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Nietzsche on Criminality

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Nietzsche on Criminality

by

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A dissertation submitted in partial fulfillment of the requirements for the degree of Doctor of Philosophy
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ABBREVIATIONS AND CITATIONS OF FRIEDRICH NIETZSCHE’S WORKS

AOM = Vermischte Meinungen und Sprüche (in Menschliches, Allzumenschliches II); frequently translated as Assorted Opinions and Maxims
BGE = Jenseits von Gut und Böse; translated as Beyond Good and Evil
BT = Die Geburt der Tragödie; translated as The Birth of Tragedy
CW = Der Fall Wagner; translated as The Case of Wagner
D = Morgenröthe; frequently translated as Daybreak or Dawn
DS = David Strauss (Unzeitgemäße Betrachtungen I)
GM = Zur Genealogie der Moral; frequently translated as On the Genealogy of Morals or On the Genealogy of Morality
GS = Die fröhliche Wissenschaft; frequently translated as The Gay Science or The Joyful Wisdom
HH = Menschliches, Allzumenschliches; translated as Human All-too-Human
HL = Vom Nutzen und Nachtheil der Historie für das Leben (Unzeitgemäße Betrachtungen II); frequently translated as The Uses and Disadvantages of History for Life
IM = “Idyllen aus Messina”; translated as “Idylls from Messina”
RWB = Richard Wagner in Bayreuth (Unzeitgemäße Betrachtungen IV)
SE = Schopenhauer als Erzieher (Unzeitgemäße Betrachtungen III); translated as Schopenhauer as Educator
TI = Götzen-Dämmerung; translated as Twilight of the Idols; references to this work also include an abbreviated section name
UM = Unzeitgemäße Betrachtungen; frequently translated as Untimely Meditations, Unmodern Observations, or Unfashionable Observations
WS = Der Wanderer und sein Schatten (in Menschliches, Allzumenschliches II); frequently translated as The Wanderer and His Shadow
Z = Also sprach Zarathustra (part IV originally published privately); translated as Thus Spoke Zarathustra; references to this work also include an abbreviated section name

Abbreviations for other frequently cited posthumous and private publications, authorized manuscripts, and collections of Nietzsche’s unpublished writings and notes:

A = Der Antichrist; frequently translated as The Antichrist or The Antichristian
DD = Dionysos-Dithyramben; translated as Dionysian Dithyrambs
DW = “Die dionysische Weltanschauung”
EH = Ecce Homo; references to this work also include an abbreviated section name
FEI = “Über die Zukunft unserer Bildungsanstalten”; translated as “On the Future of our Educational Institutions”
GSt = “Der griechische Staat”; translated as “The Greek State”
HC = “Homer’s Wettkampf”; translated as “Homer’s Contest”
HCP = “Homer und die klassische Philologie”; translated as “Homer and Classical Philology”
NCW = Nietzsche Contra Wagner
PPP = “Die vorplatonischen Philosophen”; translated as “The Pre-Platonic Philosophers”
PTAG = “Die Philosophie im tragischen Zeitalter der Griechen”; translated as Philosophy in the Tragic Age of the Greeks
SGT = “Sokrates und die griechische Tragödie”; translated as “Socrates and Greek Tragedy”
TL = “Über Wahrheit und Lüge im aussermoralischen Sinne”; frequently translated as “On Truth and Lie in an Extra-moral Sense”
WPh = “Wir Philologen”; translated as “We Philologists” or “We Classicists”
ABSTRACT

In Nietzsche scholarship, little has been done regarding Nietzsche’s reflections on penology and criminology. This dissertation aims to critically examine Friedrich Nietzsche’s thoughts on justice, punishment, and the criminal and to show that his interest in these topics runs throughout his writings. Nietzsche attacked the tradition of Western justice theory and the idea that justice consists in giving each their due. I argue that in place of this notion of justice, he puts forth a non-metaphysical, naturalistic account of justice that refuses to judge and hold man accountable. In addition, I explicate Nietzsche’s passionate critique of punishment, which stops short of calling for its complete abolition, and the various alternatives he sets forth in place of punishing. Finally, I demonstrate that Nietzsche’s reflections on criminality amount to a defense of the criminal whom he considers a valuable and essential feature of society.

Nietzsche’s reflections on justice, punishment, and the criminal are important and warrant closer consideration for several reasons. First, these topics intersect with several major themes within Nietzsche’s work, such as causality, freedom (of the will), responsibility, guilt, ressentiment, hierarchy of rank, and greatness, or nobility. Second, a thorough understanding of punishment, and its relationship to justice and revenge are essential to understanding why Nietzsche rejects traditional morality and the values he wishes to call forth in its place. Third, his rejection of the traditional notion of justice as revenge, and his affirmation of mercy, as well as his insistence upon overcoming the desire to punish, undermines the idea that he is a champion of violence and cruelty. Fourth, these topics contribute to a more comprehensive understanding of what Nietzsche means by greatness and advances our knowledge of his ideal-types and moral
exemplars. Finally, a thorough understanding of Nietzsche’s treatment of justice, punishment, and the criminal lends a coherent dimension to his positive ethics, his political theory, and his vision for society. While some critics have claimed that Nietzsche’s reflections on justice and punishment yield nothing of practical use, this dissertation demonstrates that Nietzsche not only provides valuable critiques but also valuable philosophical and psychological insights concerning justice, punishment, criminal law, and criminal justice reform.
CHAPTER ONE
INTRODUCTION

This dissertation focuses on Nietzsche’s treatment of justice, punishment, and the criminal. It is my contention that such topics, particularly the latter two, are underrepresented in Nietzschean scholarship. While there has been a moderate amount done on Nietzsche’s thoughts on justice, most accounts seem to focus on his critique of justice as it relates to, or diverges from, political theories such as democracy and liberalism. With regard to his genealogy of justice, if addressed, it is oftentimes limited and incomplete. However, what is lacking from scholarship is Nietzsche’s alternative conception of justice which he posits in place of the traditional understanding of justice as giving each their due. On the topic of punishment within Nietzsche, it is my contention that scholarship has overlooked his passionate critique of punishment, which stops short of advocating for its complete abolition. Moreover, while it may sound surprising, Nietzsche’s thoughts on justice and punishment are interconnected with his understanding of greatness and nobility. In particular, those who are great abstain from judging when acting justly and reject punishing in favor of mercy. In Nietzschean scholarship greatness is oftentimes ascribed to free spirits, the Übermensch, and the philosopher of the future, yet it is my belief that Nietzsche considers the criminal among these. Finally, this dissertation broadly considers the way in which Nietzsche’s alternative accounts of justice, punishment, and the criminal contribute to a better understanding of his vision for society and his positive ethics.

Generally, this dissertation aims to de-stigmatize and clarify Nietzsche’s moral and political philosophy. Much attention has been given to his uncompromising attack on morality in
itself, and Christian morality in particular. Such great attention has yielded several misunderstandings and misinterpretations of his thinking. For instance, Nietzsche has long had a reputation as an amoralist and champion of cruelty, malice, and violence.¹ This view is often held not merely by popular opinion but even by various scholars of Nietzsche as well. Thinkers such as Alan White interpret Nietzsche’s self-proclaimed immoralism as “his apparent advocacy of violence and oppression” (White 1990, 118).² Similarly, Philippa Foot interprets Nietzsche’s immoralism as a complete rejection of values as well as an affirmation of those actions that are traditionally characterized as evil or immoral. Moreover, Foot argues that ethical concepts such as justice cannot be accommodated within Nietzsche’s thought because “Nietzschean teaching is inimical to justice” (Foot 1994, 13).³ Indeed, Foot even denies that Nietzsche has an ethics, claiming that he is not merely critical of all moral systems, but also fails to propose a new morality after his rigorous critique.⁴

However, Foot’s claims are misguided because she fails to acknowledge that while Nietzsche dismisses particular forms of morality, he does so without dismissing the entire realm of value as such. As Maudemarie Clark argues, Nietzsche does not “reject all morality (or morality itself) given every possible understanding of ‘morality’” (Clark 1994, 16).⁵ While his critique of morality may have resulted in the destruction of moral principles and facts, it does not

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¹ I believe that this reputation is true not only generally, in mass society and parts of academia, but also in aspects of Nietzschean scholarship.
⁴ See, “Nietzsche’s Immoralism,” Philippa Foot.
extend to non-moral values or aim at the invalidation of all values. Solomon and Higgins explain further,

The attack on morality does not signify that ‘everything is permitted,’ and when Nietzsche presents himself as an ‘immoralist,’ we should not be misled by his schoolboy bravado. In his less flamboyant moments, he declares himself quite sensibly in favor of not only the customary virtues (courage, generosity, honesty) but even such a genteel virtue as courtesy. What Nietzsche rejects is neither moralities (in the general sense) nor the accepted rules of civilized behavior. (Solomon and Higgins 2000, 105)

Nietzsche does not reject any and all guidelines for behavior and “he does not spurn the value judgements ‘good’ and ‘bad’” (Sedgwick 2013, 190). His philosophy illustrates that “one certainly can have values, and assess and rank and discriminate with them, without having a morality” (Bergmann 1988, 34). Although he dismisses, for instance, consequentialist/utilitarian views and intentional ethics, he endorses extra-moral, non-intentional valuation. Nietzsche’s standards of evaluation are life and existence, and he determines value in relation to whether something advances and promotes life or hinders and damages it. He values that which is life-affirming, and thus that which is useful to perpetuating and cultivating the human species so as to allow it to flourish, progress, and enhance itself. In doing so, he rejects values that he considered to be degenerate, decadent, and sickly while offering an alternative form of valuation based upon health, strength, and power.

Moreover, I am in agreement with Frithjof Bergmann who notes that Nietzsche’s goal was not “to undermine, or erode, or otherwise derogate the reality of values” (Bergmann 1988, 36). Rather, Nietzsche feared that the invalidation of morality would extend to all values and in response, he sought to distinguish morals from values. Nietzsche also seems to distinguish between morality and moralities of which the former is characteristic of modern bourgeois society and the subject of Nietzsche’s critique. This must be kept in mind when considering

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Nietzsche’s distinction between morals and values. Possibly my interpretation is incorrect, but I believe the former refers to general and/or universal principles, given in advance by some authority, that require man’s obedience whereas the latter are codes or guidelines for living that are neither specific nor concrete, yet context-dependent. Moreover, it seems that morals also entail metaphysical presuppositions such as free will, autonomy, cause and effect, and responsibility.

In addition, his critique of morality is in part an attack on the universality of morality since his philosophy aims not to replace one morality with another but to set forth “an ordering of rank” (WP 287). Nietzsche is clear that hierarchies exist among men and also among moralities, or values. On his account, various modes of valuation exist since men of different ranks evaluate differently. Hence, he rejects systems of morality that assert themselves as universally applicable in favor of an ethical pluralism. His rigorous critique of morality should be interpreted not as an attempt to destroy morality as such for all time, but to clear space for alternative values and ideals. Ultimately, he insists that the origins, nature, and value of morality must be reassessed and reevaluated and in place of the dominant moral schema, he urges us to accept what might be described as an aristocratic ethics.

While Nietzsche did acknowledge that things such as cruelty and violence could be useful and possess value, and that the will to such things is natural to our species, his acknowledgment was not an endorsement nor an affirmation of such things. Despite this, Nietzsche is oftentimes interpreted as though he espouses those acts that are typically associated with evil and immorality. According to Bergmann, “many still imagine that Nietzsche’s central message was a

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8 Throughout this dissertation I have decided to translate “Mensch” and “Menschen” as “man.” I acknowledge that “human” does not depart from Nietzsche’s obvious masculine understanding of things and is therefore also an equally valid translation. However, I decided that in using “man,” it more clearly alludes to Nietzsche’s one-sided understanding of the human species.
sermon in praise of ruthlessness” (Bergmann 1988, 44). While I agree with Bergmann that many interpret Nietzsche’s philosophy as an affirmation of violence, cruelty, and oppression, I disagree with this interpretation and consider it to be false and misleading. Moreover, I believe Lawrence Hatab posits a correct understanding of Nietzsche’s thought. Hatab states,

Nietzsche’s text is not promoting an ‘immoral’ or ‘amoral’ posture on behalf of presumably value-free life forces. Rather, Nietzsche wants to explore new possibilities of life-affirming values by drawing from historical sources that were deemed ‘immoral’ by traditional moral systems, but that can be redeemed by morally defensible life-values. (Hatab 2008, 2)

While some may interpret Nietzsche as affirming deeds that are traditionally deemed “evil” and “immoral,” Nietzsche is really examining the extent to which such values, although prohibited by society, possess a “life-promoting, life-preserving, species preserving” dimension (BGE 4). He is also examining values that have been traditionally deemed “good” and the degree to which such values are in opposition to the conditions of natural life and are thus, life-denying. In addition, it is important to note that for Nietzsche morality is in constant flux. There is nothing that is intrinsically good or intrinsically evil: “there is no absolute morality” (D 139). While modern bourgeois society posits but one morality, which Nietzsche refers to as “herd morality,” this is only one morality among many. Moreover, since Nietzsche is focused on man’s ability to be great, he acknowledges that man’s greatness resides in his behavior and way of living and thus not in his ability to follow principles or subject himself to rules.

Scholars have shown that Nietzsche is in fact very much concerned with ethical thinking, only in ways that are radically opposed to traditional ways of approaching ethics. Many have pointed to such concepts as the Übermensch, will to power, and eternal recurrence to lend a coherent, positive dimension to Nietzsche’s project. While these concepts are indeed important, their importance seems to obfuscate other themes in his work that are equally significant.

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Scholars have often overlooked frequently recurring ethical themes that figure throughout Nietzsche’s work and thought, particularly his passionate and repeated treatment of, and opposition to, the modern practice and institution of punishment, as well as his concern for, and at times appraisal of, the criminal. I stated above that Nietzsche does not affirm the complete eradication of punishment. However, he does urge us to abolish a specific form of punishment, namely the form associated with modern bourgeois society and slave morality.

It is my contention that such topics warrant closer consideration in part because they stand at the intersection of several major themes such as freedom of the will, causality, judgment, responsibility, justice, guilt, and ressentiment and are therefore indispensable in recognizing Nietzsche’s positive ethical theory amid his critique of morality. Nietzsche alleges that “Western civilization is caught in the grip of debilitating and demoralizing nihilism in which our most fundamental conceptions of the world are no longer tenable and believable” (Ansell-Pearson 1994, 7). He believes that concepts such as free will, justice, and punishment illustrate the extent to which nihilism has affected language and knowledge and for this reason he concludes that such concepts must be reconsidered and reevaluated.

Nietzsche’s interest in punishment, which can be seen as early as Human-All-Too-Human, is present throughout much of his work and it is my contention that a closer reading reveals that punishment figures centrally in his ethical perspective. Moreover, I believe Nietzsche’s thoughts on punishment have been overlooked in part because his position is not articulated through a coherent, logical procedure. It is quite difficult to identify and articulate a coherent, unified view of Nietzsche’s perspective of punishment because it consists of various

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11 I do not deny that Nietzsche was interested in punishment prior to Human, All-Too-Human, yet my exegesis of Nietzsche’s treatment of this topic began with this text although I did explore and incorporate Nietzsche’s letters.
remarks dispersed throughout his writings, the longest of which appear in *On the Genealogy of Morality*. Therefore, as James B. Halsted correctly observes, “the only manner by which one can effectively uncover Nietzsche’s definitive position on any subject, and in particular secular punishment, is to cross reference and reorganize all his wide and dispersed aphorisms” (Halsted 1991, 38). I have undertaken this laborious task to the best of my ability and although I acknowledge that some scholars may doubt that a complete view of Nietzsche’s perspective on punishment is possible, it is my contention that this dissertation is evidence to the contrary. In addition, unlike Robert C. Solomon who referred to Nietzsche’s treatment of punishment as an “inconsistent and incontinent campaign,” I believe that Nietzsche's critique of punishment is coherent and consistent (Solomon 2002, 82). However, like Bradley Stewart Chilton, I too acknowledge that “the aphoristic quality of Nietzsche's writing posits only small fragments of the entire story at a time while leaving the whole to only the most reflective (Chilton 2001, 81).

Given the wealth of divergent claims regarding Nietzsche’s philosophy, it would be advantageous to more clearly articulate Nietzsche’s position on punishment. Indeed, if Nietzsche scholarship aims to understand his ethical perspective, then his persistent claims regarding punishment must be seen as significant for several reasons. For instance, the concept of punishment is conceptually linked to most of our traditional ethical notions, beliefs, and practices, a point which Nietzsche argues for explicitly in the second section of *On the Genealogy of Morals*. The practice of punishing as well as the notion that man is responsible for his deeds relies on the notion that man has a will that is indeed free, and thus, that he is a *causa sui* that could have chosen otherwise. It is important to note that this is one of the main

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distinguishing factors between humans and animals, mankind and nature. However, Nietzsche
denies that there is a “free will” and in doing so he alleges that man cannot be held fully
responsible for his actions. Of course, this is in part precisely why Foot and others are convinced
of Nietzsche’s ultimate amoralism. However, Nietzsche seeks to criticize just the kind of
morality that Foot and Christianity have in mind.

Nietzsche’s discussion of punishment leads us into his view that the common notion of
justice ultimately sanctions revenge and punishment; the traditional understanding of justice has
revenge lurking behind it in that punishment is the name given to revenge. This connection
between revenge and justice is also made evident when Nietzsche explains that the structure of
revenge, like justice, manifests as an exchange and thus, while revenge is not justice, it resides in
the realm of justice. Thus, the “justice” that Foot claims cannot be accounted for within
Nietzsche’s ethical perspective is exactly the breed of justice that Nietzsche critiques and refutes.
Therefore, a thorough understanding of punishment, its relationship to justice and revenge are
essential to understanding why Nietzsche rejects traditional morality, and what values he wishes
to call forward in its place.

Furthermore, while Nietzsche has been predominantly associated with metaphysics,
aesthetics, and ethics, it is my contention that Nietzsche not only provides valuable critiques but
also valuable philosophical insights concerning punishment, criminal law, penal thought, and
criminal justice reform.\footnote{Nietzsche rightly pointed out that “a comparative history of law or at
least punishment is so far lacking completely” (GS 7). As is well known, Michel Foucault was
greatly inspired by Nietzsche and undertook this difficult task. However, little has been done,
particularly in philosophy, on Nietzsche’s own thoughts on the subject, apart from the work of

It is my belief that such insights are of particular importance in the United States today. While this was not my
focus, the United States is currently trying to implement criminal justice reform.
James B. Halsted, James E. Parejko, Robin Small, and Kyron Huigens.\textsuperscript{16} Most often scholars discuss Nietzsche’s treatment of punishment in relation to \textit{GM} and thus in isolation from Nietzsche’s numerous remarks outside of that text. In addition, Nietzsche’s perspective on punishment is rarely the topic of discussion and if discussed at all it is only done sparingly and in relation to other topics such as justice, conscience, and responsibility.\textsuperscript{17}

Although little has been done on Nietzsche’s perspective on justice, punishment, and the criminal in the depth and breadth of this dissertation, apart from Peter R. Sedgwick, there have been scholars who have discussed the aforementioned topics, with a different focus than this dissertation. For instance, the thesis of Jakob Skinner focuses on the relationship between punishment and power. Skinner argues that power is central to Nietzsche’s account of punishment and that “the power of empowerment” is both the justification and function of punishment (Skinner 2006, 5).\textsuperscript{18} Although this dissertation differs from Skinner’s thesis by not focusing exclusively on the relationship between power and punishment, his thesis remains a valuable exegesis of Nietzsche’s account of power as it relates to punishment. Outside of philosophical scholarship Nietzsche’s criticisms of punishment, as well as his insights on the topic, have received more attention. For instance, in the essay “Ressentiment, Revenge, and Punishment: Origins of the Nietzschean Critique,” Robin Small addresses the various historical sources that influenced Nietzsche’s perspective on punishment.\textsuperscript{19} He focuses on the way in which Nietzsche responds to, and is inspired by, Eugen Dühring’s retributive theory of punishment and his close friend Paul Rée’s utilitarian theory. My dissertation fails to discuss the historical

\textsuperscript{16} This does not exhaust the list of thinkers who have treated Nietzsche’s position on punishment to some extent. However, many of them are unknown or lesser-known scholars such as Mark Tunick and Travis J. Denneson.
\textsuperscript{17} See, for instance, “Nietzsche’s Immoralism and the Concept of Morality” by Maudemarie Clark and Nietzsche’s \textit{On the Genealogy of Morality An Introduction} by Lawrence J. Hatab.
\textsuperscript{19} Robin Small was part of the School of Education at the University of Auckland.
individuals that influenced Nietzsche’s thinking on the topics of justice, punishment, and the
criminal although I acknowledge the importance and significance of Small’s essay.

To my knowledge, Peter R. Sedgwick is the only scholar to write extensively on
Nietzsche’s perspective of punishment, as well as his treatment of justice, in his book titled
_Nietzsche’s Justice: Naturalism in Search of an Ethics_. It is my conviction that a discussion
regarding Nietzsche’s sustained treatment of punishment ought to be further articulated because
his thoughts are not only important for Nietzsche scholarship, but also for penology and
criminology. While some scholars have noted that Nietzsche’s thoughts on justice, punishment,
and criminality are “some of the most penetrating in the corpus of criminal theory,” an
exploration of these themes still seems to be lacking in Nietzschean scholarship (Halsted 1991,
38).

Lastly, we see Nietzsche presenting the criminal as a paragon of moral innovation,
worthy of praise rather than punishment. Thus, it is my belief that while Nietzsche praises
various figures throughout his writings, the criminal is one such figure that is of importance for
understanding his view of greatness, nobility, and his ideal types such as the genius, the free
spirit, and the philosopher of the future. In the form of the criminal Nietzsche presents us an
actual figure upon which to aspire, as well as an ideal model. Although the criminal is among
one of several paragons Nietzsche presents to us, the criminal is often absent from Nietzschean
scholarship. Apart from Fredrich Balke, James B. Halsted, James E. Parejko, and Peter R.
Sedgwick, most scholars never make mention of Nietzsche’s sustained interest in criminality and
the figure of the criminal. It ought to be acknowledged that there are several scholars who are
lesser-known or unknown who discuss Nietzsche’s thoughts on the criminal. For instance,
Charles Boasson, Travis J. Denneson, Timothy Gould, Edison Carrasco Jiménez, Jakob Skinner,
and Jason Vick. Although James B Halsted and James E. Parejko may be lesser known, I made mention of them above because in 1991 and 1974 respectively, when little was done on Nietzsche’s thoughts on the criminal and criminality, they undertook the difficult project of interpreting and organizing his numerous reflections on the topic. Moreover, while many scholars acknowledge Nietzsche’s ideal types, exemplary human beings, and higher men, most fail to include the “great criminal” among these. However, it is my contention that a discussion of Nietzsche’s moral exemplars and ideal types is incomplete if the criminal and the great criminal are not included. While it is not my aim to discuss Nietzsche’s ideal types aside from the criminal, I believe that a thorough understanding of such types must consider that Nietzsche sometimes describes them in terms of criminality.

