals," 500
- <sup>60</sup> Friedrich Nietzsche, "On the Genealogy of Morals," 506
- <sup>61</sup> Friedrich Nietzsche, "On the Genealogy of Morals," 506-507
- <sup>62</sup> See Friedrich Nietzsche, "Untimely Meditations" 185
- <sup>63</sup> Friedrich Nietzsche, "On the Genealogy of Morals," 507
- <sup>64</sup> Friedrich Nietzsche, "On the Genealogy of Morals," 508
- <sup>65</sup> Friedrich Nietzsche, "On the Genealogy of Morals," 508
- <sup>66</sup> Friedrich Nietzsche, "On the Genealogy of Morals," 512
- <sup>67</sup> Friedrich Nietzsche, "On the Genealogy of Morals," 508
- <sup>68</sup> Friedrich Nietzsche, "On the Genealogy of Morals," 508-509
- <sup>69</sup> Friedrich Nietzsche, "On the Genealogy of Morals," 509
- <sup>70</sup> Friedrich Nietzsche, "Beyond Good and Evil," in *Basic Writing of Nietzsche*, ed. Walter Kaufmann (New York: Random House, Inc.) 185

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- <sup>71</sup> Friedrich Nietzsche, "On the Genealogy of Morals," 473
- <sup>72</sup> Friedrich Nietzsche, "On the Genealogy of Morals," 563
- <sup>73</sup> Friedrich Nietzsche, "On the Genealogy of Morals," 472-473
- <sup>74</sup> Friedrich Nietzsche, "On the Genealogy of Morals," 472-473
- <sup>75</sup> Friedrich Nietzsche, "On the Genealogy of Morals," 472
- <sup>76</sup> Friedrich Nietzsche, "On the Genealogy of Morals," 474
- <sup>77</sup> Friedrich Nietzsche, "On the Genealogy of Morals," 481
- <sup>78</sup> Friedrich Nietzsche, "On the Genealogy of Morals," 481
- <sup>79</sup> Friedrich Nietzsche, "Thus Spoke Zarathustra," *On the Sublime*
- <sup>80</sup> Friedrich Nietzsche, "Thus Spoke Zarathustra," 143

<sup>81</sup> "...one beats the dogs one likes best; perhaps this misery is also a preparation, a testing, a schooling, perhaps it is even more—something that will one day be made good and recompensed with interest, with huge payments of gold, no! of happiness. This they call 'bliss.'" See Friedrich Nietzsche "On the Genealogy of Morals," 483.

<sup>82</sup> Nietzsche quoting *Summa Theologiae, III, Supplementum, Q. 94, Art. 1* in "On the Genealogy of Morals," 485

- <sup>83</sup> Friedrich Nietzsche, "On the Genealogy of Morals," 498-499
- <sup>84</sup> Friedrich Nietzsche, "On the Genealogy of Morals," 499
- <sup>85</sup> Friedrich Nietzsche, "On the Genealogy of Morals," 501
- <sup>86</sup> Friedrich Nietzsche, "Thus Spoke Zarathustra," The Tarantulas
- <sup>87</sup> Friedrich Nietzsche, "Thus Spoke Zarathustra," 711
- <sup>88</sup> Friedrich Nietzsche, "Thus Spoke Zarathustra," The Tarantulas
- <sup>89</sup> Friedrich Nietzsche, "On the Genealogy of Morals," 513
- <sup>90</sup> Friedrich Nietzsche, "On the Genealogy of Morals," 509-510