This dissertation is an exposition of Nietzsche’s thoughts concerning justice, punishment, and the criminal. It is organized logically rather than historically, beginning with an exegesis of Nietzsche’s account of the individual, or the subject, as nexus for freedom, autonomy, and responsibility or moral blame. This chapter is followed by three chapters that each provide a detailed explanation of Nietzsche’s thoughts on justice, punishment, and the criminal, respectively. Each chapter is organized in a similar manner, containing three general sections. The first details Nietzsche’s historical and genealogical exposition of the chapter topic. This is followed by Nietzsche’s critique of historical and metaphysical treatments of the topic. Many of these criticisms are directed at the values presupposed by a particular concept or system, although he does critique the concept and/or system in and of itself at times. Finally, each chapter concludes with Nietzsche’s privileged, alternative account.

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20 There are some exceptions. For instance, Daniel Conway, James B. Halsted, James E. Parejko, Peter R. Sedgwick, Francesca Cernia Slovin and Geoffe Waite.
21 Nietzsche believed that the ideal philosopher was someone who not only destroyed but also created; it is evident that he did not merely value this sentiment because his work is both a testament to the destruction of values and the
Beginning with Chapter Two is a discussion of the concept of the individual and the corresponding notions of freedom, autonomy, responsibility, and guilt, upon which the traditional concept of justice and punishment is dependent. Nietzsche rigorously critiques the notion of responsibility and guilt by arguing that they are founded on presuppositions, such as the subject, causality, and free will, which are metaphysical fictions. Since the idea of accountability hinges upon an incoherent and fallacious account of the individual, Nietzsche reasons that man can no longer be thought of as responsible in the traditional sense. In addition, he rejects the type of freedom that posits man is free to choose one action over another and claims instead that man acts in accordance with necessity. While Nietzsche claims man is not free in the sense that traditionally justifies praise and blame, he does not go so far as to claim that man is completely unfree. Rather, he claims that freedom is not an inherent human trait but something for which man must strive; man endeavors toward freedom to create values, as well as himself. On Nietzsche’s account genuine agency is indeed possible, though only for those few who are strong enough to obtain it.

Chapter three begins with Nietzsche’s genealogy of justice, which, contrary to those who locate the origins of justice in reactive feelings such as resentment, posits that justice originated among the strong to eliminate the feeling of ressentiment and the desire for revenge. Nietzsche argues that there is no such thing as natural justice since it is only with the erection of a formal system of law that just and unjust become meaningful. Therefore, the concepts of just and unjust are in themselves meaningless and possess no meaning or value in a pre-political or pre-legal realm. Nietzsche directs his critique at the modern form of justice, which he claims originated with the slave revolt in morality. It is aimed at “the great tradition of Western justice theory that

creation of values. He critiques and dismisses values but also dedicates a significant portion of his writing to creating and affirming values.
originated with Socrates and Plato,” as well as modern theories of justice such as utilitarianism and liberalism and those of the Kantian and Marxist tradition (Chilton 2001, 81). He alleges that this type of justice is not really justice, but a disguised form of revenge. Moreover, he rigorously attacks egalitarian justice and universal equality and the way in which such principles are founded on a respect for sameness and uniformity yet a lack of respect for difference and diversity. Nietzsche contends that this type of justice prevents the flourishing and elevation of man. In place of the traditional notion of justice he urges us to acknowledge that man acts via necessity and is therefore innocent. For Nietzsche, the man who is just is the man who refrains from judgement. Hence, Nietzschean justice is extra-moral. While he greatly values justice, there is something he values even more, namely, mercy. Hence, he tells us that those who are noble and strong will refuse to punish or seek revenge and will bestow mercy instead. Lastly, in place of an egalitarian society that hinders man’s ability to act on his will to power, Nietzsche urges us to implement a society based on hierarchy of rank which will allow man to grow in depth and reach new heights.

Chapter Four addresses Nietzsche’s perspective of punishment. As we learn from his genealogy of punishment, there is no single reason as to why man punishes. However, since punishment was initially utilized prior to the notion of moral responsibility, he maintains that it was enacted not because man was guilty or responsible for the harm he had done. On Nietzsche’s account, punishment was first utilized for instilling a memory within the animal-man. While Nietzsche is extremely critical of the practice of punishing, he confines his critique to the modern use of punishment. In particular, his discussion of punishment can be read as a polemic against the two dominant theories of punishment in the 19th century, namely utilitarian and retributive theory. Although Nietzsche fails to address each theory by name, his critique is aimed in part at
the main principles of each. Ultimately, he concludes that the principles that underlie each theory are contradictory and incoherent and thus the reasons for why we punish are not justified. Nietzsche further claims that man punishes in an attempt to gain power. However, he alleges that directing one’s power externally is not an efficacious way of procuring power. Those who are great demonstrate a more effective way of gaining power; they direct their power internally, toward self-creation and self-mastery. However, in place of punishing others, Nietzsche posits a moral injunction, namely to “step aside” or “look away” and he additionally advises that when man is subjected to malice or cruelty, man should determine how he was benefited, rather than respond in kind.

While Nietzsche critiques and rejects the modern practice of punishment, in Chapter Five I discuss his rigorous defense of the subject of punishment, namely, the criminal. According to Nietzsche, the criminal is a general term for anyone who violates society’s customs, traditions, or laws. As such, the criminal is representative of the lawbreaker, the sinner, the evil-one, and the non-conformer. Contrary to society’s definition of the criminal, Nietzsche describes him as a man who is strong but has been made ill by society. Nietzsche is extremely critical of the harsh way society treats the criminal. From his perspective the criminal is not deserving of the contempt and disparagement to which he is subjected. Rather, the criminal is deserving of respect and at times, even praise, since it is due to the actions of the criminal that morality evolves, and society progresses. Furthermore, Nietzsche presents us with the great criminal who is not only representative of healthy, human behavior, but also strength and greatness.

The final chapter of this dissertation discusses Nietzsche’s vision for the future and how his thoughts on justice, punishment, and the criminal play a role in bringing this future about. In
addition to this I address whether Nietzsche’s thoughts are merely critical, or if they go beyond critique into valuable suggestions for criminal justice reform.
CHAPTER TWO
THE INDIVIDUAL, FREE WILL, RESPONSIBILITY, AND GUILT

1. Introduction:

Two features that are central to Western moral philosophy are responsibility and moral blame. These notions presuppose that individuals are endowed with consciousness, reason, and free will and are thus able to freely choose whether to act in one way or another. The distinction between human beings and nature hinges on this notion of free will, which is said to belong exclusively to the former, who are described as innately equipped with a free will. This logic implies that responsibility and guilt are also natural to human beings. Contrary to nature and the natural world, humans possess the capacity to freely engage in action, or to refrain from doing so, and as such, can be made accountable and responsible for their deeds. It is this rationale, Nietzsche explains, that accounts for the fact that individuals react differently when they are injured by other individuals as compared to when they are injured by nature, or a natural event (HH 102). He suggests that when individuals are injured or harmed, they insist that those who harmed them are to blame for the harm done. To the contrary, when a natural disaster occurs and great harm and destruction ensue, generally speaking, nobody blames the natural disaster for the harm that resulted.

Nietzsche contends that although the results are the same, i.e., harm was done, we do not blame natural events for the havoc that results because we do not consider such events to be intentional entities in the sense that human beings are conceived to be. The presuppositions that underlie our conception of (human) freedom entail a causal link between an individual’s
intentions, actions, and the consequences of their actions, yet there is assumed to be no such causal link with nature. Nature does not cause in the way a free will is said to be a cause, in the sense of freely and intentionally affecting events to occur; nature does not consciously act to bring circumstances about. The rationale behind judging free acts and excusing natural events is that we attribute mere necessity to nature but believe the actions of the wrongdoer to be the consequence of a free will. Morality is based on this account of free will that implies the concept of choice and causation; where our actions are understood as causes for things, we are considered responsible, or guilty. This logic illustrates the conceptual connection between free will and responsibility that is presumed to exist. The natural disaster should not be devoid of any valuation since it may still be regarded as undesirable, but what is lacking is a conscious, free will to attach responsibility.

Society’s various accounts of justice, punishment, and the criminal are dependent upon the individual as free and autonomous. Nietzsche’s critique of justice, punishment, and the criminal begins with his rejection of this notion of the individual. Nietzsche, like Marx, challenges this view of man and the presuppositions that support this view, “which, though they purport to be necessary truths, are in fact mere reflections of certain historical circumstances” (Murphy 1995, 19). Nietzsche dismisses the metaphysical concepts of free will, responsibility, and guilt and instead puts forth a naturalist-genealogical account that traces the socio-historical phenomena that contributed to man’s becoming free, responsible, and ultimately, guilty. He further explains that the notion of free will and responsibility also led to the origin of two forms of conscience in man, which are integral parts of the conception of morality and personhood discussed above. He traces the various socio-historical phenomena that led to the development of

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the sovereign conscience and the bad conscience, of which the latter occurs in various stages that culminate in the development of moral guilt. In addition to this, Nietzsche puts forth a psychological and philosophical critique of the presuppositions that underlie the notion of moral blame, or responsibility, such as free will, causality, and the subject. He reasons that the notion of moral responsibility is untenable because it is founded upon metaphysical fictions.

Nietzsche further undermines the traditional notion of moral agency by hypothesizing that we have no conscious rational self, free will, or causal force. He states, “those evil actions which outrage us most today are based on the error that that man who harms us has free will, that is, that he had the choice not to do this bad thing to us” (HH 99). Moreover, not only does the notion of moral responsibility consist of falsehoods, but it also often “arouses hatred, thirst for revenge, spite, the whole deterioration of our imagination” which negates the life-affirming perspective that Nietzsche praises (HH 99). He rejects the traditional, metaphysical notions of free will and responsibility and posits an aesthetic-naturalist account of such notions. In place of a moral ethics, he urges us to embrace a naturalist system of values. Nietzsche suggests that man is not distinct from nature, but part of it, and like all of nature, man acts in accordance with necessity. Since man acts as he must, Nietzsche urges us to reinterpret man in terms of his utter innocence. Although this seems to preclude the possibility of freedom, Nietzsche insists that freedom is indeed possible.

2. Nietzsche’s Historical, Genealogical, and Psychological Account of the Individual

2.1. The Origin of Autonomy, the (Free) Will, Responsibility, and Moral Blame:

Nietzsche rejects metaphysical explanations of the independent and autonomous self in possession of a ‘free will’ and instead offers an historical account of the invention and development of such characteristics. Specifically, he discusses the origins of conceptualizing individuals as autonomous subjects endowed with free will in terms of master-slave morality and
the subsequent slave revolt in morality.\textsuperscript{23} Nietzsche traces the historical development of two types of moral values, namely, those that originated in the ruling classes and those that originated among the oppressed. Nietzsche describes the value judgments “good” and “bad” as originating among the moralities of the ruling classes and he alleges that “good” originally meant “noble” or “privileged soul,” whereas “bad” meant “common” or “low.” Nietzsche observes that the nobles deemed their own character traits to be “good” since such traits distinguished the nobles from the plebeians. However, in response to unfair and oppressive treatment by the nobles, the slavish types took revenge upon the ruling classes. But, since the low classes were “denied the true reaction, that of deeds,” their revenge consisted in inverting the values of the nobles (GM 1.10). When the low and oppressed took revenge upon the nobles, a new morality emerged, accounting for the origin of “good” and “evil.” However, according to Nietzsche, the values of the oppressed were reactionary in nature since they merely inverted the values of the noble race. The resentful slaves judged themselves to be “good” and morally better than their counterparts and they denounced the powerful and strong as “evil: and blameworthy for having “chosen” to be as such. It is important to note that the main distinction between master and slave morality consists in the fact that “good” and “evil” were moral judgments whereas the noble value judgments of “good” and “bad” were not. Clark explains, “calling commoners ‘bad’ is certainly making a value judgment about them, but it is not judging them to be ‘morally bad’ or ‘immoral’” (Clark 1994, 24).

\textsuperscript{23} Due to the nature of this paper, this topic will only be discussed briefly. Master-slave morality is Nietzsche’s hypothesis concerning the origin of morality. Rather than drawing on metaphysical arguments he looks to history and philology to answer the question, “under what conditions did man devise these value judgments good and evil?” (GM, Preface 3). He reasons that value judgments originally referred to who was good, rather than what was good.
According to Nietzsche, the slave revolt in morality also accounts for the origin of responsibility and moral blame.\(^{24}\) He alleges that the doctrine of the will acted as a justification for punishing, “a right to ordain punishments,” since it functioned to make individuals accountable by presupposing that they have the ability to freely and intentionally act one way rather than another. Nietzsche insists that “this type of man needs to believe in a neutral independent ‘subject’” since it allowed him to interpret himself as something freely chosen, and therefore, as something deserving of respect and praise (GM 1.13). The slavish types accepted and affirmed this notion because it gave them leverage over the masters through the implication that who they were was “a voluntary achievement, willed, chosen, a deed, a meritorious act” (GM 1.13). Moreover, this narrative entails that the noble and powerful were the way they were because they chose to be as such, and it is on these grounds that they can be blamed. Nietzsche explains, “in short, the pessimism of indignation invents responsibility in order to create a pleasant feeling for itself – revenge” (WP 765). With the notion of responsibility, the slavish types can justifiably claim that the powerful are evil because they choose to oppress, exploit, and enslave. Nietzsche uses a parable to illustrate the psychology of the slave,

> that lambs dislike great birds of prey does not seem strange: only it gives no ground for reproaching these birds of prey for bearing off little lambs. And if the lambs say among themselves: ‘these birds of prey are evil; and whoever is least like a bird of prey, but rather its opposite, a lamb – would he not be good?’ (GM 1.13)

Thus, within the power-relations between the weak and strong, the “darkly glowering emotions of vengefulness and hatred” of the weak “exploit this belief for their own ends,” namely that “the strong man is free to be weak and the bird of prey to be a lamb – for thus they gain the right to make the bird of prey accountable for being a bird of prey” (GM 1.13). Moreover, it is with this notion that “a pessimistic suspicion about the whole condition of man will find expression,

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\(^{24}\) This also accounts for the moralization of suffering. Pointless suffering becomes moralized when responsibility is placed upon something or someone.
perhaps a condemnation of man along with his condition” (BGE 260). From this point onward, all actions, and even an individual’s nature, were “traced back to will, to intentions, to accountable acts” (TI ‘The Four Great Errors,’ 7).

In On the Genealogy of Morals, Nietzsche writes “this precisely is the long story of how responsibility originated” (GM 2.2). Yet, prior to this account, in Human, All-Too-Human, Nietzsche also traces the history of responsibility, which he divides into four stages of valuation. Initially, actions were evaluated in relation to their consequences alone. Actions were deemed ‘good’ if they proved beneficial to society and ‘evil’ if they harmed society. Second, valuations focused on the actions in and of themselves rather than the consequences. Thus, the utilitarian origins were replaced and forgotten and contrary to the consequences yielded, it was presumed that the action itself possessed an inherent value that was either ‘good’ or ‘evil’. This logic constructs the conditions for the third phase in which the action is linked to a corresponding motive. Valuations of ‘good’ or ‘evil’ refer to the motives and intentions that are presumed to be the cause of the action. Finally, in the fourth and final stage, the man who has committed the action is deemed ‘good’ or evil. Thus, it is no longer the consequences of man’s actions, the action itself, or the intention underlying the action that determines value; instead, it is man’s nature that is marked as ‘good’ or ‘evil.’

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25 Section Two of Human, All-Too-Human: A Book For Free Spirits is titled “On the History of Moral Feelings” and in many respects it is a precursor to On the Genealogy of Morals. This is acknowledged by Nietzsche, who, in the preface to On the Genealogy of Morals, states that his ideas regarding moral concepts and their origin were first articulated in Human, All-Too-Human, although the ideas themselves were formulated even earlier.

26 Note that in BGE 32, Nietzsche provides another account of the history of responsibility. In pre-historical times, the value of an action was determined in relation to the consequences that came about. The consequences, nor the action as such, were of significance. If a successful state of affairs came about, the action was subsequently deemed positive and if the consequences brought about failure or a poor state of affairs, the action was deemed bad. Nietzsche refers to this period as the “pre-moral period” (BGE 32). Roughly 10,000 years ago, a revaluation of values took place in which value shifted from the consequences to the intention. With this shift, intention was interpreted as the origin of the action. Nietzsche calls this period the “moral” period (BGE 32). At present, Nietzsche insists that we stand on the horizon of a new, post-moral period in which an action’s value consists in the unintentional.
Contrary to the above account, in GM Nietzsche posits his hypothesis concerning the historical processes that aided in the development of the modern notion of moral responsibility. In explaining the origin of responsibility, Nietzsche indicates that several fundamental human faculties and instincts had to be forcibly developed in the animal, man. Specifically, since this animal was naturally attuned to forget, a memory and the ability to make a promise had to be bred within this creature before he could become accountable.27

Nietzsche describes the cultivation of memory as an ambitious and arduous process because the psychic realm of the human animal was a “partly obtuse, partly flighty mind, attuned only to the passing moment” (GM 2.3). Rather than a rational ego transparent to itself and able to control itself consciously, this creature was a slave to the present, commanded by sudden and unexpected instincts, appetites, and desires. Forgetting was an active faculty that functioned to open a sort of space in man’s consciousness, which allowed for “the nobler functions and functionaries” (GM 2.1). It was a necessary function, something that primitive man needed to do because it allowed for the maintenance of order in the psychic realm and ensured a certain degree of psychic health. Forgetting was a force that allowed man to be future-oriented, rather than, as Hatab says, “confine us to a fixation on the past” (Hatab 2008, 70). Memory, on the other hand, is described as an “opposing faculty” in which forgetting is rescinded in those specific instances where promises are made (GM 2.1). However, in order to counter forgetting and override it, an active desire not to forget was required. The intention to remember required not only that man calculate and judge the outside world, but also himself, and it further required a certain degree of control over future events and an ability to distinguish accident from necessity.

Since the process of forgetting was an innate instinct and the faculty of memory and the ability to make promises were not, the faculty and ability had to be cultivated over time. This

27 It is only after this long process that man would be capable of reason, reflection, and self-mastery.
required that man had to be bred to be “necessary, uniform…regular, and consequently calculable” in order to carve out a memory for himself (GM 2.2). Punishment aided in this overall process, assisting man in remembering what he should and should not do. But it ought to be noted that the act of punishing was prior to any notion of accountability or guilt. Pain and punishment were used as a means of preventing the competition of ideas and ensured that certain ideas dominated and became “fixed” and “unforgettable” (GM 2.3). Pain and cruelty were utilized to create the indelible mantra “I will not.”

Nietzsche describes the process of making man predictable in terms of the discipline and labor used during the pre-historical, pre-moral period to teach man societal norms. He refers to these often cruel and violent ancient processes, which resulted in man becoming regular and calculable, as the “morality of custom” (D 9). Hatab describes this period as “a culture of tradition, where the individual self must be subjugated to the community’s values, which are inherited by and instilled within the individual by the force of convention and conformity” (Hatab 2008, 74).

Over time, the act of making promises transformed from an “active desire not to rid oneself” to an instinct, which man named “his conscience” (GM 2.1; GM 2.2). The development of the conscience was representative of man’s ability to self-regulate and assert himself. Nietzsche writes, “the proud awareness of the extraordinary privilege of responsibility, the consciousness of this rare freedom, this power over oneself and over fate, has in his case penetrated to the profoundest depths and become instinct, the dominating instinct” (GM 2.2). The conscience represented the social customs, norms, and traditions that were now ingrained in man’s memory as an instinct. It is

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28 Nietzsche’s historical narrative highlights the cruelty that facilitated the making of the conscience.
Contrary to Kant, who insists that the moral law is an innate capacity within human beings, Nietzsche asserts that the moral law was the product of several historical processes that subjected man to procedures of conditioning and disciplining. Responsibility is not natural to man but ingrained in man’s psyche through a long, arduous breeding process. Nietzsche’s account of the conscience describes the means by which socio-historical phenomena constitute man’s nature as well as his instincts and drives. Moreover, it evidences his naturalism, which he favors over metaphysical accounts of man’s nature. Thus, according to Nietzsche, it was through various historical and social processes that a “reliable self” was created.

Nietzsche describes the conscience as a prerequisite for what he calls the “bad conscience” or “consciousness of guilt.” For man to perceive himself as guilty he must first consider himself to be an autonomous causal agent in the sense that he himself, and not fate or some other force, is the cause of his behavior. Thus, man must begin to conceive of himself as the legislator of his own life. Regarding both forms of conscience, it is important to note that “for Nietzsche the morality of custom is a precondition for both, and that both seemingly rest on an understanding of oneself as author of one’s own behavior” (Zamosc 2011, 108). While the (sovereign) conscience represents man’s sovereignty and his ability to make moral judgments, as well as his awareness of his duties and commitments to social norms, the second type of conscience, the bad conscience, represents man’s belief in his wrongdoing, in violating the status quo.

2.2. The Origin of Guilt and the Bad Conscience:

According to Nietzsche, “the feeling of guilt, of personal obligation” developed in man due to a variety of social, historical, and economic processes (GM 2.8). He traces the origins of guilt to the personal and primitive relations between creditor and debtor, which are described by

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29 Some of these processes were discussed above.
Nietzsche in terms of contractual agreements, or promising (GM 2.4). The concept of guilt arose in this material world of economic exchange “in an external, transactional manner” (Hatab 2008, 85). Guilt consisted in the consciousness that man must fulfill an economic obligation, or provide economic compensation for a debt owed. In the primitive sphere of economic relations among creditor and debtor, guilt is nonmoral; it is an economic, material concept that referred to defaulting, or owing a debt. However, Nietzsche alleges that the material notion of guilt (debt) gives rise to the moral concepts of guilt and duty. He believes this historical event is captured in the German word for guilt, *Schuld*, which also translates as debt (*Schulden* – debts). Thus, the understanding of moral debt and the consciousness of moral obligations arose out of legal obligations, “and not in any reference to individual responsibility or free will” (Hatab 2008, 85). However, it is only after debt becomes a part of the bad conscience that the notion of moral guilt comes about.

According to Nietzsche, “the consciousness of guilt, the ‘bad conscience’” first took root in man upon his abrupt departure from nature and immediate entrance into society (GM 2.4). When the human-animal was forcibly removed from nature and placed within the confines of society he became infected with a “serious illness,” the bad conscience, of which he has not yet

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30 Creditor-debtor relations would also contribute to the invention of a realm of values, such as justice. It was here within the exchanges between creditor and debtor that mankind first discovered and learned that he was “the valuating animal as such,” that “everything has its price; all things can be paid for” (GM 2.8). Nietzsche insists that buying, selling, trading, and bartering are more primitive than the formation of organized social structures, such as the state. However, these practices would help to create and structure the conditions of early societies. Creditor-debtor relations will be discussed in greater detail in Chapter Three: Justice.

31 Interestingly, it seems that this does not only hold true for the German language since a connection between debt and responsibility also exists in the Chinese language. In Chinese, the character (ze) can mean “responsibility;” “duty,” “blame,” or “reproach.” It is comprised of the character (bei) meaning “currency,” “money,” or “shell” and (feng) meaning “bountiful,” and “plenty.” In addition, the word “debt” (zhai) is comprised of the characters for “person” (ren) and responsibility (ze). Although this might not add weight to Nietzsche’s overall argument, it certainly does not speak against his argument concerning the connection between debt and responsibility, which is not just an idiosyncrasy of German.

been cured (GM 2.16). Nietzsche insists that the origins of the bad conscience developed as a result of the actions of the original organizers of society who came together to mold and form a directionless and yielding people (BGE 257). They were “brutal, powerful” men, “a pack of blond beasts of prey,” who, through force, violence, and sheer will, made for themselves the right to organize (HH 99; GM 2.17). Men such as these were bold and authoritative and had no need for mutual covenants and contracts. Thus, the initial institution of the state did not occur through meaningful deliberation and planning with all consenting freely and voluntarily; rather, it was the spontaneous creation of a group of men who were “by nature ‘master’” (GM 2.17). But Nietzsche insists that although the beginnings of the state can be attributed to these men, the bad conscience cannot; for they had no such concept. “It is not in them that the ‘bad conscience’ developed, that goes without saying – but it would not have developed without them” (GM 2.17).

Yet, it is important to note that those who organized and created society and those who invented the bad conscience were driven by “the same active force” (GM 2.18). However, the difference between the two is that the active, powerful state-creators vented their energy outward, whereas those who were subjected to them vented their energy inward. Ultimately Nietzsche claims that bad conscience arises because of the reactive and resentful perspective of those who were subjected to “the active and aggressive powers” who forced obedience upon them (GM 2.11). As

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33 Their acts, although violent and brutal, were not unjust, nor did they violate the rights of those who were subjected to their will, since no such concept yet exists. However, just as these powerful men created the state, so too did they create such concepts (e.g., just, unjust). This is discussed further in Chapter Three: Justice.

34 Nietzsche rejects Hobbes’ contractual theory and the idea of a commonwealth by institution and instead argues that the original state came about through forceful acquisition. Thus, the organization of a people into a political unity did not come about through mutual covenants as Hobbes hypothesized but through acts of violence and force (See, for instance, HH 99; GM 2.17; Z ‘Of Old and New Law-Tables,’ 25). However, it ought to be noted that Nietzsche’s perspective does not equate to Hobbes’s notion of the “commonwealth by acquisition” since the main difference between this form of commonwealth and the “commonwealth by institution” is that the former is chosen because individuals fear one another whereas the latter is chosen because individuals fear the person in power. On my reading of Nietzsche, man lacked the power to choose and was forced to do as the powerful state organizers required. Furthermore, for Nietzsche society could not have been the result of a social contract since man lacked the faculty of reason. That is to say, the capacity for reason developed within the confines of society when man was forced to remember social norms.
a result of the actions of this master race “a tremendous quantity of freedom” was driven from human existence and consequently the will to power was “forcibly made latent” in man, thereby signaling the initial beginnings of the bad conscience (GM 2.17).

Prior to man’s entry into society, man was accustomed to being uninhibited, wild, and free. He lived in an animal-like state in which he relied solely on his instincts and drives. In this environment, he was able to exert his force outward, upon other things and other men, without restriction or limitation. He was well-adapted to a wild and free environment in which he reveled in adventure, cruelty, change, and war. Upon entering society, he was made to rely on his consciousness and forced to suppress his instincts, his natural guides. “They were reduced to thinking, inferring, reckoning, co-ordinating cause and effect, these unfortunate creatures; they were reduced to their ‘consciousness,’ their weakest and most fallible organ” (GM 2.16). Man found himself confined and restricted within the walls of the state where he was deprived of the “external enemies and resistances” to which he had grown accustomed (GM 2.16). He was no longer able to be unrestrained and free but through the threat of punishment was made to restrain himself and his impulses and act in accordance with social norms and mores.35

The instincts that naturally formed the social order were now, as a requirement of social order, suppressed and rendered useless. Even though man was forced to regulate and suppress his instincts he was accustomed to in the wild, such instincts remained powerful.36 As a result, man grew to resent his animal nature. Catherine Zuckert explains, “to the extent to which they accept community standards of good, they come to regard themselves as bad; they acquire a ‘bad

35 Punishment is the primary means through which men were forced and compelled to adopt customs and social norms. However, the origin of the bad conscience cannot be attributed to the practice of punishing. Rather, Nietzsche identifies the repressed “instinct for freedom” as the origin of the bad conscience.
36 Note that man was restricted from acting cruelly or violently but the state was not similarly prohibited. All cruel actions committed by the state were done so with the justification of defending itself. This justification was acknowledged as legitimate by society because society adhered to the belief that the state was a necessity. In the modern era the belief in the state’s necessity remains powerful. The effects of which can be seen in, for instance, man’s insensitivity toward the cruelty committed by the state upon political dissidents. See, HH 101.
conscience,’ because they continue to feel their naturally aggressive, unruly instincts within” (Zuckert 1983, 49). Deprived of any outward channel, the natural instincts of power, domination, violence, and cruelty, turned inward, back upon man. That is to say, “the instinct for freedom” turned inward and brutally expelled itself against “man himself, his whole ancient animal self – and not, as in that greater and more obvious phenomenon, some other man, other men” (GM 2.18). It is important to note that man’s “instincts do not become gradually domesticated, but are vehemently turned inwards” (Risse 2001, 57). Nietzsche calls this event “the internalization of man” and describes it as the point at which the bad conscience becomes active.9

As the animal in man was tamed and the creature forced out of him, man’s restlessness and desperation grew. The instinct to cause suffering, to be wild, to partake in adventure, manifested as the bad conscience. Ultimately, man sought relief in the form of self-deprecation and self-abuse which was a way for him to express his natural, but repressed, drives. However, this form of self-mistreatment was also a form of pleasure because man experienced an increase in power through making suffer, even though the sufferer was man himself. Solomon and Higgins explain, “although the person afflicted with bad conscience suffers, this suffering is mingled with self-satisfaction about causing and enduring such pain” (Solomon & Higgins 2000, 79). That is to say, man’s will to self-deprecate and self-condemn functioned as a form of relief; this creature “makes itself suffer out of joy in making suffer” (GM 2.18). It is here,

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39 The “inward pain” that is characteristic of guilt is the result of the internalization of man. Moreover, it ought to be noted that Nietzsche also claims that this process accounts for the origin of the “soul.”
Nietzsche states, that “this fool, this yearning and desperate prisoner became the inventor of the ‘bad conscience’” (GM 2.16).41

However, at this point the bad conscience has not yet developed into the feeling of guilt, nor has it become moralized. Rather, this occurs at a later stage when the bad conscience is coupled with the idea of being indebted to a deity. This fundamental change occurs when the external, concrete contractual relationship between creditor and debtor is transformed into an internal indebtedness within the individual members of a tribe in relation to their founder. Since the tribe would not have come into existence without the labor and effort of the original founder, a feeling of indebtedness developed within tribal members. They felt obligated to honor the sacrifices and achievements that led to the tribe’s creation and took part in sacrifices and rituals to illustrate their gratitude and respect. With each generation, the feeling of indebtedness grew, as did the status of the tribal ancestor, who in the end, was transformed into a deity. Nietzsche explains, “this man of the bad conscience has seized upon the presupposition of religion so as to drive his self-torture to its most gruesome pitch of severity and rigor. Guilt before God: this thought becomes an instrument of torture to him” (GM 2.22).

Over time the feeling of indebtedness compounded and was “pushed back into the bad conscience” (GM 2.21). Clark explains, “debt is moralized into guilt, and duty into moral duty, through the development of the bad conscience and of the idea of having a debt to God” (Clark 1994, 28). It is important to note that when the feeling of indebtedness is combined with Christian ideals, failure to repay one’s debts results in one’s diminished self-worth. Thus, moral debt is fundamentally distinct from non-moral debt since the former is in part a determination of man’s worth whereas the latter is not.

41 It seems that, for Nietzsche, self-punishment, in part accounts for the origin of guilt.
According to Nietzsche, the bad conscience “reached its most terrible and most sublime height” with the invention of the Christian God (GM 2.19).\footnote{For a more comprehensive account of the moralization of guilt in relation to god, see: Aaron Ridley, “Guilt Before God, or God Before Guilt? The Second Essay of Nietzsche’s Genealogy,” Journal of Nietzsche Studies 29 (2005): 35-45. In this essay, Ridley argues that the moralization of guilt “is essentially independent of transcendental presuppositions, and is logically prior to the invention of (the Christian) God” (Ridley 2005, 35). Mathias Risse, objects to Ridley’s reading and argues instead that “Nietzsche tells us how the bad conscience as a feeling of guilt arises from an earlier form of the bad conscience (which has nothing to do with guilt) and an indebtedness towards gods” (Risse 2001, 56).} He describes this historical event as having two major consequences. First, the bad conscience was pushed deeper into the human-animal’s psyche through the invention of the Christian God and the massive amount of guilt Christians were required to feel for their creditor. Second, the Holy God was a complete inversion of the human-animal, man. The beast-like nature of man was reinterpreted “as a form of guilt before God” (GM 2.22). As a result, man’s natural drives and inclinations became a part of the bad conscience, which was called “sin” by the priests.\footnote{See, for instance, GM 2.24.}

Although man had always, in some sense, treated his natural inclinations with disdain, they were now branded as evil, as sinful. In this way suffering is given meaning, yet suffering is also increased as a result. Man becomes essentially and inescapably guilty in being conceived as naturally evil. Ansell-Pearson explains,

the notion of guilt (Schuld) has changed fundamentally from the ancient civil relationship between a creditor and a debtor, in which it primarily denotes a debt that one has to honour in order to prove oneself as an animal who has earned the ‘right’ to make promises, to the moral one of a Christian culture in which one feels guilt in the sense of original sin: one is not in debt to a creditor in terms of social or legal relationships of equals, but simply on account of being born (Ansell-Pearson 1994, 136).

Furthermore, the distance between man as debtor and God as creditor grew to such an extent that man came to believe that there was no punishment in existence that could balance his guilt. Guilt before God reaches its climax when “the irredeemable debt gives rise to the conception of irredeemable penance, the idea that it cannot be discharged (‘eternal punishment’) (GM 2.21).

Man brands all of humanity and all of existence as evil and reprehensible, guaranteeing his
eternal guilt, of which there was no possibility of atonement. As a result, man becomes convinced “of his own absolute unworthiness” (GM 2.22).

3. Nietzsche’s Critique of the Individual

Nietzsche’s genealogical narrative illustrates that the fundamental concepts of moral accountability are not inherent features of human nature. However, in addition to that, he alleges that the presuppositions that underlie the notion of responsibility are metaphysical fictions. Nietzsche rejects all metaphysical explanations because they are nonsensical and irrational and argues instead that there are no metaphysical causes or entities. He alleges that the subject, or the doer, is a fiction, and so too are the characteristics of free will, independence, and autonomy. Peter R. Sedgwick summarizes Nietzsche’s perspective as follows: “responsibility – has a history, and that history begins with questionable assumptions concerning the link between doer and deed. Free will, Nietzsche argues, is in fact an error, as is the notion of responsibility that it justifies” (Sedgwick 2013, 103). Thus, Nietzsche’s contention with moral systems and principles is that they are founded upon the (false) belief in the reality of free will. I read Nietzsche as not necessarily affirming or denying the existence of such concepts but insisting that our typical way of understanding them is absurd and incoherent. Nietzsche recognizes that such beliefs are in a sense necessary for the preservation of the species; however, he cautions against believing that such things are truths, and against granting them objective status. Ultimately, he rejects free will and thus the idea that man is morally responsible for his actions. The following section will discuss Nietzsche’s metaphysical, psychological, and philosophical critiques of the aforementioned concepts.

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44 See, for instance, WP 487.
3.1. The Psychology of Freedom, Willing, and Guilt:

Instead of accepting that the natural state of man is freedom, Nietzsche reflects upon why man has come to believe that he is indeed free in the first place. Nietzsche reasons that the idea that man is free corresponds with specific psychological and emotional states that buttress and reinforce man’s belief in his being free. Moreover, he points out that this belief is so powerful that it obfuscates the possible alternative, namely that the natural state of man is bondage. The reality is that human beings are “living in a complex state of dependence” and only after much time has man come to believe, and even feel, that he is free (WS 10). Therefore, on Nietzsche’s account, freedom as is typically understood is an illusion; “for we are in a prison, and can only dream of freedom, not make ourselves free” (AOM 33).

In The Wanderer and His Shadow, Nietzsche hypothesizes as to why man interprets himself in possession of a free will. He observes that in the socio-political realm, those who are most powerful and strong are also those who are the freest, whereas those who belong to the lower, slavish class tend to be the most impotent and unfree. As such, Nietzsche contends that “an experience that a man has undergone in the social and political sphere is wrongly transferred to the ultimate metaphysical sphere” (WS 9). Over time, man has come to the resolution that there is an inevitable association between “dependence and apathy, independence and vivacity” (WS 9).

This logic also explains what is occurring on an internal, psychological level such that man feels the freest in those instances in which his strength is most powerful, when feelings of dependence are altogether absent. When man experiences vigor and vivacity such feelings are related to freedom and independence; however, when vitality wanes and feelings of apathy and listlessness take over, so too do the feelings of dependence and unfreedom. Man has come to
relate the state of unfreedom and dependence to feelings of indifference and spiritlessness and when such feelings are absent, man (falsely) concludes that he must be free and independent. Thus, man presumes that his natural state is one of freedom and independence and “so long as we do not feel that we are in some way dependent we consider ourselves independent” (WS 10).

This leads Nietzsche to conclude that the notion of free will is merely the name given to the feeling that has developed in man when he no longer feels dependent, when “he no longer feels the weight of the chain” (WS 10). Humankind has adopted the belief that it is possible to consciously recognize states of dependence and nonfreedom, yet Nietzsche rejects this perspective as hubris, insisting instead that the various states of dependence and bondage in which mankind currently exists go undetected. In *Writings from the Late Notebooks* Nietzsche states, “that we are effective beings, forces, is our fundamental belief. *Free* means: ‘not pushed and shoved, without a feeling of compulsion’” (WLN 34.250). He continues,

> where we encounter a resistance and have to give way to it, we feel *unfree*: where we don’t give way to it but compel it to give way to us, we feel *free*. i.e., it is our *feeling of having more force* that we call ‘freedom of will’, the consciousness of our force *compelling* in relation to a force which is compelled. (WLN 34.250)

The concept of “‘free will’ really means nothing more than an absence of feeling of new chains” and since humankind “only suffers from new chains” it has come to the conscious conclusion that the natural state must be without chains entirely (WS 10). In other words, since humans felt as though they were not dependent on anything, they reasoned that they were therefore, independent.

The feeling of freedom that has developed over time in the human psyche is also linked to the feeling of pleasure and satisfaction that arises when man is the acting authority. When man acts, and the act comes to fruition successfully, man delights in his power as a causal agent and attributes such success to his will. When willing culminates in achieving that which was
intended, man “enjoys an increase of the sensation of power which accompanies all success” (BGE 19). Thus, when there are no obstacles or hindrances to man bringing about a certain state of affairs, he considers himself free. Nietzsche writes,

‘Freedom of the will’ – that is the expression for the complex state of delight of the person exercising volition, who commands and at the same time identifies himself with the executor of the order – who, as such, enjoys also the triumph over obstacles, but thinks within himself that it was really his will itself that overcame them. (BGE 19)

When man has no control over himself and events, he experiences feelings of impotence and helplessness. Man oftentimes explains such feelings in terms of being cursed and/or condemned. Nietzsche explains that “one thus understands ‘unfree will’ as meaning ‘a will coerced by an alien will’” (WLN 1.44). That is to say, the notion of an ‘unfree will’ entails that man acts, though not voluntarily, but because he is coerced or forced by a will external to his own.

However, the sensation of obedience as such does not entail that man possesses an “unfree will” such that “obedience to one’s own will is not called coercion, for there is pleasure in it” (WLN 1.44). While being commanded by others is indicative of an unfree will, commanding oneself is to have a free will; this is because pleasure accompanies the latter, though not the former.

In considering the psychology of free will, Nietzsche insists that man experiences displeasure, guilt, and shame after certain actions because he functions under the assumption that he could have chosen and acted otherwise.\(^\text{45}\) That is to say, the feeling of guilt is conceptually linked to a belief in freedom of the will and therefore man experiences the feeling of guilt because he presumes that he is indeed free. However, Nietzsche insists that the feeling of guilt does not arise because man is free, but only because man believes himself to be. The feelings of discontentment and displeasure that are experienced after certain actions are not due to a fixed nature but instead were acquired throughout history. Therefore, Nietzsche contends that such

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\(^{45}\) See, for instance, HH 39.
feelings can be changed because like all habits, they are learned. Guilt, shame, and remorse are not inherent features of mankind, but instead, as previously discussed, they arose in accordance with “the development of custom and culture” late in human history (HH 39).

3.2. The Will as Causal:

The notion of accountability not only implies the belief in free will but also the belief in cause and effect. According to Nietzsche, man thinks of himself as a causal entity and so he believes he possesses free will. The belief in free will “seeks to create the right for man to think of himself as cause” of not only his various psychological states and actions, but also events external to himself (WP 288). It also warrants ownership, since man falsely believes that “nothing belongs to us that we have not consciously willed” (WP 288). Nietzsche explains, “man feels his power, his ‘happiness,’ as they say: there must be ‘will’ behind this state – otherwise it would not be his” (WP 288).

One of the criticisms Nietzsche makes regarding the notion of the (free) will concerns the fact that the will is considered a causal entity. The belief in free will and the notion of responsibility imply that one accepts that all actions originate from a man’s will, which is presumed to be the original motive for all actions, the mechanism by which deliberate action occurs.46 When the consequence of willing brings about a successful state of affairs, or the desired result, it is believed that the will itself is responsible. However, Nietzsche maintains that causality is illusory and that “one does not know the origin” of action (WP 291). Moreover, for Nietzsche, the will cannot be reduced to a conscious level, as in Descartes. Nietzsche insists that

46 This belief also necessitates an atomic theory of action whereby actions are perceived as “isolated and indivisible” (WS 11). Thus, “the belief in free will is incompatible with the idea of a continuous, uniform, undivided indivisible flow” (WS 11). Moreover, it entails the existence of “similar facts” which Nietzsche dismisses, claiming instead that there are none (WS 11). Similarity of this nature only exists in language.
man is not transparent to himself and does not possess knowledge concerning human action; man is ignorant of the ways in which he is shaped and driven.

All feelings, actions, and events are said to possess some meaning because they are the result of some cause, or some will. Human beings assume that there must be some reason for why they feel as they do, or why such and such occurred. Nietzsche insists that this logic is fallacious; it is a mistake to attribute causation to experience because human beings have no actual experience of a cause. Rather, the mind recalls and connects earlier feelings and events to present ones, but it does not isolate or locate the cause of such feelings or events. Fate and chance are merely misconstrued into meaning and purpose. Nietzsche rejects the notion of the will as a causal entity, stating that “the will no longer ‘effects’ anything, no longer ‘moves’ anything” (A 14). In addition, he rejects the idea that all events are the consequence of some will, whether the subject’s will, or God’s. He contends that error exists not only in the conviction, “I am responsible” but similarly in the opposite conviction “I am not responsible, but someone must be” (AOM 33).

Nietzsche alleges that human beings believe that someone or something must be responsible for their circumstances because existence becomes endurable when there is someone to blame. He claims that this logic is particularly true with regard to human suffering. Rather than seek the cause of suffering within, individuals are driven to locate the cause of their suffering externally. Since “danger, disquiet, [and] anxiety attend the unknown,” human beings

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47 See, for instance, TI ‘The Four Great Errors,’ 4.
48 Nietzsche’s perspective is similar to Hume’s who insists that man never has a sensory experience of causation and thus the belief, although powerful, is neither justified nor rational. However, the experience of causation can be explained psychologically and epistemologically. Hume is a compatibilist who argues that man only experiences two separate events and not causation as such. In pure, raw experience there is just a sequence of events and the constant conjunction of two events becomes a habit. Cause and effect produce a feeling of expectation (i.e., necessity) that man wrongly attributes to objects. Necessity is neither absolute nor metaphysical; it is merely the name given to the feeling that is experienced between cause and effect. Causation is an artifice, a useful fiction; it is something that the mind attributes as a matter of understanding.
are driven to know the cause of their feelings of displeasure and misfortune. Nietzsche explains that man tries to escape depressive conditions and feelings by creating a cause, a reason for his feelings. Determining the cause, and thus responsibility, function as a means of relief and alleviation because it gives man’s suffering, as well as his life meaning and significance. Hence, in *Will to Power*, Nietzsche describes guilt as “a general state of suffering that demands explanation” (WP 229).

3.3. Causa Sui:

Another aspect of Nietzsche’s rigorous critique of the notion of free will concerns the fact that positing an independent free will entails that man is a self-caused cause, or a *causa sui*. To postulate the reality of free will is to dismiss all possible influences other than oneself and to thereby assume absolute responsibility for oneself and one’s actions. Nietzsche is critical of this notion and the idea that humans are of the type that can create themselves via sheer will, that they can choose to become a certain type of individual versus another type. This narrative of the individual who acts freely and intentionally is additionally misleading because the individual has no such choice or ability. Nietzsche alleges, for example, that the weak do not choose to be weak and the strong do not choose to be strong – for they are such by their very nature. He reflects upon the logical and psychological consequences of this and reasons that absolute responsibility is a consequence of the desire for free will whereby one is made “to bear the entire and ultimate responsibility for one’s actions oneself and to absolve God, the world, ancestors, chance, and society” (BGE 21). Nietzsche rejects this as an illogical and fallacious belief, which arose due to the ignorance and hubris of humanity.