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- <sup>91</sup> Friedrich Nietzsche, "On the Genealogy of Morals," 511
- <sup>92</sup> Friedrich Nietzsche, "The Dawn," 120
- <sup>93</sup> Friedrich Nietzsche, "On the Genealogy of Morals," 514
- <sup>94</sup> Friedrich Nietzsche, "Beyond Good and Evil," 303
- <sup>95</sup> Friedrich Nietzsche, "Beyond Good and Evil," 304
- <sup>96</sup> Friedrich Nietzsche, "Beyond Good and Evil," 304
- <sup>97</sup> Friedrich Nietzsche, "Beyond Good and Evil," 304
- <sup>98</sup> Friedrich Nietzsche, "Beyond Good and Evil," 304
- <sup>99</sup> Friedrich Nietzsche, "Thus Spoke Zarathustra," 211
- <sup>100</sup> Friedrich Nietzsche, "On the Genealogy of Morals," 475
- <sup>101</sup> Friedrich Nietzsche, "Thus Spoke Zarathustra," *On Redemption*
- <sup>102</sup> Friedrich Nietzsche, "Thus Spoke Zarathustra," *On Redemption*
- <sup>103</sup> Friedrich Nietzsche, "Thus Spoke Zarathustra," *The Adder's Bite*
- <sup>104</sup> Friedrich Nietzsche, "Thus Spoke Zarathustra," *The Adder's Bite*
- <sup>105</sup> Friedrich Nietzsche, "Thus Spoke Zarathustra," *The Adder's Bite*; See also "On the Genealogy of Morals," 530
- <sup>106</sup> Friedrich Nietzsche, "On the Genealogy of Morals," 510
- <sup>107</sup> Friedrich Nietzsche, "Thus Spoke Zarathustra," *The Adder's Bite*
- <sup>108</sup> Friedrich Nietzsche, "Thus Spoke Zarathustra," *The Adder's Bite*
- <sup>109</sup> Friedrich Nietzsche, "Thus Spoke Zarathustra," *The Tarantulas*
- <sup>110</sup> Friedrich Nietzsche, "The Second Meditation," in *Untimely Meditations*, (Cambridge: Cambridge University Press, 1997) 9.
- <sup>111</sup> Friedrich Nietzsche, "On the Use and Abuse of History for Life," in *Untimely Meditations*, (Cambridge: Cambridge University Press, 1997) 211

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<sup>112</sup> Friedrich Nietzsche, "Human, All too Human," 224

<sup>113</sup> Friedrich Nietzsche, "Human, All too Human," 224

<sup>114</sup> Friedrich Nietzsche, "The Anti-Christ," 5

<sup>115</sup> Friedrich Nietzsche, "Will to Power," 657

<sup>116</sup> Friedrich Nietzsche, "Will to Power," 740

<sup>117</sup> Friedrich Nietzsche, "Will to Power," 740

<sup>118</sup> Nietzsche is not proposing that our future look like that depicted in the movie "Minority Report" where all criminal acts are preemptively stopped, for this would be inconsistent with his notion that individuals explode the confines of society and, as such, advance it in their image.

<sup>119</sup> Friedrich Nietzsche, "Human, All too Human," 56

<sup>120</sup> Friedrich Nietzsche, "Thus Spoke Zarathustra," *On the Pale Criminal*

<sup>121</sup> Friedrich Nietzsche, "Thus Spoke Zarathustra," *On the Pale Criminal*

<sup>122</sup> Friedrich Nietzsche, "Thus Spoke Zarathustra," *On the Pale Criminal*

<sup>123</sup> Friedrich Nietzsche, "Thus Spoke Zarathustra," *On the Pale Criminal*

<sup>124</sup> Friedrich Nietzsche, "Thus Spoke Zarathustra," *On the Pale Criminal*

<sup>125</sup> Friedrich Nietzsche, "Beyond Good and Evil," 229

<sup>126</sup> Friedrich Nietzsche, "Thus Spoke Zarathustra," 129

<sup>127</sup> Walter Kaufmann, *Nietzsche: Philosopher, Psychologist, Anti-Christ*.  
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<sup>128</sup> Friedrich Nietzsche, "On the Genealogy of Morals," 517

<sup>129</sup> Friedrich Nietzsche, "The Dawn," 120

<sup>130</sup> Friedrich Nietzsche, "Human, All too Human," 66

<sup>131</sup> Friedrich Nietzsche, "The Dawn," 120

<sup>132</sup> Friedrich Nietzsche, "The Will to Power," 716

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<sup>133</sup> Friedrich Nietzsche, "On the Genealogy of Morals," 558

<sup>134</sup> Friedrich Nietzsche, "The Dawn" 63