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49 Nietzsche argues that humankind established meaning for itself as well as the reason for which it suffered by means of the “ascetic ideal.” The ascetic ideal “placed all suffering under the perspective of guilt” (GM 3.28). See the third essay of GM for Nietzsche’s discussion of the ascetic ideal.
However, Nietzsche’s argument concerning free will and *causa sui* does not amount to a denial of human freedom on these grounds alone. Rather, it illustrates that this perspective of freedom is absurd and illogical. Kirwin explains,

Nietzsche’s suggestion is that an image of freedom on which one’s action is free ‘all the way down’, with all determining input coming purely from the will itself and no (as we might say) ‘external resistance’, is the wrong picture of freedom, not because we don’t have such a thing, but because such a picture doesn’t really make sense. (Kirwin 2018, 88) 50

Therefore, Nietzsche rejects theories, such as those of Kant, that argue for instance, that freedom resides in self-legislating by reason alone and that freedom is therefore independent of desire and inclination. Nietzsche not only attacks the metaphysical concept of free will (and the Kantian notion), but also “the very concept of freedom and with it the existentialist idea that we are free and responsible to make of ourselves what we will” (Solomon 2002, 63).

3.4. The Subject:

The idea that humans can creates themselves as they wish is a misguided belief that is premised in part on the belief in the subject. However, Nietzsche attacks the Cartesian conception of the subject as a source of belief in free will and insists that it must be rejected. He acknowledges, like Hume, that the will is a useful, descriptive metaphor, but cautions that it should not be misconstrued as being actual in itself. Moreover, Nietzsche argues that the belief in the subject gives rise to another false belief, the belief that there exists a unity and coherence in willing. The process of willing presupposes an essence, or transcendent substratum, that is simultaneously the commanding subject and the obeying subject. 51 Nietzsche explains that we are able to overlook and deceive ourselves with regard to the duality that exists in the process of willing between the commanding and the obedient party “by means of the synthetic concept ‘I’”


51 Note that Kant also has an account of the will in which the will is both master and subservient.
Thus, the concept of a unified and coherent subject is misleading in part because it obfuscates the complexity of, and the paradoxical nature of, willing.

Nietzsche claims that “the seduction of language” and “the misleading influence of language” are in part to blame for the belief in the subject, or a substratum behind action (GM 1.13). He further claims that science and morality have contributed to perpetuating the misleading concept of “the doer,” and the idea of a self with free will who is able to choose one action rather than another. Whereas “advocates of free will discern the subject (substance or substrate) and the act the subject causes,” Nietzsche insists this dichotomy is fictitious and misleading (Grillaert 2006, 44). The subject is nothing but a grammatical fiction; the existence of an independent, objective, unified entity that chooses whether to act is dismissed by Nietzsche as false. There is no subject, ego, or self that freely and intentionally chooses whether to act; there is no inherent autonomy to which the concepts of self or will objectively make reference.

Moreover, Nietzsche is critical of moral language that “separates strength from expressions of strength, as if there were a neutral substratum behind the strong man, which was free to express strength or not to do so” (GM 1.13). He insists that such thinking is problematic because there are no independent, separate entities. All that exists is bound with all else and “in light of the constant flowing that constitutes reality,” it is illogical to suppose that act and agent can be separated from one another” (Grillaert 2006, 44). Hence, “this subject is a pure fiction, Nietzsche argues, because there is no life (agent) separate from living itself (the activity)” (Zuckert 1983, 55).

Nietzsche insists “the ‘subject’ is not something given, it is something added and invented and projected behind what there is” (WP 481). The subject entails the belief in a

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coherent and unified substratum that underlies the various and multiple drives that war within us. 

53 It arises in part “from the subjective conviction that we are a cause, namely, that the arm moves…” and we thus “distinguish ourselves, the doers, from the doing, and make use of this scheme everywhere – we seek a doer for everything that happens” (WLN 14.98). But Nietzsche contends that this belief is a misinterpretation of “a feeling of force, tension, resistance, a feeling in the muscles that’s already the beginning of the action” (WLN 14.98). Furthermore, he insists that while the subject implies permanence and singularity, this is not the case. The subject is not fixed or static and for this reason, it cannot be known. Nietzsche describes us as seeking out ways to explain various occurrences and the invention of the subject as a causal entity is merely one way in which to provide such explanation. He insists instead that “there is no such substratum; there is no ‘being’ behind doing, effecting, becoming; ‘the doer’ is merely a fiction added to the deed – the deed is everything” (GM 1.13). Thus, on Nietzsche’s account it is the action itself, not the fictitious being behind the action, that is of significance. The notion of the subject was created in order to be “made responsible for something having happened and how it happened” (WLN 14.98). However, Nietzsche maintains that the Cartesian subject, which underlies the notion of willing, and by extension responsibility, must be rejected.

3.5. The Conscience and Moral Judgements:

The invention of the subject coincided with man’s becoming accountable. Accountability manifested in terms of obedience to social custom and tradition and as Nietzsche’s genealogy makes evident, social customs and norms were instilled within man in the form of the conscience. For this reason, Nietzsche claims that the conscience is representative of the morality of the herd. The conscience inspires a sense of obligation and duty to society in the form of “thou ought.” Moreover, according to Nietzsche, the development of the conscience in man resulted in

53 See, for instance, WP 485.
“the consciousness that good and evil are permanent” (WP 141). However, in opposition to this he states, “unchanging good and evil does not exist” (Z ‘Of Self-Overcoming’). In addition, Nietzsche observes that throughout history the notions of “good” and “evil” have altered and transformed and have been renamed and reclassified. He asserts that “there is lacking a knowledge and consciousness of the revolutions that have already occurred in moral judgments, and of how fundamentally ‘evil’ has several times been renamed ‘good.’” (WP 265). Since our judgments concerning morality are always subject to change, judgments should not be rendered too hastily. Rather, thoughtful reflection as well as an overall open-mindedness are needed.

Nietzsche explains that the mere act of interpreting a particular judgment as the conscience is mostly “due to the fact that you have never thought much about yourself and simply have accepted blindly that what you had been told ever since your childhood was right” (GS 335). When the conscience deems something immoral and reprehensible, it is “because it has been reprehended for a long time. It merely repeats: it creates no values” (WP 294). Contrary to Kant, who claims that morality is innate and self-evident, Nietzsche explains that the conscience gives rise to subjective feelings that have erroneously been interpreted as moral truths. Thus, the moral imperatives of the conscience seem absolute because they are experienced as instinctual. In addition, such judgments manifest as pleasant feelings, which further reinforces man’s belief that the conscience yields absolute truths. Nietzsche explains that the conscience is said to be active when the feeling of “self-contentment” is present and for this reason he describes the conscience as “the pleasant feeling of ‘at peace with oneself’” (WP 294). However, Nietzsche insists that feelings of contentment and pleasantries after an action are not indicative of that action’s value or origin. He states, “it proves nothing at all” (WP 294). Nietzsche explains that feelings of self-contentment indicate as much about a thing’s value as
does the absence of such feelings do as a counterargument for that thing’s value. He claims that we ought to interpret such feelings as “a means of seduction” since they inhibit us from engaging in criticism, discretion, and vigilance (WP 294).

Individuals possess a strong faith in the conscience and its ability to yield correct judgments. Yet, it is important to note that Nietzsche describes the determination of something as just or moral as first and foremost a value judgment. Moreover, he alleges that the very act of judging is initially and always flawed for three general reasons. First in “the way the material is present (that is very incompletely), second, in the way it is assessed, and third, in the fact that…. the material again results…. from impure knowledge” (HH 32). Judgments, on Nietzsche’s account, do not constitute knowledge in the sense of something that is known to be true and actual, but are instead beliefs “that something is thus and thus!” (WP 530). All judgments are evaluations that entail presuppositions about the world and all facts and truths are merely perspectives or interpretations. Nietzsche explains, “your judgment ‘this is right’ has a pre-history in your instincts, likes, dislikes, experiences, and lack of experiences” (GS 335). Therefore, even though the conscience is thought to yield “true and infallible” moral judgments, all judgments entail presuppositions, and the judgment ‘x’ is moral or immoral is not an objective truth but the result of various drives, prejudices, and experiences (GS 335). For this reason it is possible to “judge in a moral and in an immoral manner” (GS 335). Hence, Nietzsche claims that the conscience has instilled within man “a false knowing in place of testing and experiment” and as a result “we perpetuate a stupidity” (WP 141; WP 294).

For the aforementioned reasons Nietzsche concludes that the act of judging is a form of injustice. However, the violence and injustice that man commits through the act of judging refer

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54 The majority of man’s nature is the result of various ancient and historic influences and processes of which Nietzsche also includes the conscience and the various (moral) judgments that are said to originate from the conscience. The notion of humanity’s nature being made up of past influences will be discussed more below.
not to the noumenal realm as described by Kant, but instead to the multiplicity and plurality of all things. The world is one of becoming, a realm where nothing is unchanging or static, which entails that our judgments can never correspond to the world in a definitive, singular way. Moreover, since man himself is the standard by which the world is evaluated and man lacks a fixed and enduring nature, his use of himself as the standard of measurement is problematic and dubious. It is not possible to make a value judgment about life that is valid and absolute since humankind is a part of life. Thus, individuals are not objective about their judgments concerning what is moral and immoral since they are “but interested parties” (WP 294). The attempt to step outside of life in order to gain a higher perspective has only led to nihilism. In particular, it has led to a sickly form of nihilism since man’s resentment created value judgments that were life-denying.

In addition to the above arguments, Nietzsche claims that moral judgements perpetuate cruelty; “he found the impulse of moral judgment and condemnation to be terribly cruel” (Vick 2015, 46). Nietzsche explains that the herd’s will to power expresses itself in the form of moral valuations directed against those who oppress and dominate them. In particular, Nietzsche alleges that moral judgments originate with the feeling of ressentiment and are manifestations of the herd’s will to revenge. He claims that everywhere man is looking to find guilt, to hold others accountable, and the determination to locate guilt “usually” expresses itself as the “instinct for punishing and judging” (TI ‘The Four Great Errors,’ 7). Nietzsche insists that the herd needs guilty individuals because it allows them to shift their natural desire for destruction, cruelty, and

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domination away from themselves and onto others. Moreover, it allows them to evade responsibility for themselves and their condition by reassigning the responsibility to others.\textsuperscript{56}

Nietzsche insists that the moral valuations of the herd also culminated in the distortion of nature and the defamation of existence. He argues that “all displeasure, all misfortune has been falsified with the idea of wrong (guilt)” (WP 296). Although pain and suffering are natural on Nietzsche’s account, they were reinterpreted in moral terms as evil and punishment. On account of this, Nietzsche insists that “pain has been robbed of innocence” (WP 296). Such falsifying of existence was a further means by which the weak defended and protected themselves against the strong. Through moral judgments, man experiences the feeling of power as well as the feeling of pleasure that accompanies this feeling. In this sense, there is a certain element of delight in judging, blaming, condemning.\textsuperscript{57} For this reason, Nietzsche believes that moral judgments are a form of moral cruelty and he thus proclaims, “sitting in moral judgment should offend our taste” (GS 335).

Since “we are from the start illogical and therefore unfair beings,” then perhaps it ought to be concluded “that one ought not to judge at all” (HH 32). However, according to Nietzsche, it is impossible not to judge and evaluate. Making value judgments about the world is a form of epistemic injustice that man is condemned to commit at this point in history. In an attempt to reconcile man’s illogical fate, Nietzsche advises against making judgments, particularly moral judgments, and insists that “we have to learn to think differently – in order at last, perhaps very late on, to attain even more: to feel differently” (D 103). Ultimately, Nietzsche rejects interpreting and judging the world in moral or ethical terms and urges us to move beyond moral judgment and the past-oriented perspective of the herd, who continue to drag the past forward by

\textsuperscript{56} See, for instance, WP 765.
\textsuperscript{57} See, for instance, Z ‘The Convalescent,’ 2.
evaluating life, individuals, and actions in moral terms. In addition, Nietzsche advises that individuals “must become the best learners and discoverers of everything that is lawful and necessary in the world” (GS 335). This entails accepting that “everything is necessity: this is the new knowledge, and this knowledge itself is necessity” (HH 107). Humanity must transcend moral thinking and instead embrace a “more natural…knowing”; this is what Nietzsche refers to as wisdom (WLB 10.53).\(^5\) In place of what Nietzsche deems “anti-natural morality,” he posits a “healthy morality” that “is dominated by an instinct of life” and finds expression in “shall and shall not” rather than the moral imperatives “must” and “ought” (TI ‘Morality as Anti-Nature,’ 4). Human beings ought to seek knowledge of themselves, the world, and nature, which entails rejecting metaphysical explanations and acknowledging historical and naturalistic knowledge.\(^6\)

3.6. The Conscience, Obedience, and Freedom:

Nietzsche’s historical-genealogical discussion demonstrates that the intellectual and spiritual features of the human being are not innate but constructed and created by humanity itself, although unconsciously and unintentionally. For this reason, he believes that Descartes, for instance, was wrong to suppose that the rational mind was an innate feature of being human. However, human beings were taught that through their adherence to the demands of their conscience they were utilizing the uniquely human capacity of reason. As a result, rationality became a disciplinary power in and of itself. Furthermore, when men who are considered to be rational act in accordance with custom and tradition then custom and tradition “thereby acquire... the sanction of rationality itself” (D 149). Therefore, although “many tolerably free-minded people” believe that it is of little significance that they adhere to custom and conform to the

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\(^5\) See, HH 107.

\(^6\) It is important to note that although Nietzsche insists that our beliefs and judgments are errors and misconceptions, they are not useless. Nietzsche claims that they are useful because they are part of a larger process in which humanity reaches a more enlightened and wise state. See, for instance, HH 107 and D 107.
status quo, Nietzsche insists that such thinking is a “thoughtless error” (D 149). Whether men conform to law and custom out of respect or duty it renders the “intellectual conscience” impotent. Nietzsche maintains that “nothing matters more than that an already mighty, anciently established and irrationally recognized custom should be once more confirmed by a person recognized as rational” (D 149). He insists that such thinking should be left to the herd, the masses, since they have no other choice or option insofar as “their spirit is imprisoned in their good conscience” (Z ‘Of Old and New Law-Tables,’ 26).

According to Nietzsche, the good conscience speaks the language of the masses, the people, the herd, whereas the bad conscience speaks the language of the ego, of selfishness, of the individual. Since the conscience is representative of the morality of the herd, it prohibits and condemns all individuality and independence from the herd. Hence, we are told by Zarathustra, “as long as the good conscience is called herd, only the bad conscience says: I” (Z ‘Of the Thousand and One Goals’). Although society has claimed that man is free to act as he desires, man is really only free to act as society desires. Obedience and conformity to the status quo are said to be in man’s self-interest and in this way, herd membership is ensured. Thus, man experiences a superficial connectedness to society and believes in the proposed benefits of his obedience to society’s customs and traditions where all that is truly beneficial for him is regarded as bad, useless, etc. Society condemns all who act contrary to the good where the good represents the man of conscience who thinks and acts selflessly. In other words,

Thus it became moral to act in ways that are outside of one’s own interests, and immoral to act self-interestedly. In other words, a profound value had been placed on actions that are absolutely impossible for a human being to perform, vis-a-vis, altruistic actions. (Denneson 1999, 8)60

Moreover, Nietzsche explains that when man truly acts in accordance with his own desires, instincts, and values, society responds by marginalizing, stigmatizing, or punishing him. In other words, man is treated by society as a threat and an enemy.

Nietzsche alleges that “this will to good” has yielded “the most repellent type, the unfree man” (WP 351). Specifically, it has yielded the “‘good man,’” which according to Nietzsche, is “the ideal slave” (WP 358; WP 356). Nietzsche is extremely critical of this notion of freedom as it is a form of slave morality, which entails that freedom consists in obedience. One such view is represented by Kant who argues that man is free when he disregards the influence of the passions and adheres instead to the dictates of reason. For Nietzsche, an unwavering obedience and strict adherence to one’s conscience is not indicative of freedom but slavery. It represents “personal abjectness, impersonality… [and an] inability to envisage new ideals” (GS 335). He explains, “to experience one’s own judgment as a universal law… betrays that you have not yet discovered yourself nor created for yourself an ideal of your own, your very own” (GS 335). According to Nietzsche, freedom rightly understood consists in the freedom to conform to the dominant moral schema or to deviate from it and to therefore act disobediently.

Although Nietzsche rigorously attacks free will he also insists that individuals must become free.\textsuperscript{61} Therefore, he does not reject freedom as such, but “only one specific kind of freedom – in particular, a conception of freedom connected to notions meriting reward and punishment” (Kirwin 2018, 84). In place of the traditional conception, he posits an alternative understanding of freedom that emphasizes distinct conceptions of agency, autonomy, and self-creation. Nietzschean freedom is something that is not innate but that must be obtained. Moreover, it does not consist in a passive stance of obedience to norms but an active engagement in creating one’s own values and laws. Although he insists that human beings do not possess free

\textsuperscript{61} This point will be developed further in the next section: Nietzsche’s Privileged, Alternative Perspective.
will in the traditional sense, he suggests that it is possible for some individuals, though not all, to achieve freedom in this alternative sense.

4. Nietzsche’s Privileged, Alternative Perspective

4.1. Nietzsche’s Revaluation of Freedom and Responsibility:

Nietzsche’s position on freedom is oftentimes confusing and misleading because while he denies free will in a number of contexts, he seems to endorse it in others.62 A prima facie reading of Nietzsche’s work may lead one to assume that he contradicts himself, but a careful examination reveals that this is not the case. Nietzsche rejects a specific type of freedom, specifically, the notion of free will that is tied to the idea that an individual could have chosen to act one way or another. For Nietzsche, this notion of freedom is not only illogical, but, as Kirwin notes, it “doesn’t actually, on closer inspection, look very much like freedom at all” (Kirwin 2018, 84). Rather, it looks more like obedience and compliance. In addition to dismissing the traditional way in which freedom is understood, Nietzsche dismisses the notion of moral responsibility that it gives rise to and the notion of punishment and reward to which it is connected. In place of the traditional notion of freedom, Nietzsche posits a conception of freedom connected with strength, power, creation, and self-mastery. Freedom for Nietzsche is neither natural, nor innate. Rather, man must become free through an active process of liberation and creation that can only be realized by a strong nature. Moreover, freedom entails great responsibility because those who are free create their own values, as well as themselves.

62 For a different account of Nietzsche’s position regarding freedom see: Ken Gemes, “Nietzsche on Free Will, Autonomy and the Sovereign Individual,” *Proceedings of the Aristotelian Society, Supplemental Volumes* 80 (2006): 321-338. and Christopher Janaway, “Nietzsche on Free Will, Autonomy, and the Sovereign Individual,” *Proceedings of the Aristotelian Society, Supplementary Volumes* 80 (2006): 339-357. Gemes and Janaway argue that Nietzsche does not dismiss freedom as such but only rejects a particular type of freedom. They believe that Nietzsche rejects what they call “deserts free will” yet endorses “agency free will.” The former type of free will refers to the traditional notion in which man can be held responsible for his actions because he is able to freely choose one action over another. The latter type, namely “agency free will,” refers to agency and autonomy. Although Nietzsche himself does not distinguish between free will in such terms, Gemes and Janaway provide a compelling account of Nietzsche’s various criticisms and endorsements of freedom.
4.2. The Innocence of Becoming:

Accountability rests upon the notion of the individual who is independent, free, and autonomous. Nietzsche dismisses this understanding of the individual as false and misleading as well as the notion of responsibility that depends upon it. It is my contention that Nietzsche ought to be read as not merely rejecting metaphysical concepts such as the subject, free will, and autonomy but as providing an alternative perspective by replacing these concepts with naturalist and historical accounts. Nietzsche suggests that part of his aim is “to translate man back into nature” (BGE 230). This is evidenced in part by the fact that he puts forth an account of humanity in which man is described as a part of nature rather than distinct from it. However, reconciling man with nature requires that morality must be overthrown and overcome. Throughout history becoming moral coincided with man becoming “humane” and thus with man’s move away from his animal nature. For instance, morality and moral judgments required the repression of man’s natural drives and instincts. Ultimately, becoming moral led to and entailed the “hatred of the human, and even more of the animal, and more still of the material” (GM 3.28).

Nietzsche alleges that existence has been deprived of its innocence because mankind has sought to explain everything in terms of “a will, an intention, a responsible act” (WP 765). In opposition to this he argues that the nature of existence is not deductible from teleological principles or final causes. Moreover, he alleges that man possesses no purpose and he is not designed by a transcendent mind with the purpose of attaining some goal or form of perfection. Such concepts are mere myths, invented by man himself. Nietzsche insists that “a total liberation from ends” is an “absolute necessity” (WP 787). For this reason, Nietzsche praises the blond

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63 Nietzsche is clear that this does not involve a “going back” but a “going-up.” He contends that “there has never been a natural mankind” and that man only “arrives at nature after a long struggle – never comes ‘back’...Nature: i.e., daring to be as immoral as nature is” (WLN 10.53). See also: TI ‘Expeditions of an Untimely Man,’ 6.
beasts of humanity’s ancient past since they structured their lives in accordance with an “absolute freedom from meaning” (Danto 1994, 26).64 Thus, he believes that we must no longer be those who are “locked in the world of goals and purposes, who subscribe to hypothetical imperatives, who fight for causes, rather than those who are categorical fighters, for whom warring is for its own sake” (Danto 1994, 13). Yet, “the innocence of becoming” can only be restored when “no one is any longer made accountable (TI “The Four Great Errors,’ 8).”65 Hence, Zarathustra laments, “if only you had become perfect at least as animals! But to animals belongs innocence” (Z ‘Of Chastity’).

Nietzsche contends that “no one gives a human being his qualities: not God, not society, not his parents or ancestors, not he himself” (TI ‘The Four Great Errors,’ 8). He explains that man does not act how he wishes or chooses, but “man may act as he can, that is, as he must” (HH 107). While Nietzsche acknowledges that man has traditionally exempted himself from nature by distinguishing himself as a creature who acts on his own volition and free will, and thus not in terms of instincts and drives, he insists that man must conceive of himself in the same way man views the lion, the orchid, or the waterfall.66 That is to say, just as all non-human life is understood as acting in accordance with its nature and thus its drives and instincts, so too must man regard himself. This entails understanding human action as the result of necessity, rather than voluntary, intentional, free choice.67 Man must accept that he has wrongly distinguished


65 Nietzsche also says that innocence and necessity entails “that the kind of being manifested cannot be traced back to a causa prima, that the world is a unity neither as sensorium nor as ‘spirit’” (TI ‘The Four Great Errors,’ 8).

66 “When we see a waterfall, we think we see freedom of will and choice in the innumerable turnings, windings, breakings of the waves; but everything is necessary; each movement can be calculated mathematically” (HH 106).

67 See also: HH 39; HH 102; HH 105; HH 107; AOM 33; WS 24.
himself from nature by endowing himself with a free and autonomous will and nature with mere necessity.

This notion of necessity is in part explained by Nietzsche in terms of the will to power, which describes the basic character of all instinctive life. He posits that multiple forces, motives, and influences war within every man, of which one dominates, and motivates man to act. That is to say, man does not intend or choose with which force to act in accordance, but, like all that exists, an inner struggle ensues until one force dominates all the rest. For Nietzsche, free choice is completely absent from this process; individuals do not decide which force dominates; rather, “the most powerful motive decides about us” (HH 107). In this way Nietzsche undermines the conventional narrative that privileges the rational over the natural as the dominant form of agency. In addition, he collapses the rational-natural dualism by claiming that reason is merely one form of will to power and is thus a natural drive.

However, Nietzsche claims that the forces that war within man are ancient and historic. Man is neither the author nor the cause of his own nature but is a compilation of the past such that much of his nature is the result of the “imprinted writing of many millennia” (HH 41). Nietzsche’s account of the character of mankind, which was created in the distant past, suggests a form of historical determinism. This is evidenced by his various remarks such as those in *Human, All-Too-Human* where he explains that man’s nature “is itself an inevitable consequence, an outgrowth of the elements and influences of past and present things” (HH 39). Moreover, he insists that “one cannot erase from the soul of a human being what his ancestors liked most to do and did most constantly” (BGE 264). The man of today is the heir of the past. Based upon this reasoning, Nietzsche concludes that “it is simply not possible that a human

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68 See, for instance, HH 39, 41, and 452; D 18; WP 373. In addition, Nietzsche’s reference to “backward men” illustrates his belief that the nature of man and the character of mankind are constituted by ancient and historic processes. For Nietzsche’s thoughts on “backward men,” see: HH 26, 42, 43, 614, and 633.
being should *not* have the qualities and preferences of his parents and ancestors in his body” (BGE 264). Thus, all individuals are subject to a nature that is in some sense immutable. By insisting that we are not naturally endowed with free will, Nietzsche creates a sense of hopelessness and dismay. However, this feeling is countered by the prospect of freedom, even if only for the few.⁶⁹

The idea that man acts in accordance with necessity entails that he cannot be held morally accountable for his actions, the consequences of his actions, or his nature. Since man is not accountable for who he is, what he thinks, and how he acts, Nietzsche reasons that man must interpret himself as innocent.⁷⁰ As a result, “there is no place, no purpose, no meaning, on which we can shift the responsibility for our being, for our being thus and thus” (WP 765). Although man cannot be made morally accountable, he is still the one who acted. Yet, there is nothing that can be made accountable, nothing upon which that man can place blame or guilt for his existence, or existence as such.

This underscores the fact that making moral judgments is inane and futile. It is therefore illogical to deem individuals responsible and thus *deserving* of punishment (or reward). Hence, Nietzsche likens the will to judge and blame to a “monster” and a “beast” that must be restrained and subdued (Z ‘Of the Thousand and One Goals’).⁷¹ Moreover, he writes, “for the man who is punished does not deserve the punishment…likewise, the man who is rewarded does not deserve this reward; he could not act other than as he did” (HH 105). It is unreasonable to praise or blame

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⁶⁹ This will be discussed further below.
⁷⁰ Nietzsche discusses becoming and man’s innocence in several places. See, for instance, HH 107; TI ‘The Four Great Errors,’ 8; WLN 36.15; WP 765.
⁷¹ Note that Nietzsche also includes “praising” here.
that which occurs not by way of choice, will, or merit, but by way of necessity. Since man is 
undeserving of blame, Nietzsche proposes the following alternative that reflects his aestheticism,

just as he loves a good work of art, but does not praise it, because it can do nothing about itself, just as he 
regards a plant, so he must regard the actions of men and his own actions. He can admire their strength,
beauty, abundance, but he may not find any earned merit in them. (HH 107)

Thus, we can regard the actions of man with wonder and pleasure yet not as deserving of reward 
or praise, punishment or blame.

At this point in human history, Nietzsche acknowledges that it is extremely difficult to 
understand and accept the idea of man’s complete lack of responsibility, which he describes as 
“the bitterest drop which the man of knowledge must swallow” (HH 106). Yet, as discussed 
above, history entails that responsibility was ingrained within man and is therefore not natural;
man was instilled with a false sense of responsibility. Nietzsche maintains that moral 
responsibility must be rejected on the grounds of “the stern necessity of human actions, that is, 
the unconditioned non-freedom and non-responsibility of the will” (AOM 33). However, the 
innocence of becoming entails going beyond the mere acknowledgment and acceptance of non-
responsibility and innocence. That is to say, “not merely bear what is necessary, still less conceal 
it all...but love it” (EH ‘Why I am so Clever,’ 10). This entails embracing amor fati, which is an 
ethical injunction in which the totality of life is accepted and loved. Thus, man must passionately 
and enthusiastically embrace what was, what is, and what will be to the exclusion of regretting, 
worrying, fearing, and judging since such things are negations of life rather than affirmations. In 
opposition to sickly, nay-saying, life-negating attitudes, amor fati is a healthy, yes-saying, life-
affirming outlook.

Nietzsche insists that humans must become “conscious of their innocence” to evolve to 
greater heights and depths since the acknowledgment and acceptance of humanity’s innocence is

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72 See, for instance, HH 107.
a means by which freedom is obtained (HH 107). Thus, he claims that “only the innocence of
becoming gives us the greatest courage and the greatest freedom” (WP 787). For Nietzsche,
there is no intrinsic value and therefore, mankind can create value(s) for himself. Freedom is thus
conceived as absence of (moral) restraint. Liberated from accountability and blame, man is now
free to create his own values.\textsuperscript{73} Moreover, through creating values for himself, mankind can
achieve freedom. Thus, affirming man’s innocence is a prerequisite for Nietzschean freedom.

4.3. Overcoming the Conscience and the Bad Conscience:

Translating man back into nature and reclaiming man’s innocence in part requires that we
overcome the communal conscience and thus both the good and bad conscience that have been
instilled within us. Nietzsche acknowledges that it is extremely difficult to overcome the bad
conscience and the demands of the (good) conscience because “usually we prefer to surrender
unconditionally to a conviction held by people of authority (fathers, friends, teachers, princes),
and we have a kind of troubled conscience if we do not do so” (HH 631). This is not only
because man has been conditioned to experience feelings such as discontent and loathing when
thinking and acting in accordance with his own desires and values but also the influence of the
bad conscience is so powerful that fear, anxiety, and doubt arise when going against tradition and
the status quo. Contrary to non-conforming, adhering to tradition is more pleasurable, since man
experiences contentment and security through conforming and acting obediently. Yet, as
Conway explains, “the conscience, a fiercely vigilant homunculus responsible for reckoning
one’s debts and obligations, represents the final – and most forbidding – barrier to genuine
sovereignty” (Conway 1997, 19).\textsuperscript{74} Since both types of conscience hinder and obstruct man’s
ability to become (genuinely) free and autonomous, each must be overcome.

\textsuperscript{73} This is considered “healthy nihilism” or “active nihilism.”
\textsuperscript{74} Daniel W. Conway, \textit{Nietzsche & the Political} (London: Routledge, 1997), 19.
In order to overcome the conscience, man must depart from the majority and take his own path. Hence, we are told in *The Gay Science* that emancipation from the conscience is an aspect of becoming a “liberated spirit” (GS 297). However, Zarathustra explains that in going his own way, man will experience suffering and grief, which serves as proof that the voice of the herd still speaks within. Grief and suffering are evidence that man has not yet overcome the conscience of the herd because “it is still this same conscience that causes your grief” (Z ‘Of the Way of the Creator’). Yet, for man to go the way of himself, he must go the way of his grief and in doing so he must act with conviction. Danto explains that “any suffering due to false moral beliefs about ourselves is due to bad consciousness, when there is nothing really bad about us except our consciousness of being bad” (Danto 1994, 22). Yet, due to the fear of “this imagined ‘evil character’ of nature” man resists acting upon his natural inclinations (GS 294).

Although Nietzsche maintains that the bad conscience had several negative and destructive consequences, of which he is extremely critical, he provides the caveat that it is “an illness as pregnancy is an illness” (GM 2.19). Just as pregnancy is a condition that is not only temporary but productive, so too is the bad conscience. It is only after man becomes so utterly ashamed and repulsed by his condition that he strives to be something more, something great. Thus, “without acquiring a bad conscience, without learning to be profoundly dissatisfied with ourselves, we cannot envisage higher norms, a new state of being, self-perfection” (Kaufmann 1989, 12). The bad conscience is not representative of man’s innate nature nor his fate, but one stage in mankind’s overall evolution and for this reason it must be overcome. Nietzsche describes the bad conscience as a terrible affliction; however, it is a necessary affliction since it functions as a catalyst for change. Although difficult, it is not impossible to reverse the initial

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conditioning that led to the conscience since man himself is responsible for the processes of conditioning that “conjoined the natural inclinations and a bad conscience” (WP 295). Nietzsche urges man to embrace his whole nature, even that part of his nature that has been deemed “evil” and “immoral.”

Since the bad conscience arose because the instinct of freedom was turned inward, the bad conscience has always been a faculty that arrests man and restricts his freedom. Thus, the instillation of the conscience in man marked the end of man’s freedom. In addition, it signaled the end of individuality and autonomy since man was no longer free to direct his own life and be himself; rather, man was only “free” to be obedient to society. However, overcoming both the (good) conscience and bad conscience is necessary not only for health, but also for freedom and true autonomy. It is only when the conscience is overcome that man is faced with limitless possibilities and knowledge.

4.4. Freedom and the Possibility of Genuine Agency:

In contrast to the traditional notion of freedom that Nietzsche rejects, freedom for Nietzsche is neither innate nor inherent. Man is not born free, as the narrative of Christian morality purports, or can man be made free in terms of a right guaranteed by the state, as conceived by liberalism. Rather, man must become free. Hence, in Twilight of the Idols, Nietzsche states freedom is “something one has and does not have, something one wants, something one conquers” (TI ‘Expediting of an Untimely Man,’ 38). Like Hegel, Nietzsche characterizes freedom as the ability to overcome adversity and opposition; Nietzsche insists that “war is a training in freedom” (TI ‘Expediting of an Untimely Man,’ 38). Moreover, he explains that “the highest form of individual freedom, of sovereignty” is measured and attained through the threat of slavery and “the degree of resistance that must be continually overcome in order to
remain on top” (WP 770). The free man is not just anyone but someone who can overpower resistance; “the free man is a warrior” who through his actions is not exercising free will but acting in ways to achieve freedom (TI ‘Expeditions of an Untimely Man,’ 38). Therefore, for Nietzsche freedom is indeed possible, but only with much effort, determination, and strength is it achievable.

According to Nietzsche, the possibility for freedom arises because of constraint and compulsion. In particular, the various constraints and laws that man has been subjected to in history, particularly as the result of the “morality of custom” and Christian morality, have created the conditions in which freedom is made possible. He states, “all there is or has been on earth of freedom, subtlety, boldness, dance, and masterly sureness… has developed only owing to the ‘tyranny of such capricious law’” (BGE 188). As a result of man’s submission to external laws, and his “continual fight against unfavorable conditions,” he has become hard, strong, and disciplined (BGE 262). However, while Nietzsche considers the oppressive constraints throughout history constitutive of the discipline necessary for freedom, liberation from those same constraints is also necessary to become free on Nietzsche’s account.76

76 It is my contention that Nietzsche describes the figure of the “sovereign individual” in the same way. That is to say, the sovereign individual is representative of the way in which the constraint and discipline that resulted from the “morality of custom” is a preparatory task for genuine freedom. However, I chose not to discuss the sovereign individual because there is much debate in Nietzschean scholarship surrounding its meaning. For instance, there are some scholars, such as Lawrence Hatab, who argue that “the sovereign individual names the modern ideal of individual rational autonomy, which is something that Nietzsche critiques as a vestige of slave morality” (Hatab 2008, 76). However, Hatab misinterprets Nietzsche on this point. In addition, there is the position of Brian Leiter, who argues that Nietzsche’s sovereign individual is the result of the morality of custom and the human-animals who were bred to be necessary, regular, and calculable. On Leiter’s account, Nietzsche rejects metaphysical free will as well as freedom and agency because Leiter interprets Nietzsche as affirming a specific brand of naturalism in which man’s actions are necessary and man is thus unable to control or change his behavior in any way. However, other scholars, such as Claire Kirwin, Gabriel Zamosc, Ken Gemes, and Christopher Janaway, directly oppose Leiter’s interpretation, and I believe rightly so. These scholars argue that the sovereign individual has not yet come about in full. Rather, it is an exemplar representing the difficulty in becoming truly autonomous and free. They believe that the sovereign individual is autonomous and in control, and therefore, truly has the right to make promises. Yet, the morality of custom, guilt, and the bad conscience are all prerequisites for becoming genuinely free. Through such “preparatory tasks” man acquires discipline and constraint, which are necessary for becoming free on Nietzsche’s account. It is only when external constraint is redirected internally, by man himself, that he can overcome the morality of custom and herd morality and finally achieve genuine agency. Moreover, Kirwin, Zamosc, Gemes, and
In describing his understanding of freedom, Nietzsche refers to the free spirit who liberates himself from “all faith and every wish for certainty” (GS 347). The free spirit rejects all forms of Truth and all that has been binding. As Kaufmann notes, the free spirit is “a liberated, autonomous spirit” (Kaufmann 1974, 347). Yet it is important to note, as Kaufmann does, that Nietzsche’s use of freedom of the will, or more accurately, autonomy, “does not involve any belief in what Nietzsche called ‘the superstition of free will’” (Kaufmann 1974, 347). The free spirit is not bound by the rule or external forms of authority and evaluation but has released himself from such constraints. Nietzsche states, “it is not part of the nature of the free spirit that his views are more correct, but rather that he has released himself from tradition” (HH 225). While adhering to the status quo brings about comfort and ease, parting from it will result in difficulty and suffering. Yet, Nietzsche tells us that man will be compensated in the form of freedom. However, being free does not entail a conscious stance of rejection and denial but acting and performing in ways that illustrate one’s rejection of the status quo. Although freedom involves emancipation from tradition and other modes of external domination, liberation from such things does not in itself suffice to explain freedom on Nietzsche’s account. Zarathustra

Janaway point out that while Nietzsche claims that autonomy and morality are mutually exclusive, the constraint and discipline that arises from morality are a preparatory task for achieving freedom. This position is also adopted by Peter Sedgwick, Keith Ansell-Pearson, and Daniel Conway, although Conway goes further and adds that the sovereign individual is representative of the “completion (rather than the transcendence) of the all-too-human” and it is only when such individuals are bred “as a matter of design” that the transition from animal to human-animal will have concluded (Conway 1997, 18-19).

77 While Nietzsche describes freedom in terms of the “free spirit,” he also describes the process of becoming free in terms of stages, which he calls the “three metamorphoses.” The first stage is represented by the camel who submits to the laws and virtues of society. Thus, the camel responds to the imperative “thou shalt.” The second stage is marked by the transformation of the camel into a lion who “wants to capture freedom and be lord in its own desert” (Z ‘Of the Three Metamorphoses’). At this stage, the lion says “no” to the commanding principle “thou shalt;” instead, “I will” becomes the dominate maxim. Although the lion is unable to create new values, it is able to “create itself freedom for new creation” (Z ‘Of the Three Metamorphoses’). Hence the final stage, the child, which Nietzsche characterizes as “innocence and forgetfulness” (Z ‘Of the Three Metamorphoses’). The child brings about creation through the “sacred Yes;” affirmation is necessary for creation. Moreover, the child symbolizes possibility and experimentation. With the child everything is possible, everything is an experimenting. It is with the child that “the spirit now wills its own will” (Z ‘Of the Three Metamorphoses’).

tells us that genuine freedom does not equate with negative freedom or being “free from,” since this equates to a state of passivity. 79 For Nietzsche, the annihilation of all bondage is not freedom; it is nihilism. Hence Zarathustra tells us, “there are many who threw off their final worth when they threw off their bondage” (Z ‘Of the Way of the Creator’). Freedom does not entail that man is completely unrestricted or unconstrained; rather, freedom entails constraint and compulsion although not of responsibility, guilt, or morals. In this way, Nietzschean freedom is a rejection of the traditional characterization of freedom as the absence of such things.

According to Nietzsche, the artist serves as an example of the way in which necessity is freedom. He explains that for the artist, creating is not experienced as a voluntary or optional task but an inner compulsion: the artist must create. Although the impulse to create manifests as a feeling of necessity, it is not experienced as unfreedom or bondage, but as the height of freedom. Through the act of creation, necessity and freedom are unified. 80 Ultimately, “freedom is, for Nietzsche, the condition of creativity” (Sedgwick 2013, 165). Part of Nietzsche’s overall motivation is “to replace a passive stance and engender a genuinely active creative engagement with the world” (Gemes 2006, 335). 81 Freedom is a matter of action; it is an active form of liberation in which man becomes free to create. Nietzsche’s positive account of “freedom cannot be conceived in abstraction from the substantive ends of that freedom” (Drolet 2013, 38). 82 This is contrary to Kant’s notion of freedom as abstracted from empirical relations and particular contexts. Thus, the answer to Zarathustra’s question “free for what?” is ultimately, creation (Z ‘Of the Way of the Creator’).

79 Freedom, for Nietzsche, involves both negative and positive freedom. Man must first reject and destroy to create and affirm.
80 See, for instance, BGE 213 where Nietzsche discusses this in further detail.
Freedom is the possibility of self-becoming. One aspect of self-creation is developing into a “whole” or a “totality.” While describing Goethe, whom Nietzsche admired and considered to be truly free, he explains that Goethe dared “to allow himself the whole compass and wealth of naturalness” (TI ‘Expeditions of an Untimely Man,’ 49).\(^83\) Goethe did not “sever himself from life,” nor from his nature, but embraced and affirmed even those parts that have been considered evil, sinful, or bad (TI ‘Expeditions of an Untimely Man,’ 49). In this way Goethe shows us what freedom and self-creation mean for Nietzsche.

In addition to creating oneself as an integrated unity, creation entails a “going beyond” or an “overcoming” of the self. However, man does not overcome himself through some external, metaphysical nature. Self-overcoming is an overcoming of the individual by the individual or, an overcoming by the individual within the individual. This process is exemplified by Nietzsche’s beloved maxim that he borrowed from Pindar “you shall become the person you are” (GS 270). While self-making entails autonomy, Hatab points out that “it cannot be associated with autonomy in the strict sense” (Hatab 2008, 81). Nietzsche’s imperative refers to man’s nature being the result of man’s innate drives that can be reordered, cultivated, and sublimated, but not created \textit{ex nihilo}. Moreover, Nietzsche states, “at the bottom of us, really ‘deep down,’ there is, of course, something unteachable, some granite of spiritual fatum” (BGE 231). Thus, freedom, for Nietzsche, is the realization of one’s internal or natural forces to become what one is; “the self is not so much created as unfolded” (Thiele 1990, 215). While this dictum summons man to fully develop himself, what man becomes is a matter of his innate constitution. Self-legislation

\(^83\) For instance, Nietzsche refers to Goethe as “the last German of noble taste” (CW Epilogue, 192). According to Nietzsche, Goethe was one German who greatly influenced European society and culture. This is evidenced when he asks: “haven’t you so much as one spirit who \textit{means something} to Europe? In the way your Goethe...meant something?” (TI “What the Germans Lack,” 4). Later in \textit{Twilight of the Idols}, Nietzsche states, “Goethe is the last German before whom I feel reverence” (TI “Expeditions of an Untimely Man,” 51). However, as is typical of Nietzsche, although he respected and admired Goethe, he was still critical of him at times. See, WLN 10.33; GS Appendix, “To Goethe”).
arises to the effect that everyone has the ability to squander their talents, suppress various drives, or facilitate their actualization. However, Nietzsche states, “each has inborn talent, but only a few have inherited and cultivated such a degree of toughness, endurance, and energy that they really become a talent, become who they are – that is, release it in works and actions (HH 263). Thus, only those who possess the strength and the determination will, through deeds, take possession of themselves and become who they are.

According to Nietzsche, possessing a strong will is necessary for freedom and self-making. Freedom is not a matter of possessing a free or unfree will since Nietzsche insists that there is no such thing; rather, he maintains that “in real life it is only a matter of strong and weak wills” (BGE 21). A strong will is a prerequisite for freedom, which Nietzsche describes in terms of “precision and clarity of direction” and the coordination of the impulses “under the dominance of a single one” (WLN 14.219). In other words, the unification of drives and impulses into “a ruling idea,” an inner feeling of compulsion, is indicative of a strong will (Z ‘Of the Way of the Creator’). Thus, a strong will can be understood as a form of “coordination” that results from dominating and structuring one’s drives and instincts. A ‘weak will,’ to the contrary, is described as a “multiplicity and disaggregation of the impulses, lack of system among them” (WLN 14.219). Therefore, a weak will lacks a “center of gravity” and is marked by disorder and discord. However, a state of disorder and war among an individual’s drives and values is

84 In The Gay Science, Nietzsche’s conception of freedom is further described in the context of giving style to one’s character, upon which Nietzsche places great significance. He explains that giving style is something that “is practiced by those who survey all the strengths and weaknesses of their nature and then fit them into an artistic plan until every one of them appears as art and reason and even weaknesses delight the eye” (GS 290). However, Nietzsche tells us that this is not an easy feat because it involves “long practice and daily work” (GS 290). Giving style entails “constraint” in the form of self-control and self-discipline. He explains that only those who live in accordance with “a law of their own” will embrace this practice (GS 290). For this reason, he insists that giving style is something reserved for “strong and domineering natures,” rather than those who are weak (GS 290).

85 Similarly, in Twilight of the Idols, Nietzsche defines that which is bad as the “degeneration of instinct, disintegration of will,” whereas to the contrary, that which is good corresponds to that which is instinctual “and consequently easy, necessary, free.” (TI The Four Great Errors 2, 59)
ultimately destructive since it leads to a state of exhaustion and weakness. Moreover, a state of internal conflict inhibits one from an individual, or a genuine self.

Contrary to the traditional, dominant narrative that presupposes the existence of the individual, Nietzsche describes the individual as “something quite new” (WP 767). Hence, Zarathustra tells us that first people were creators, then individuals, but “the individual himself is still the latest creation” (Z ‘Of the Thousand and One Goals’). However, Thiele explains that for Nietzsche, “the individual is not so much a reality as a goal” (Thiele 1990, 45). As discussed above, Nietzsche problematizes and rejects the metaphysical notion of the self, the doer that underlies all action; his critique undermines the perspective that implies all actions are done by some coherent self or are the consequence of some underlying will. For Kant, freedom is realized through strict adherence to the moral law, which entails and necessitates the denial of the self. However, Nietzsche is dismissive of moral systems, such as Kant’s moral philosophy, that emphasize altruism and selflessness. Nietzsche explains that individuality is realized when values are generated out of oneself, from one’s own inner depths, as an inner compulsion.

Rather than submitting to the values and principles imposed by society, freedom consists in creating values for oneself, from within oneself. Ultimately, man must “possess his value apart” (WP 319). Thus, Zarathustra contends, “that your virtue is your Self and not something alien, a skin, a covering” (Z ‘Of the Virtuous’). On this point Sedgwick explains, “in this condition, the self is at once the source and subject of its own authority” (Sedgwick 2013, 165). Freedom is thus a form of emancipation and empowerment, since man creates and subjects

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86 Nietzsche characterizes this condition as “passive nihilism” whereas “active nihilism” is characterized in terms of a synthesis among man’s drives. See, for instance, WP 23.

87 In this way, necessity is not absent from freedom and individuality for Nietzsche; rather, an inner compulsion and self-discipline are indicative of genuine freedom. Although traditional morality has rendered duty and discipline as unpleasant and burdensome, Nietzsche envisions that if rendered in the service of self-creation and self-development such things will no longer be experienced as such; “he has the hope that after long practice it can become instead a pleasurable inclination” (Ansell-Pearson 2011, 201).
himself to his own values, principles, and laws. Ultimately, man must go his own way and become his own authority. Therefore, Nietzsche does believe that people can achieve “personhood” or become “genuine selves” by creating and becoming their own master and authority. However, rejecting all forms of law and authority other than oneself leads to a state of solitude. Sedgwick explains that “one is alone in the sense that one is able to turn to no higher authority than oneself when it comes to the question of judging oneself” (Sedgwick 2013, 171). Knowing that there is no other standard of valuation besides oneself can be daunting and oppressive. This causes great suffering that is only multiplied by society’s contempt and ill-will for individuals who go their own way.

Whereas Kant maintains that genuine freedom consists in submitting and adhering to the moral law, Nietzsche, on the other hand, asserts that genuine freedom consists in creating and performing one’s own law. Thus, the creator must embody his virtues and must command and discipline himself to act in ways that demonstrate his personal values, norms, and laws. Therefore, “the liberty we have at our disposal is that of cultivating the drives, not some miraculous power of self-invention and self-creation ex nihilo” (Ansell-Pearson 2011, 180).

Although the creator is free on Nietzsche’s account, he is not free as in unbound or without constraint. He who commands himself must also obey himself. Therefore, as both origin and subject of his law, man must practice an extreme strictness and discipline with himself in adhering to his law.

In *Daybreak*, Nietzsche envisions the future criminal as someone who is both “judge and executive with regard to their own punishment, so the richest form of selfhood is possible only if one meets the requirement of the cultivation of a rigorous self-discipline” (Sedgwick 2013, 170).

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This is in part why Nietzsche urges us to focus on self-command as opposed to commanding others. Man’s greatest power and strength are demonstrated through self-control and self-discipline, not as some might suppose, by oppressing and controlling others. As Kaufmann observes, this aspect of Nietzsche’s ethics affirms one of the maxims attributed to Lao-tze, namely “that the man who conquers himself shows greater power than he who conquers others” (Kaufmann 1974, 252). Thus, self-command requires great strength, power, and discipline. Moreover, “to be powerful enough to create values means to risk oneself, to render oneself accountable” and for this reason, creation involves great responsibility (Sedgwick 2013, 189).

Although Nietzsche rejects moral responsibility, and the juridical notion of accountability it gives rise to, he does not reject responsibility as such. Instead, he endorses a version of responsibility that “is premised on an idea of human flourishing” (Huigens 2003, 569). Whereas moral responsibility frames arguments in terms of what actions require reward or punishment, and juridical responsibility is grounded in duty and blame, Nietzschean responsibility focuses on whether man has the strength, discipline, and determination for freedom and creation. Moreover, Nietzsche describes freedom in terms of personal responsibility “which he bases in conscience that expresses a self open to an undetermined future, rather than conscience determined by prevailing moral norms” (Diprose 2008, 617). Solomon points out that Nietzsche’s rare use of the term ‘responsibility’ (Verantwortung) is oftentimes critical, yet, it is not “a misreading or a bad interpretation of Nietzsche that places the existentialist thesis ‘responsibility for self’ at the very heart of his philosophical mission” (Solomon 2002, 81).

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92 Rosalyn Diprose offers a comprehensive look at Nietzsche’s thoughts on responsibility. However, while she admits that responsibility for the self is central to Nietzschean responsibility, she is critical of the fact that he fails to
Nietzsche urges us to reject moral responsibility as a standard way to determine value and claims that value ought to be determined in relation to how much responsibility man himself can bear. This perspective is illustrated in *Daybreak* where he suggests that the value of man (and society) ought to be determined in relation to “how many parasites it can endure” (D 202). Similarly, in *Beyond Good & Evil*, Nietzsche claims that man should be measured and judged in relation to “how much of the ‘truth’ one could still barely endure” (BGE 39). Note that Nietzsche suggests that the evaluation of both societies and individuals, as well as the order of rank within society and among individuals, should be in accordance with the amount of responsibility each assumes and what they are able to bear and take on. In this way freedom also involves a responsibility to one’s conscience. That is to say, man himself must become capable of judging and evaluating.

Since genuine freedom entails great strength and responsibility, it is only a possibility for a few, select individuals. Nietzsche insists that “independence is an issue that concerns very few people – it is a prerogative of the strong” (BGE 29). Thus, “the heroic task… is to become a sovereign individual” (Thiele 1990, 45). While most will never attempt to become free, even less will actually become so. However, Nietzsche not only limits freedom to those who have the strength for it, he also insists that one must have a *right* to freedom. Nietzsche explains,

we should not wish to persuade anybody because we do not readily concede *the right to it* to anyone: the ideal of a spirit who plays naively – that is, not deliberately but from overflowing power and abundance – with all that was hitherto called holy, good, untouchable, divine (GS 382).

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93 See, for instance, BGE 212.
94 Although Nietzsche dismisses the traditional concept of natural rights, he oftentimes discusses things in accordance with whether one possesses the right to do “x.” Nietzsche’s use of the term “right(s)” is most often related to power and strength.

emphasize that the individual has responsibilities to the other. See, Rosalyn Diprose, “Arendt and Nietzsche on Responsibility and Futurity” *Philosophy and Social Criticism* 34, no.6 (2008): 617-642.
Having a “right” to freedom is also demonstrated by Zarathustra who demands, “show me your strength for it and your right to it (Z ‘Of the Way of the Creator’).  

According to Nietzsche, the “philosopher of the future” represents one such human-type that is in possession of both the strength and the right to freedom. The philosopher is hard, strong-willed, disciplined and prepared for great responsibilities. Nietzsche explains that the philosopher of the future has “acquired, nurtured, inherited, and digested singly” each of his values and embodies the art of command and self-discipline (BGE 213). By his very nature and constitution, the philosopher is an iconoclast. Hence, Nietzsche states that they are representative of “the bad conscience of their time” (BGE 212). The philosopher of the future undermines the present values by exposing the inconsistencies and falsities extant with the aim of bringing about a new, higher type of man that is both rare and great. Thus, he is tasked with overthrowing eternal values in order to force the future of humanity in a different direction. The philosopher of the future embodies and symbolizes “Nietzsche’s belief that all human advancement springs from being challenged by the world we inhabit” (Sedgwick 2013, 176). The philosopher of the future is presented as having “the most comprehensive responsibility” since he possesses “the conscience for the over-all development of man” (BGE 61).

The philosopher of the future is not merely a destroyer of values but also a creator of values. His creating is a legislating of new values that transforms and restructures the conditions of extant valuation. However, this can take place only after the active destruction of the hegemonic moral paradigm. That is to say, the destruction of morality is a prerequisite for the transvaluation of values. While the philosopher of the future participates in the destruction of values and norms, it is my contention that Nietzsche also considers the criminal to be a

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95 In the upcoming chapter, i.e., Chapter Three: Justice, Nietzsche’s idea of rights with be discussed further. However, it ought to be noted that rights, like freedom, are not innate or given, but conquered and obtained.
significant force because the criminal overthrows the status quo and creates conditions for a new future, with new values, which fosters an elevated version of man. Moreover, although criminality is oftentimes discussed in terms of a temporary freedom, Nietzsche seems to suggest that a particular type of criminal, the great criminal, is genuinely free on his account.96 This in part explains Nietzsche’s praise and admiration for the criminal; they are “the closest thing we know to genuine, supramoral sovereignty” (Conway 1997, 19). Conway remarks, rightly I believe, that for Nietzsche the paradigmatic example of sovereignty and freedom “is not the debt-paying, promise-keeping, originally positioned author of the social contract, but the criminal, the monster devoid of conscience, who personally shoulders the entire burden of his existential suffering” (Conway 1997, 19). The criminal, like those who are great, possesses “a solitude within him that is inaccessible to praise or blame, his own justice that is beyond appeal” (WP 962).

For Nietzsche, freedom and thus creation are a privilege reserved for the strong and disciplined. It is my contention such individuals will be criminals in the sense that they will possess “a free conscience in those things that today are most undervalued and prohibited” (WP 898). Their actions force “a reversal and fundamental shift in values” beyond good and evil, beyond reward and punishment (BGE 32). Thus, they “revalue and invert ‘eternal values’” and overcome and overthrow morality in the traditional sense (BGE 203).

5. Conclusion

Nietzsche’s conception of freedom and autonomy requires first and foremost that man’s innocence is affirmed. However, affirming man’s innocence problematizes the traditional notion of justice, which entails that man is blameworthy and deserving of punishment. Nietzsche insists that we must reject the traditional notion of justice and create a new version that excludes

96 This idea will be discussed further in Chapter Five: The Criminal.
blaming and punishing. Nietzsche perceives justice, particularly egalitarian justice, as arresting man and limiting his freedom and autonomy. This version of justice culminates in a war against all that is unique, exceptional, higher, greater, and powerful. Justice as fairness and/or equality produces mediocre, average, individuals and thereby contributes to the overall leveling of man. It produces “a smaller, almost ridiculous type, a herd animal, something...sickly, and mediocre” (BGE 62). For these reasons Nietzsche claims that the modern version of justice as equality of rights “belongs essentially to decline” (TI ‘Expeditions of an Untimely Man,’ 37). Hence, he states that “there exists no more poisonous poison” (TI ‘Expeditions of an Untimely Man,’ 48). Ultimately Nietzsche insists upon a new justice that fosters and promotes freedom, autonomy, and individuality.
CHAPTER THREE

JUSTICE

1. Introduction

Nietzsche’s discussion of justice is difficult to ascertain and understand. This is in part because his many references to law and justice are dispersed throughout his work. However, what is most challenging about Nietzsche’s understanding of justice concerns the fact that he uses the term in a variety of different ways. For instance, justice is spoken of in terms of epistemology, morality, politics, philosophy, and cosmology and they refer to different types of justice such as epistemic justice, political justice, punitive justice, and natural justice. While some scholars, such as Philippa Foot, argue that Nietzsche (wrongly) rejects the traditional notion of justice and that justice is absent from his thinking, it is my contention that Nietzsche is clearly concerned for (a version of) justice, though different from how it is traditionally conceived. However, it is not possible to refer to a particular section or aphorism where Nietzsche elaborates in full regarding what he means by justice. His characterization of justice, or rather, his re-characterization of justice, can only be elucidated by looking at the types of justice he criticizes, along with the forms of justice he endorses.

Nietzsche’s reflections upon justice amount to a critique of characterizations of justice as delineated by Platonism, Christianity, and modern political justice theories. In contrast to

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97 I focused on Nietzsche’s account of justice starting with Human, All-Too-Human because it marks the beginning of Nietzsche’s exploration of justice in non-metaphysical terms. This text marks a significant turn for Nietzsche since he dismisses the metaphysical perspective of The Birth of Tragedy and shifts to naturalism. However, he was concerned with law and justice prior to this. See Peter R. Sedgwick’s Nietzsche’s Naturalism: Naturalism in Search of an Ethics for a discussion of Nietzsche’s perspective of law and justice in The Birth of Tragedy.
characterizations of justice as a timeless, a priori, universal truth, Nietzsche alleges that justice was a sort of *achievement* that was *constructed* by primitive, natural, economic, pragmatic, and cultural forces. Throughout Nietzsche’s writings he puts forth two genealogies that account for the origin of justice. His early genealogy of justice, located in *Human, All Too Human* and *The Wanderer and His Shadow*, describes the emergence of justice as a process of exchange arising from an equilibrium between power relations. Nietzsche notes that Thucydides correctly observed that “justice (fairness) originates among approximately equal powers” (HH 92). In *The Genealogy of Morals* Nietzsche puts forth his later genealogy of justice, which describes justice as a method by which strong, noble types organized primitive communities. He alleges that justice, on this conception, came about in an hierarchical setting in which the powerful utilized justice to curtail the *ressentiment* and desire for revenge that characterized the weak and impotent.

Nietzsche’s genealogy of justice illustrates that justice is not a natural state, but an achieved state of balance between forces. Justice, on Nietzsche’s account, emerges from power relations. However, his critique of justice concerns the form of justice that came about as a result of slave morality, which he rigorously attacks because it is abstracted from the concrete power relations that are constitutive of justice. The slave’s notion of justice not only entails an abstract equality, but according to Nietzsche, what the slaves call justice is really revenge. Moreover, he alleges that this form of justice gave rise to the modern notion of justice and equal rights. Ultimately, he claims that this form of justice, which consists in giving each their due, must be dismissed. He says of this type of justice that it is utilized as a weapon against all who are different and other and further, its claim to equal rights yields inequality rather than equality. In addition, Nietzsche argues that the traditional notion of justice reinforces herd mentality and thus
mediocrity, sameness, and conformity. Equality amounts to an attack on particularity, rarity, and uniqueness and has thereby cheapened and impoverished individuality through the privileging of standardization and sameness. This prevents great individuals from developing and proliferating and hinders the flourishing, enhancing, and evolving of individuals. Due to the aforementioned reasons, Nietzsche declares that a new justice is needed.

In place of the traditional notion of justice derived from slave morality, Nietzsche puts forth an alternative form of justice in naturalistic and non-metaphysical terms. Nietzsche’s re-characterization of justice entails that only those who are strong and powerful can practice justice because it is only those individuals that will be capable of rising above the desire to condemn others as guilty. Nietzschean justice refuses to hold man accountable and instead embraces the innocence of all men. It transcends the desire for vengeance and, in place of holding others responsible and seeking revenge, it embraces mercy instead.

2. **Nietzsche’s Historical, Genealogical, and Psychological Account of Justice**

2.1. Justice and Rights: A State of Equilibrium:

Nietzsche describes the origins of justice (fairness) as an exchange between two parties approximately equal in power and strength that attempt to negotiate a resolution. A resolution that culminates in equilibrium is necessitated by the fact that neither party can obviously and decisively gain advantage over the other. Conflict between two parties equal in power would otherwise amount to a futile struggle where both are pointlessly harmed. Therefore, each party agrees to a “just” process of exchange. Hence, Nietzsche states, “the initial character of justice is barter” (HH 92). Justice denotes a domain of exchange arising from primitive man’s ability to evaluate and calculate. However, the “fair” settlement, or compromise, is reached not by giving each party their due, but by each party agreeing to give the other what it wants. In this way, justice is “always only: ‘Tit for tat’” (WLN 5.82).
According to Nietzsche, “equilibrium is, in fact, the basis of justice” (WS 22). Therefore, justice is not a pre-existing state that is conserved, but a matter of attaining a state of equal relations of power. This is further illustrated by the ancient principle of *Lex Talionis* (Jus talionis) which functioned to attain equilibrium while also ensuring that “the revenge of blind anger” would not be sought (WS 22).\(^98\) However, it is important to note that a state of justice is not preserved through the act of revenge; rather, the act of revenge actively creates a state of justice. The principle of an eye for an eye implied that equality could be achieved and maintained by means of repayment, and the guarantee of equal compensation was a means of reestablishing the power relations that were initially disrupted. Sedgwick explains that *jus talionis* “makes just rather than merely conforming to a pre-existent universal state of justice from which the act of wrongdoing represents an unfortunate deviation” (Sedgwick 2013, 86). Punishing the wrongdoer was not a means of applying some transcendent notion of justice; rather, punishing the wrongdoer brought about a state of equivalence and in turn resulted in the creation of a just state. Since, for ancient societies “an eye or an arm more means a bit more power, more weight,” *jus talionis* was implemented to ensure that power imbalances were restored to a state of equilibrium (WS 22).

It is important to note that justice, on this account, arises only after equilibrium has been attained and functions as a means of reproducing this state.\(^99\) Therefore, equality of power and/or strength are a prerequisite for the emergence of justice; “justice and power are thereby inextricably entwined” (Sedgwick 2013, 81). For this reason, justice is also subject to instability

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\(^{98}\) *Lex Talionis* is Latin for “the law of retaliation” and it refers to the idea that punishment must bear an equivalence in degree and kind to the misdeed of the wrongdoer. That is to say, it requires that punishment is restricted rather than unrestricted, unregulated, or random. *Lex Talionis* is “retributive justice” and while it is most often associated with justice in the form of “eye for an eye,” it is not limited to this form of justice.

\(^{99}\) In *Writings from the Late Notebooks*, Nietzsche insists that Lady Justitia, the pictorial image of justice, is misleading, and the correct representation “would be to make Justice stand at the center of a pair of scales in such a way that she kept the two pans balanced” (WLN 5.82).
because it depends upon achieving equilibrium between power relations that are in constant flux. Justice is not universal and timeless, but impermanent and ephemeral. Thus, a contract is established that consists of “not just a mere affirmation with respect to an existing quantum of power, but also the will to affirm this quantum on both sides as something lasting” (WLN 5.82).

This agreement requires that equilibrium be affirmed and maintained by each party involved, despite any changes. Nietzsche states, “in this...is to be found a germ of all ‘good will’” (WLN 5.82).

According to Nietzsche, the notion of compromise and contracts gives rise to the notion of rights, which he describes as similar to justice, i.e., as a temporary form of balance or equilibrium. In _Human, All-Too-Human_, he explains that rights come about through equalization whereby they are extended only “as far as the one appears to the other to be valuable, essential, permanent, invincible, and the like” (HH 93). For instance, Nietzsche argues that both master and slave have rights, although the slave’s rights are “more modest” (HH 93). The master utilizes the slave to his advantage, to make a profit, yet the slave is only profitable so long as he remains alive, healthy, and in his master’s possession. Similarly, the slave only has rights in so far as he remains profitable to the master. Later in _Daybreak_, Nietzsche explains rights in relation to duty, insisting that duty turns on the notion of who has rights over and against us. The attainment of rights, like justice, consists in an entity’s power and strength. Hence Nietzsche states, “the rights of others can relate only to that which lies within our power,” whereby we demonstrate our power by giving “back in the measure in which we have been given to” (D 112). He concludes that the origination of rights entails an exchange between parties who are essentially equal in power and rank and thereby consists in “recognized and guaranteed degrees of power” (D 112). For this reason, being “fair” is extremely difficult; it involves a keen insight and “much practice”
to assess and determine the extent of another’s power, as well as one’s own, and then to strike a balance in between (D 112).

Equality of power relations is a precondition of justice and rights as well as the creation of the community. In The Wanderer and his Shadow, Nietzsche describes the origin of justice in relation to the origin of the community which he illustrates in terms of a robber, the weak who need protection from the robber, and an individual who vows to do the protecting (WS 22).
Nietzsche explains that those who are weak and without power have two options. They can come together and become a power equivalent to that of the robber, and any other power external to them or, they can subject themselves to a powerful individual who will ensure their protection by “maintaining the equilibrium against the robber” (WS 22). Nietzsche explains that the powerless choose the latter scenario because “it really keeps two dangerous beings in check” (WS 22). Otherwise, they would be forced to deal with both the powerful individual and the robber. Thus, Nietzsche states that “the community is at first the organization of the weak to counterbalance menacing forces” (WS 22).

In order to counter the threat of external forces, weaker individuals come together to protect themselves against those that are stronger and/or more powerful. Nietzsche explains that the creation of the community is done in part by all individuals presuming a general state of equality among one another. However, equality is imposed only to achieve security and protection since those who do not have enough power require the association of others to become powerful. Organizing together to become a force powerful enough to counter that of their neighbor is essential, although becoming more powerful is preferable. In the instance that the community becomes equal in power to that of its neighbor, realizing that they are each equal in power, they might decide to be “friends” rather than attack one another. This “equal weight” or
“counterweight” is the basis of justice such that it brings about an equal balance between opposing powers or forces. This is the fundamental power equation that is at the basis of the idea of equivalence in law and morality, an equivalence later corrupted into an abstract conception independent of power and natural capacities. Nietzsche’s description of communal justice illustrates that equilibrium is not a naturally occurring state but one that must be sought after. This “likewise reveals why there is no such thing as ‘natural justice’” (Sedgwick 2013, 80). Moreover, Nietzsche points to the breakdown of the community, which brings about “the state of nature: an absolutely ruthless inequality,” to further illustrate that natural justice does not exist (WS 31).

Nietzsche’s account of justice illustrates that justice arose out of egoistic concerns for self-preservation. It is an exchange between parties that are essentially equal in power and rank. Moreover, it is a way in which two equal powers settle conflicts that are advantageous to them both. Thus, “two parties do not enter ‘just’ terms of exchange because they are just, but because they are acceptable to both parties” (Queloz 2017, 739). In considering the crude origins of justice, Nietzsche states that “the beginnings of justice…are animal” (D 26). Motivated by self-preservation and self-interest, ancient man reasoned that it would be pointless to attempt to bring about a desired state of affairs when the consequence could be failure and harm to self. It is important to note that justice as fairness is distinct from moral justice since “it does not concern what it is to be fair to another qua another person – but one that relates primarily...to distribution of certain material goods” (Elgat 2016, 158). Justice arises from basic human drives directed

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at practical concerns like self-preservation. Thus, Nietzsche naturalizes justice and insists that justice arose out of egoistic concerns rather than justice as such.\textsuperscript{102}

2.2. Justice and Law: A Device Used by the Powerful:

Contrary to thinkers such as Eugen Dühring, who locate the origins of justice in reactive feelings such as resentment, Nietzsche’s later genealogy of justice illustrates that “the political value of justice emerged first not in the interests of weak types but in the active power of strong types” (Hatab 2008, 93). Nietzsche states, “the last sphere to be conquered by the spirit of justice is the sphere of the reactive feelings” (GM 2.11). Therefore, “justice and law are not reducible to retribution for injury” (Hatab 2008, 93).

In The Genealogy of Morals, justice is described as a device utilized by those in power to form and organize early societies. The powerful considered the conflicts within ranks and between ranks as disturbances to the order of the whole. Justice functioned as a means of challenging reactive pathos such as the desire for revenge. Moreover, it acted to establish a compromise among those equal in power, who thereby influenced and directed those of lesser power to secure compromises among themselves. Justice, on this conception, originates “in equalization or an agreement between forces of approximately equal powers, as well as in the compulsion of the less powerful to agree” (Jelkić 2006, 395).\textsuperscript{103} Whereas those in power had the advantage of settling disputes among themselves without violence and brute force, those who were less powerful were not as advantageously positioned and could not afford the same luxury. However, the powerful were able to compel those who were weaker to settle their disputes in a

\textsuperscript{102} Nietzsche claims that the true egoistic origins of justice were forgotten because centuries upon centuries separated humanity from the time in which justice originated. Justice was presented as though it derived from selfless motivations and man was taught to imitate and value justice as a selfless action. Over time, the value of justice increased in worth because it was so revered, and as more people strove to imitate it, the more it became “highly esteemed” (HH 92). Yet reproducing a just and thus fair act was not always an easy feat; at times it involved risk, sacrifice, insight, etc. Justice continued to increase in value and worth as the amount of “effort and exertion” increased (HH 92).

similar manner, that is, without violence. In this context, justice was a technique for responding to conflict and disorder, a way in which the strong and powerful responded to those of lower rank to force them to resolve their conflicts and a means by which those of higher rank abated acts of revenge among the lower.

Once the rulers are powerful enough, they immediately erect a formal system of laws, which reaffirms and reproduces equilibrium between opposing powers. Nietzsche contends that the creation of laws is “the most decisive act” for the powerful in combating “the predominance of grudges and rancor” (GM 2.11). Hatab explains,

> the establishment of law is not grounded in some metaphysical warrant of ‘right’ (whether divine, natural, or human) because it arises as a modification of prior conditions of social power for the purpose of addressing the problem of vengeful dispositions. (Hatab 2008, 95)

The institution and administration of law signal a superior level of strength and power on the part of the rulers since the erection of a formal system of law takes place only when the active powers are “strong enough to do so” (GM 2.11).

It is at this point that the notions of just and unjust become meaningful and valid since such notions are consequences of instituting a legal system rather than the stimulus for it. Hence, it seems that Nietzsche is in agreement with Hobbes, who states, “where there is no common power, there is no law; where no law, no injustice” (Hobbes I, 13.13). Like social contract theorists such as Thomas Hobbes and John Locke, Nietzsche argues that such terms are a matter of social convention and cannot be understood in isolation, and thus independently from the establishment of law. Their value and meaning come about only after laws are developed and

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105 However, it ought to be noted that Nietzsche does not endorse social contract theory. He considered the social contract theory, as posited by Thomas Hobbes, John Locke, and Jean-Jacques Rousseau, as a form of slave morality in which the weak disempower the strong and coerce them to embrace their morality (i.e., slave morality or, the morality of the weak). Other scholars adopt this reading of Nietzsche. See, for instance, Keith Ansell-Pearson. See,
all that is permitted and prohibited is established. Therefore, it is nonsensical to speak of “natural justice,” “intrinsic injustice,” or “justice as such” since such terms are meaningless in themselves (AOM 31; GM 2.11).

Nietzsche explains that the creation of law “on the part of the active and aggressive powers” functions to counter and redirect the excesses of ressentiment and revenge by depersonalizing crime through broadening the realm of injury from the specific injured party to the whole of society (GM 2.11). While the idea of law as a general, impersonal force seems consistent with modern legal theories, “Nietzsche embeds this idea in more natural forces of power relations, rather than in any notion of ‘natural law’ or rational principles of justice intrinsic to human nature” (Hatab 2008, 95). Through law, the rulers “attempt to subdue the senseless raging of ressentiment of injured parties by providing a new interpretation and meaning of violent and harmful actions they suffer” (Cartwright 1985, 19).106 Harmful actions are reconceived as offenses against the law rather than offenses against the individual, thereby eliminating the personal element, and in this sense, ressentiment is redirected by way of justice. The counterbalancing that occurs by means of justice is measured not in relation to the victims and their losses, but instead from the standpoint of society and its losses. The victim oftentimes adopts a prejudiced view by overestimating the degree to which the perpetrator is malicious, as well as exaggerating the extent of harm to arouse, and justify, the feelings of revenge and loathing.107 However, the prejudiced perspective of the victim is replaced by that of the law, which assesses lawbreakers and their punishment objectively, impartially, and equally. The law acts as arbitrator and punishment, which is the way in which the criminal makes recompense,


107 Nietzsche discusses this concept in HH 62.
acts to moderate. This, in effect, is how the supreme powers countered the desire for, and the effects of, revenge.

3. Nietzsche’s Critique of Justice

Generally speaking, Nietzsche’s critique of justice is directed at the type of justice that was produced as a result of the slave revolt in morality. He argues that this form of justice is not really justice, but in truth, a concealed form of revenge. Moreover, he attacks the corresponding notions of universal equality and equal rights, arguing that such notions foster inequality and negate difference, rarity, and uniqueness. Ultimately, Nietzsche urges us to reject the traditional notion of justice as well as the idea of universal equality because such ideas hinder the ability for man to flourish and elevate himself.

3.1. Justice and Slave Morality:

Much of Nietzsche's critique is aimed at a particular form of justice, namely “moral justice and the related concepts of moral equality and equal moral rights” that originated with the slave revolt in morality (Elgat 2016, 155). As is well known, Nietzsche alleges that ressentiment gave rise to the slave revolt in morality. Due to poor treatment by the masters, the slavish-types considered their “existence to be a state of distress (expressed in moral terms as a state of injustice)” and ultimately sought to free themselves from such conditions (TI ‘Expeditions of an Untimely Man,’ 40). They lacked the necessary strength and power to do so and due to their utter impotence and their inability to enact revenge, they became consumed with ressentiment. As mentioned in the previous chapter, in place of physical revenge, the

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109 According to Nietzsche, the feeling of impotence engendered such contempt and hatred that the “basic character trait of those who rule,” namely the will to power, was stigmatized and prohibited through (slave) morality (WP 55). However, Nietzsche points out that even the desire to make moral judgments is a manifestation of the will to power,
oppressed and enslaved enacted an imaginary revenge through inverting the values of the
masters. In order to affirm himself, the slave negates the other. Since the virtues of slave morality
developed in response to the noble’s values, the slave’s conception of justice and other such
virtues are essentially reactive.\textsuperscript{110}

According to Nietzsche, the slave’s \textit{ressentiment} and desire for revenge were revalued as
the virtue justice.\textsuperscript{111} In the form of justice, the slaves depicted themselves as seeking freedom
from the oppressive and unfair treatment of the ruling class. Therefore, the slaves used justice as
a means of retaliating for the suffering caused by the nobles. While the slaves claimed to lack the
desire for revenge, this narrative is undermined by Nietzsche, who claims instead that the slaves
revalued their inability to take revenge as a lack of desire for revenge.\textsuperscript{112} While Nietzsche states
that “revenge belongs initially to the realm of justice: it is an exchange” revenge is \textit{not} justice
(HH 92). Elgat’s interpretation of this passage is useful in understanding what Nietzsche means.
Elgat states,

\begin{quote}
 it should be understood merely as expressive of the view that revenge is an act that seeks to requite and to
repay and, to an extent, resembles the exchange that transpires within the realm of justice. In other words,
relations of justice and acts of revenge are alike in that both are concerned with the tit-for-tat of human
interactions (Elgat 2016, 160).
\end{quote}

On Nietzsche’s account, revenge is similar to justice since they both entail the process of
exchange. However, a precondition of justice is equilibrium and contrary to bringing about a
state of equal forces, the act of revenge usually aims to diminish the power of the adversary.

\begin{footnotesize}
\textsuperscript{110} According to Nietzsche, justice is an active stance and therefore, the slave’s conception of justice is a distortion
of what Nietzsche considers to be justice. This will be discussed further below in “Section Three: Nietzsche’s
Privileged, Alternative Perspective.”
\textsuperscript{111} Note that Nietzsche distinguishes between \textit{ressentiment} and revenge but believes that these drives are related and
connected. \textit{Ressentiment} is not merely an expression of weakness or impotence but an impotent hatred for those who
are stronger and against whom one cannot physically defend oneself. It is like revenge (\textit{Rache}) in the sense that both
drives are “reactive feelings” that possess little value in comparison to the more active drives that Nietzsche extols.
\textsuperscript{112} Nietzsche also claims that the slavish-types named their inability to enact revenge ‘forgiveness.’
\end{footnotesize}
Although revenge can bring about equilibrium, “there is nothing in revenge as such in virtue of which it could be said to be a crucial genealogical precursor to the establishment of the power equilibrium that makes justice possible” (Elgat 2016, 160). Nietzsche alleges that while the slaves interpret themselves as desiring justice, they really, in effect, desire vengeance.

This idea is further illustrated by the fact that the slave’s conception of justice does not arise from a prior state of equilibrium but seeks to establish one. Since the slave’s poor material conditions prevented them from achieving a state of equality with the nobles, they created a new, metaphysical conception of justice devoid of the prior prerequisite of equal quanta of power. Justice is abstracted from the material conditions in which it arose and can therefore be established despite there being no equality between power relations. Thus, “the slaves, in effect, reconceptualize the desire for that which might bring about a condition for the establishment of justice (revenge) as a desire for justice itself” (Elgat 2016, 163). This accounts for Nietzsche's repudiation of the slave’s conception of justice. That is to say, the slave revolt in morality produced a notion of justice abstracted from the particular and physical conditions of power relations that originally gave rise to it. Justice was no longer governed by, and dependent upon, specific contexts, which, in effect, resulted in the universalization of justice.

Although this form of justice was devoid of actual equality of power and strength, it was not devoid of equality as such. Rather, it presupposed equality in terms of the Christian notion of equality before God. Slave morality, in the form of Christian ethics, interprets everyone as equal before God and thus equally subject to the same set of moral principles. In this way the slave’s desire for justice is universalized and made into a moral demand. The universality of justice derived from slave morality interprets all violations as injustices. God thereby legitimizes the notion of moral justice as well as the notion of universal moral equality. This in effect led to the
political ideals of justice, egalitarianism, and equal rights. In other words, Judeo-Christian morality, in the form of slave morality, was secularized and politicized. Nietzsche is extremely critical of slave morality and the various moral and political ideals to which it gave rise. In particular, he attacks the notion of justice as a form of equality and considers it nothing more than a metaphysical myth of Christianity and Liberalism.

3.2. Justice as Will to Power:

Nietzsche describes the natural world from a biological perspective in terms of will to power. On this account, the basic character of all life is conflict, discord, and inequality. Nietzsche maintains that life naturally “seeks above all to *discharge* its strength” and strives toward “the feeling of growth, the feeling of increased power” (BGE 13; BGE 230). Thus, “life itself is essentially appropriation, injury, overpowering of what is alien and weaker; suppression, hardness, imposition of one’s own forms, incorporation and… exploitation” (BGE 259).

Therefore, domination, exploitation, violence, and strength are not qualities symptomatic of ancient civilizations, barbaric societies, or depraved individuals, but qualities of all that is living. Life is, according to Nietzsche, neither just nor unjust; “life simply is will to power” (BGE 259).

Nietzsche contends that all legal institutions prohibit man from acting in accordance with his natural drives and instincts and thereby suppress his will to power. In other words, from a biological perspective, the institution of law and order establishes “exceptional conditions” that entail “a partial restriction of the will of life” (GM 2.11). Nietzsche maintains that all legal orders are in some sense hostile to life since law seeks to repress and subdue man’s natural drives that are “bent upon power” (GM 2.11). For this reason, Nietzsche insists that criminality is a

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113 Nietzsche insists that all drives and values are manifestations of will to power. Therefore, the drives that society traditionally values are at root the same as those it slanders and prohibits. Nietzsche describes “the will to power as the origin of justice” and “justice as will to power” (WLN 8.7; 7.24).
necessary consequence of all societies that implement laws aimed at the suppression of man’s will and thus, his nature drives and instincts.

In addition, the very composition of law conflicts with that of life since life is “dynamic and fluid in character” and “law, by contrast, is static, rigid, and fixed in character” (Siemens 2010, 191).\(^{114}\) Nature consists of relations of power where the greater power subdues the weaker and the weaker bends naturally to the stronger. In opposition to the chaos that is nature, law and justice seek to establish order and harmony. This is in part because the masses “assign a higher value to peace than to war” (WP 53). However, Nietzsche considers this judgment unnatural and “antibiological” since “life is a consequence of war, society itself a means to war” (WP 53).

On Nietzsche’s account, the institution of law maintains and perpetuates relations of power. For this reason, he disparages any “legal order thought of as sovereign and universal” that is established “as a means of preventing all struggle in general” (GM 2.11). On his view “absence of struggle signifies absence of advancement” (Thiele 1990, 81). Nietzsche explains that the masses implement such systems due to their fear and hatred of inequality, power, and conflict. It is believed that establishing a state of equality will dispel “tension, enmity, hatred” and thereby bring about various states of happiness, peace, and security (WP 722). However, Nietzsche alleges that man is only familiar with the doctrine of equality rather than equality as such; thus, equality exists only in principle, not in practice. In addition, he maintains that the function of legal institutions consists in “creating greater units of power” rather than preventing and eradicating conflict and disorder (GM 2.11). Hence, any justice or system of law that posits equality among humankind distorts and falsifies nature. In other words, power and strength

govern the natural world, and establishing a realm of equality is a crime against nature since
equality is unnatural.

3.3. Justice, Equality, and the Negation of Rights:

On Nietzsche’s account, justice and injustice hinge upon order of rank and hierarchy. In
Beyond Good & Evil, justice is described as “that gracious severity which knows that it is its
mission to maintain the order of rank in the world, among things themselves – and not only
among men” (BGE 219). In Human, All-Too-Human, Nietzsche explains that man’s sense of
justice is motivated by man’s perception of his own status or rank. This interpretation of justice
relies on the perceived status of the other and whether they are perceived to be a worthy equal or
not. Nietzsche states, “simply the inherited feeling of being a higher being, with higher
pretensions, makes one rather cold, and leaves the conscience at peace” (HH 81). That is to say,
when man considers himself superior and of a higher value, he does not consider injurious and
harmful acts to those below him to be injustices. This sentiment is expressed by Nietzsche when
he writes “indeed, none of us feels anything like injustice when there is a great difference
between ourselves and some other being, and we kill a gnat, for example, without any twinge of
conscience” (HH 81). Nietzsche thereby concludes that man’s interpretation of justice is based
upon whether he perceives the other to be a comparable counterpart.

According to Nietzsche, equality is not justice but the negation of justice. We are told by
Zarathustra, “for justice speaks thus to me: ‘Men are not equal” (Z ‘Of the Tarantulas’).\textsuperscript{115}
Nietzsche considers it an injustice to attend equally to all.\textsuperscript{116} On his view, social equality depends

\textsuperscript{115} Note that Nietzsche makes this assertion a few times, for example in Z ‘Of the Tarantulas’ and Z ‘Of Scholars.’

\textsuperscript{116} Nietzsche not only expresses disdain for political equality but also for interpersonal ethical principles such as the
Golden Rule or the notion of reciprocity. (See for instance, WS 32; WLN 11.127) He speaks contemptuously of
ethical maxims such as the “Golden Rule” and the “notion of reciprocity” as well as those thinkers, such as John
Stuart Mill, who endorse such principles. Nietzsche states, “I abhor his [John Stuart Mill] vulgarity, which says:
“what is right for one is fair for another”’ (WP 926). Nietzsche detests the fact that people have tried to structure
human affairs on the basis of “mutuality of services rendered” (WLN 11.127). With this principle, actions possess a
upon actual power equality, rather than abstract equality, justice necessitates actual, physical
equality of power, force, and/or strength. Rights, like justice, are a matter of power and activity.
They too imply an equilibrium of strength. Nietzsche states, “my rights – are that part of my
power which others have not merely conceded me, but which they wish me to preserve” (D 112).
He continues, “where rights prevail, a certain condition and degree of power is being maintained,
a diminution and increment warded off” (D 112). Moreover, rights are in essence “conquests”
and thus they must be seized upon and taken. In one of his early works, Nietzsche references the
Greeks and the idea that “power gives the first right, and there is no right that is not
fundamentally presumption, usurpation, and violence” (GSt 209). 117 He states, “we do not
believe in any right that doesn’t rest on the power to enforce itself: we feel all rights to be
conquests” (WLN 10.53). Rights consist in “being able” and therefore rights should not be given
or bestowed upon individuals.118 A general principle that Nietzsche endorses is that “each has as
much right as his power is worth” (HH 93). In the instance where rights must be provided to
individuals by some external force it is because such individuals lack the degree of power needed
to obtain rights for themselves.

However, Nietzsche warns that universal, equal rights result in the negation of rights as
such. He points out that once all are equal, rights are no longer instrumental or valuable since the
utility of a right is dependent upon the existence of inequality.119 This is because “a right is a

118 Nietzsche describes those who claim to have rights, such as the right to evaluate or judge, as those who “claim
the right of being able to” (WP 775). My interpretation of this passage, along with other similar passages, is that
Nietzsche is drawing attention to the fact that there is a distinction between possessing a right in the conventional
sense and being able to execute that right. Nietzsche rejects the passive stance of the former and endorses the active
notion of rights.
119 See, for instance, HH 93; BGE 202; A 57; WLN 10.53.
privilege” and thus not something shared by all, but something reserved for the few, the exception(al) (A 57). Rights are advantages possessed by individuals, or small groups, beyond the advantage of the masses. Thus, Nietzsche insists that the implementation of rights for all negates rights as such. “Inequality of rights is the condition for the existence of rights at all” (A 57).

Nietzsche opposes the way in which equal rights for all have become synonymous with justice. He denounces this notion and instead claims that “injustice never lies in unequal rights, it lies in the claim to ‘equal’ rights” (A 57). Yet, those who desire equality are opposed to “every special claim, every special right and privilege (which means in the last analysis, every right)” (BGE 202). For this reason, Nietzsche insists that the implementation of political equality and equal rights “could all too easily be changed into equality in violating rights” (BGE 212). In particular, the will to equality leads to “a common war on all that is rare, strange, privileged, the higher man, the higher soul, the higher duty, the higher responsibility, and the abundance of creative power and masterfulness” (BGE 212). The imperative of equality fails to acknowledge and respect the other as other. In addition, “equality directly promotes qualitative similarity (die Ähnlichkeit) at the expense of multiplicity (die Vielheit)” (Miyasaki 2015, 2).\(^\text{120}\) It equates to a prohibition on “the highest and strongest drives” that would otherwise “drive the individual far above the average and the flats of the herd conscience” (BGE 201). This, in effect, is one way in which the community protects itself against the individual elevating himself above the average and mediocre masses, which would otherwise “wreck the self-confidence of the community, its faith in itself” (BGE 203). Thus, “instead of vying for distinction, men nurture a ressentiment

against all that is distinguished, superior, or strange” (Kaufmann 1974, 405). In this way justice and equal rights reinforce the dominance of the herd.

Nietzsche is extremely critical of “the instinct of homogenization in equality because he sees it as an attack on justice” (Sokoloff 2006, 510). His concern for this issue appears early on in his so-called middle period when he writes in The Wanderer and His Shadow that the “principle [of equilibrium]... tones down even our small differences to an appearance of equality, and expects us to be indulgent in cases where we are not compelled to pardon” (WS 32). However, it ought to be noted that Nietzsche’s contempt for equality is aimed at a specific type of equality. He dismisses equality in the form of similarity and conformity and affirms equality in the form of rank and power. Despite Nietzsche’s disdain for universal equality, he affirms equality among equals. He explains,

The doctrine of equality!...But there exists no more poisonous poison: for it seems to be preached by justice itself, while it is the termination of justice...‘Equality for equals, inequality for unequals’ – that would be the true voice of justice: and, what follows from it, ‘Never make equal what is unequal. (TI ‘Expeditions of an Untimely Man,’ 48)

Therefore, Nietzsche does not reject equality in its entirety but affirms what might be considered a noble form of egalitarianism.

Nietzsche’s “critique of anti-egalitarianism is based... in his commitment to pluralism of human values and types” (Miyasaki 2015, 16). In Writings from the Late Notebooks, he remarks “that one soul is in itself just like every soul, or ought to be: that is the worst kind of optimistic enthusiasm” (WLN 11.156). Nietzsche worries that the implementation of egalitarian justice would result in “the deepest leveling” because it would establish a realm in which distinction, difference, and diversity would be replaced by similarity, sameness, and conformity (GS 377). He states, “the tension, the range between the extremes is today growing less and less – the

122 Note that this assertion follows a reference to reciprocal altruism whereby Nietzsche quotes the ethical and religious maxim “Do unto others as you would that they should do unto you” (WS 32).
extremes themselves are finally obliterated to the point of similarity” (TI ‘Expeditions of an Untimely Man,’ 37). He continues, “declining life, the diminution of all organizing power… the power of separating, of opening up chasms, of ranking above and below… formulates itself in the sociology of today as the ideal” (TI ‘Expeditions of an Untimely Man,’ 37).

Nietzsche’s critique of justice and equal rights is also a part of his larger critique of institutions such as democracy and socialism. He considers such systems and institutions to be degenerate forms of politics that diminish the value of man by reducing man to mediocrity and sameness. Nietzsche deems the democratic movement a destructive political system, which is causing the degeneration of man because it is leveling him and making him average and common (BGE 203). He insists that the future of man and society requires an order of rank and aristocratic politics because the conditions of an aristocratic society are naturally attuned to the enhancement and elevation of individuals.

3.4. Justice, Equality, and the Elevation of Man:

Laws and rights are aimed at treating everyone equally and in this way, they promote the common good. This illustrates that the masses are valued to a greater extent than the individual. However, Nietzsche believes that we have been misguided in thinking that the goal of society lies with the masses, rather than with individuals. Nietzsche disparages egalitarianism because it constrains and limits the individual. The uniformity and universality of law ignore the particularity and uniqueness of each individual. In addition, they prevent the development and flourishing of strong, noble spirits, upon which Nietzsche places significant value. Although the modern, liberal state purports to protect and ensure individual rights, Nietzsche alleges that

\[\text{123 Nietzche expresses contempt for all forms of society that repress higher human beings. Throughout his writings, he is critical of not only democracy, but also socialism and anarchism because they suppress and marginalize higher individual-types and instead, celebrate and reinforce the masses, the herd.}\]
actual individuality and autonomy are undermined by a culture of justice and equal rights. He explains,

to aim for equal rights and ultimately equal needs, an almost inevitable consequence of our kind of civilization of commerce and the equal value of votes in politics, brings with it the exclusion and slow extinction of the higher, more dangerous, stranger and, in short, newer men: experimentation ceases, so to speak, and a certain stasis is achieved. (WLN 2.156)

For this reason, Nietzsche insists that equality causes man and society to degenerate. He states, “equality’, a certain actual rendering similar of which the theory of ‘equal rights’ is only the expression, belongs essentially to decline” (TI ‘Expeditions of an Untimely Man,’ 37).

For the aforementioned reasons, Nietzsche opposes implementing an egalitarian society. In The Gay Science, he contends, “we simply do not consider it desirable that a realm of justice and concord should be established on earth” (GS 377). Instead, he insists that an aristocratic society creates conditions that are more advantageous to man. In Beyond Good & Evil he unequivocally states that “every enhancement of the type ‘man’ has so far been the work of an aristocratic society…a society that believes in the long ladder of an order of ranks and differences in values between man and man, and that needs slavery in some sense or other” (BGE 257).\(^\text{124}\) Such assertions illustrate his belief that, contrary to systems such as democracy, Christianity, and liberalism, which (vow to) treat all men equally and without distinction, social-cultural systems that are hierarchical in nature, and thus those that recognize distinctions between different individuals and attribute different degrees of value to such individuals, are superior.

The modern, liberal version of justice coincides with a political order that is antithetical to culture and the elevation of man. For this reason, Nietzsche dismisses the egalitarian justice of modern bourgeois politics. His dismissal of values such as fairness and equality arises from his belief that “political order...can only be established through discipline, hierarchy, and slavery”\(^\text{124}\)

\(^{124}\) Note that part nine of BGE, “What is Noble,” begins with an aphorism that affirms hierarchical societies and describes the historical benefits of such societies. It is my belief that the primacy of this topic in this chapter suggests that order of rank is necessary, or at least an important condition, in being noble.
Nietzsche insists that all elevations of man occur within aristocratic societies, and thus those societies that acknowledge a hierarchy of rank. However, any claim to egalitarianism is a negation of aristocratic ideals. He states, “the demand for equal rights (i.e., to be allowed to sit in judgment on everything and everyone) is anti-aristocratic” (WP 783).

Furthermore, Nietzsche’s criticism of democratic principles such as justice and equal rights derive from the fact that such principles reinforce the dominance of the herd; laws and rights protect and maintain the power of the masses. Nietzsche states, “they are one and all founded on the most mediocre type of man, as protection against exceptions and exceptional needs” (WP 316). Nietzsche believes that society has sacrificed individuals for its own ends, but on his view, it is the herd, not the individual, that ought to be utilized as a means to an end.

3.5. Justice, Equality, and Revenge:

Nietzsche describes the demand for justice, and thus for all to be treated equally and given their due, as an expression of the herd instinct. In particular, the desire to make man more similar and homogenized is an extension of the herd’s vanity and its fear of being unequal and/or inferior. It is a manifestation of the herd’s desire for recognition in which the herd’s value and identity are affirmed. However, Nietzsche insists “where equality is really recognized and permanently established, we see the rise of that propensity that is generally considered immoral… envy” (WS 29). For this reason he claims that the desire for equality “never results from justice but rather covetousness” (HH 451). In response to those who are more powerful than themselves, the weak demand justice in the form of equality. Equal rights are implemented by the powerless in order to take away power from the more powerful as well as to prevent the powerful from increasing their power. Nietzsche explains, “the envious man is susceptible to every sign of individual superiority to the common herd, and wishes to depress every one once
more to the level – or to raise himself to the superior plane” (WS 29). Rather than seek to increase their own power, members of the herd seek to reduce the power of others. However, Nietzsche points out that decreasing the power of others does not increase one’s own power.

Nietzsche observes that the desire for justice and equality is indicative of a lack of power and rank. In addition, he claims that even the desire to eradicate inequality and slavery of all kinds is not motivated by compassion, altruism, or the belief in dignity for all, but from vanity and believing that “the harshest fate” is to be deemed unworthy, less valuable, or unequal in power, rank, or ability (HH 457). Moreover, Nietzsche says that justice and the desire for equality are interpreted as virtues, which conceals the herd’s weakness and impotence. Zarathustra states, “the tyrant-madness of impotence cries for ‘equality:’ thus your most secret tyrant-appetite disguises itself in words of virtue” (Z ‘Of the Tarantulas’). Hence, Nietzsche insists, “justice is so often a cloak for weakness” (AOM 64). However, justice and the doctrine of equality conceal not only the herd’s impotence and weakness, but also, as has been discussed, their desire for revenge.

In Thus Spoke Zarathustra, where revenge is spoken about several times, Zarathustra insists that the desire for revenge is obscured by justice. Zarathustra speaks thus to the tarantula, “I pull at your web that your rage may lure you from your cave of lies and your revenge may bound forward from behind your word ‘justice’” (Z ‘Of the Tarantulas’). Nietzsche’s skepticism concerning the way in which the term ‘justice’ is traditionally used is also demonstrated by the fact that the term is placed in quotation marks several times throughout his writings, implying that what is traditionally called justice is really otherwise.\(^\text{125}\) Zarathustra also references the connection that exists between justice and vengeance in the German language and the fact that

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\(^\text{125}\) See, for instance, Z ‘Of the Virtuous’; Z ‘Of the Tarantulas’; WP 722; WLN 1.104. However, I acknowledge that sometimes Nietzsche uses quotation marks to set off a word as a word.
the words “avenged” and “just” – “gerächt” and “gerecht” – are homophones. He notes, “when they say: ‘I am just,’ it always sounds like: ‘I am revenged’” (Z ‘Of the Virtuous’). Zarathustra further mocks the herd and states, “that the world may become full of the storms of our revenge, let precisely that be called justice by us’” (Z ‘Of the Tarantulas’).

In addition to justice being essentially a form of revenge, Nietzsche argues that revenge is also sanctioned by the doctrine of equality. We are told by Zarathustra, “preachers of equality” are really “tarantulas and dealers in hidden revengefulness” (Z ‘Of the Tarantulas’). Justice and equality are reserved for all who obediently comply with social rules and customs whereas revenge and punishment await all who defy the norms and thus all who are different, strange, solitary, privileged, etc. The herd interprets all disobedience and nonconformity as a form of objection or invalidation. Thus, the “tarantulas” and “the good and just” bestow equality upon those who are like themselves, whereas inequality and vengeance are reserved for those who are unlike them, for those who do not conform. Because of this, Zarathustra says of the tarantulas, “we shall practice revenge and outrage against all who are not as we are’” (Z ‘Of the Tarantulas’). It is on account of the fact that justice and the doctrine of equality manifest as revenge that Zarathustra advises: “mistrust all those who talk much about their justice” (Z ‘Of the Tarantulas’).

Nietzsche’s criticisms culminate in a complete rejection of egalitarian justice and all institutions that apply it in any form. In place of this type of justice, he illustrates a version of justice that is indicative of high rank since, according to Nietzsche, only those who are truly great and powerful possess the ability to enact the form of justice that he values and affirms. Justice, on Nietzsche’s account, entails being above the justice that consists in giving each their due and is instead demonstrated in the form of mercy. Those who are just on Nietzsche’s account
are those who are so powerful that if affected by a transgression at all, it is to such a little extent that it does not even warrant a response. Nietzschean justice neither punishes nor enacts revenge; rather than balancing the harm done by way of punishment or some other reactive response, the transgression is excused.

4. Nietzsche’s Privileged, Alternative Perspective

4.1. A New Justice:

Nietzsche’s various remarks on justice appear contradictory at first glance. While he puts forth a rigorous critique of justice, he also seems to praise it. Nietzsche’s praise is directed at a particular type of justice, namely, the justice that does not consist in revenge. Cartwright states, “this fundamental opposition to revenge is the basis for Nietzsche’s high evaluation of justice” (Cartwright 1985, 22). According to Nietzsche, “justice must become greater in everyone, and the violent instinct weaker” (HH 452). However, this entails cultivating man’s nature and sublimating his drives. Nietzsche explains that the eras of the past forged the character of mankind, a character that humanity has neither shed, nor altered completely. The character of mankind was determined millennia ago in the “eras of ‘morality of custom’” – in the eras in which what is now considered evil and immoral were considered good and right. Modern man is the outcome of all that has come before; the whole of human history has converged within the modern human being and therefore, the entire ancient past which was “built on violence, slavery, deception, error” constitutes man’s nature (HH 452). Humanity has not yet cast off this character, nor has it annihilated the instincts and drives that developed in millennia past. Thus, all men, whether powerful or impotent, noble or slave, are but a compilation of the past and thus, “the heirs of all these conditions” (HH 452). This seems to explain in part Nietzsche’s concern with reevaluating justice, which occupies his thoughts early in his “middle period” and throughout the rest of his career. He insists upon a “gradual transformation of attitude,” in regard to “the
unjust frame of mind” that is a part of us all (HH 452). Ultimately, Nietzsche proclaims, “what is needful is a new justice” (GS 289).

4.2. Justice as a Personal Value:

Nietzsche’s critique of justice is in part aimed at the contemporary understanding of justice as a moral demand. For Nietzsche, “justice is possible only as an active gesture, not as a principle or demand;” it “is a thoroughly and supremely active virtue. It is a mark of strength, it is strength” (Bertram 2009, 81).\(^{126}\) Being just is an active process that involves effort and discipline and entails sublimating certain wills while also cultivating new perspectives. For this reason, only those who are noble and powerful can be just. Nietzsche’s insistence upon justice refers not to the traditional notion of justice that is born of weakness and a desire for revenge but to a form of justice that arises from a powerful, great nature that has transcended the desire for revenge. Contrary to modern Western culture, Nietzsche speaks of justice as something that is rare and he advises us to be cautious concerning our willingness to believe in it. Justice is not an intrinsic feature of existence nor inherent to the order of things but, like freedom, it is something that must be achieved. For Nietzsche, justice, like many other values he affirms, is a personal value, one that is practiced, developed, and cultivated by the individual.

Nietzsche’s revaluation and re-characterization of justice is not a matter of “an all-too-great ‘objectivity’ (that is, the weakening of individual interest, loss of center of gravity, of ‘egoism’),” but the opposite. Moreover, it is attention to natural differences, context, and the particular (A 20). This insight is expressed by Zarathustra, who confesses “I do not like your cold justice” (Z ‘Of the Adder’s Bite’). In other words, the psychological disposition of the just individual is not “cold, temperate, remote, indifferent” (GM 2.11). Rather, a “positive attitude”

and an “exalted, clear objectivity” best describe the psyche of the just man (GM 2.11). Solomon and Higgins explain that Nietzsche’s account of “justice involves an open-minded responsiveness to another human being” (Solomon and Higgins 2000, 191). Hence, Zarathustra’s question, “where is the justice which is love with seeing eyes to be found” (Z ‘Of the Adder’s Bite’). While Nietzsche fails to provide an explicit definition of justice as “love with seeing eyes,” the context in which the phrase appears suggests that this form of justice refuses to judge man (as guilty) and exoneration by liberating man from guilt and blame. It entails a shift in perspective in which man’s innocence is accepted and affirmed. Thus, innocence is essential for Nietzschean justice.

According to Nietzsche “everything is necessity” and “everything is innocence” (HH 107). Since all is necessity, then all things, including man’s most egregious acts, are innocent insofar as they are necessary. Thus, man is innocent of any moral wrongdoing because man could not have done otherwise. Once man understands and accepts the “theory of complete irresponsibility,” he must then reject both guilt and innocence as the primary category of justice that sanction the giving of what one deserves (HH 105). Therefore, affirming man’s innocence and non-responsibility entails that the notion of justice can no longer consist of “the so-called justice that punishes and rewards” (HH 105). Hence, we are told by Zarathustra to “devise the love that bears not only all punishment but also all guilt! Then devise the justice that acquits everyone except the judges” (Z ‘Of the Adder’s Bite’). While the notion of justice derived from slave morality requires man to submit to moral demands and universal rules, Nietzschean justice refuses to do so. Justice here rejects moral judgments and condemnations and instead embraces everyone’s absolute innocence. Man cannot be held accountable for his actions because his actions are a matter of necessity. Moreover, man’s nature is shaped by socio-cultural and
historical influences and as such man does not decide his own nature and is thus not responsible for who he is. Nietzsche urges us to accept man’s absolute innocence, not in the legal sense of being “not guilty” but in the sense that the desire to punish is as weak, childish, and ineffective as the man who reproaches the snake that bites him. Nietzsche suggests that those who reject the doctrine of free will and by extension, the doctrine of responsibility must, act similarly to Jesus Christ and “judge not” (AOM 33).

Judging and condemning man is antithetical to Nietzschean justice since justice on his account is “beyond good and evil;” it is “extra-moral” (BGE 32). The act of judging is a prerequisite for blame and punishment and Nietzsche’s critique of judging, and his personal refusal to accuse and judge, is coextensive with his critique of blaming and punishing. In Thus Spoke Zarathustra, when discussing god with “the last pope,” Nietzsche writes, “did this god not also want to be judge? But the lover loves beyond reward and punishment” (Z ‘Retired from Service’). Similarly, in Beyond Good & Evil, he reminds us yet again that “whatever is done from love always occurs beyond good and evil” (BGE 153). Hence, Nietzsche states, when man “feels many pros and cons, he raises himself to justice – to comprehension beyond esteeming things good and evil” (WP 259). This conception of justice renders punishment not only useless but unjust. If man cannot be deemed morally accountable, then he cannot be deemed punishable. For Nietzsche, “justice would thus rather liberate all miscreants rather than license the vengeful desire to hold others to account” (Sedgwick 2013, 195).

In contrast to the traditional notion of justice, which entails that everyone be treated fairly and equally and each be given his due, Nietzschean justice “escapes the economy of symbolic

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127 Note that Nietzsche also critiques the will to praise and reward.
equivalence on which punitive justice is based” (Kertzer 2009, 280). For Nietzsche, the notion of “getting even” that is inherent in the traditional conception of justice illustrates how much the familiar sense of justice concerns the “reactive feelings” and attributing blame. Justice, for Nietzsche, ultimately involves liberating oneself from reactive feelings. Rather than assume a falsified perspective of reality, like those who are reactive and filled with ressentiment, the just man conceives the malefactor in terms of his innocence rather than his guilt. This accounts for why Nietzsche claims that “the active, aggressive, arrogant man is still a hundred steps closer to justice than the reactive man” (GM 2.11). Those who are just are not negatively influenced by the harm or suffering they have been made to endure; they are able to rise above the injustices to which they have been subjected and it is for this reason that Nietzsche describes justice as “a piece of perfection and supreme mastery on earth” (GM 2.11).

4.3. Justice and Ressentiment:

Solomon rightly explains that “what Nietzsche prefers to call ‘justice,’ by contrast (though not what most of us would recognize as ‘justice’), is that superior sense of being ‘above’ all the slights and beyond resentment, envy and vindictiveness” (Solomon 1994, 118). In overcoming the desire to punish and seek revenge, Nietzsche’s justice does not succumb to the past-oriented perspectives of traditional forms of retributive justice such as those of Kant’s and Hegel’s. Moreover, Nietzsche’s conception of justice seems to connect with another important theme in his work, namely the inability to will backwards. The man who practices justice does not waste time trying to reconcile or compensate for past occurrences. He cannot concern

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himself with that which cannot be changed. Nietzschean justice excludes reactive responses in favor of an active orientation. The just individual is future-oriented and not subject to the past-oriented perspective that characterizes those who are riddled with ressentiment.

On the topic of ressentiment, Nietzsche contends that one must seek “freedom from ressentiment, enlightenment about ressentiment” (EH ‘Why I Am So Wise,’ 6). He insists that ressentiment arises from weakness and is also a weakness in itself. In addition, it maintains one’s state of powerlessness by further depleting one’s energy. Nietzsche states, “nothing burns one up faster than the affects of ressentiment” (EH ‘Why I Am So Wise,’ 6). Ressentiment produces effects that are detrimental to one’s health such as “a rapid consumption of nervous energy, a pathological increase of harmful excretions” (EH ‘Why I Am So Wise,’ 6). Since ressentiment is destructive to one’s character, spirit, and overall health, Nietzsche insists that it must be overcome.

In order to prevent oneself from becoming consumed with ressentiment, Zarathustra advises that one ought to act “quickly” so as to dispel the feelings that were stimulated by the initial injustice. If such feelings are prevented from being released, they will become poisonous and detrimental to one’s psyche and therefore they must be discharged. Moreover, instead of responding to the perpetrator in equal measure, one ought to commit a few minor unjust acts to remedy the initial injustice. Zarathustra states, “should a great injustice be done you, then quickly do five little injustices besides” (Z ‘Of the Adder’s Bite’). The apportioning of injustice among others serves as a form of justice since it allows for one to dispense with the initial

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131 Nietzsche acknowledges that ressentiment is not without use. For instance, he considers ressentiment to account for the origin of the slave revolt in morality. He explains that the slave’s values arise when “ressentiment itself becomes creative” (GM 1.10). Ultimately ressentiment was a weapon that was utilized in overthrowing the noble races and their values.

132 Nietzsche’s description of the effects of ressentiment recall the quotation attributed to St. Augustine: “Resentment is like drinking poison and waiting for the other person to die.” Although Nietzsche draws a distinction between ressentiment and resentment, his description of the former is oftentimes described as though it were poisonous.
injustice and to thereby remedy it. Unless one is otherwise strong enough to bear an injustice alone, Zarathustra explains that one can obtain a measure of justice by sharing injustices. Hence, Zarathustra declares “shared injustice is half justice” (Z ‘Of the Adder’s Bite’).

However, justice does not hinge upon the experience of ressentiment. As discussed previously, justice is indicative of strength and power, but Nietzsche does not distinguish those who are weak from those who are strong by the mere fact that the former are consumed with ressentiment while the latter are not. It is not the mere occurrence of ressentiment that determines whether one is just and/or strong, but the way in which ressentiment is experienced and expressed. On Nietzsche’s account, both the weak and strong experience ressentiment, but its disposition differs in each. Strong, just individuals are those who are not governed by the corrosive and destructive hatred that is ressentiment; instead, they act to release the feeling through various means. Thus, the following remark ought to be kept in mind, “il est indigne des grands coeurs de répandre le trouble qu’ils ressentent” (TI ‘Expeditions of an Untimely Man,’ 46). In other words, those who are great do not release that which poisons them into the world; if they feel revenge, anger, suffering, and/or pain they do not share it with others; strong individuals rid themselves of ressentiment before it becomes poisonous.

4.4. The Self-Overcoming of Justice:

Despite Nietzsche’s praise of justice, he maintains that there is something even greater than justice, namely mercy. In GM Nietzsche tells us that justice can transcend itself and become mercy, which he defines as the “self-overcoming of justice” (GM 2.10). In other words, “justice...can ‘sublimate itself’ and move from punishment toward mercy, which therefore moves beyond the initial mercilessness of punishment” (Hatab 2008, 93). Therefore, on Nietzsche’s

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133 R.J. Hollingdale translates this phrase as: “It is unworthy of great spirits to spread abroad the agitation they feel” (TI ‘Expeditions of an Untimely Man,’ 46).
account, justice can be transformed into something that does not consist in punishing nor seeking revenge, nor giving each their due. Hence, Zarathustra speaks thus, “your killing, you judges, should be a mercy and not a revenge” (Z ‘Of the Pale Criminal’).\footnote{134} It is evident that Nietzsche’s affirmation of mercy is an extension of his desire to cease punishing since in response to malefactors, mercy takes the place of punishment. Thus, “insofar as punishment is geared to the extraction of compensation from the wrongdoer, displaying mercy towards wrongdoers overcomes punishment” (Cartwright 1985, 21). Moreover, if mercy becomes the dominant mode in which to respond to malefactors, punishment will become expendable, and the traditional form of justice will be rendered useless, and thereby cease to exist.

Nietzsche describes mercy as “the privilege of the most powerful man, or better, his – beyond the law” (GM 2.10). What is apparent in Nietzsche’s discussion of mercy is that the act of being merciful is indicative of power, both in the community and the individual. It is only the most powerful, confident communities and individuals that are able to bestow mercy since it is a manifestation of an abundance of power and strength. As Solomon and Higgins explain, “Nietzsche sees real justice as involving a largeness of spirit that considers all forms of punishment petty, and which does not feel lessened by showing mercy” (Solomon and Higgins 2000, 30). However, it is important to note that although punishment is not enacted that does not entail that an offense was not committed. And, although those who are noble do not respond in the form of punishment, it is not because they consider it wrong to do so. That is to say, “the noble person does not reject revenge or retribution as wrong, but as unnecessary, as beneath his

\footnote{134} This remark is directed at the judges who condemn the “pale criminal.” On my reading, Zarathustra advises the judges to give the pale criminal a quick death because he has become ill due to his succumbing to the ill effects of the bad conscience.
or her dignity” (Solomon and Murphy 2000, 228).\textsuperscript{135} The strong, powerful person is unaffected by the harms and offenses that others commit against them. Instead of responding in the form of punishment, they take an alternative approach and “step aside” or “look away.”\textsuperscript{136} That is not to say, as Nussbaum explains, “that no offense has taken place... it simply decides not to hold this person to the letter of the law, not to exact the strict punishment mandated in the law” (Nussbaum 1994, 155).\textsuperscript{137} In this way, mercy goes beyond the value judgments good and evil.

4.5. Mercy and Forgiveness:

Nietzsche’s conception of justice, which transcends itself and becomes mercy seems to resemble the Christian value of forgiveness. Yet, it is important to note that Nietzsche’s affirmation of mercy is not merely a different form of Christian forgiveness. While mercy and forgiveness bear a resemblance to one another, there are valuable distinctions between the two. Solomon observes that “a justice properly understood, according to Nietzsche, is very much akin in its expression (though not in its motivation) to the Christian virtues of mercy and forgiveness” (Solomon 1994, 118). But Nietzsche is clear that mercy is a virtue of the strong while he describes forgiveness as a virtue of the weak, who are \textit{incapable} of revenge. He believes that the inability to enact revenge is transfigured into a conscious renunciation of revenge that is called forgiveness.\textsuperscript{138} Moreover, while mercy denies the perpetrator recognition, forgiveness denies the victim recognition. Although Christian morality considers vanity a sin, the desire for recognition persists. The virtue of forgiveness is a way of enacting self-renunciation, but it seems to merely garner \textit{ressentiment} as a result of this radical self-denial. Moreover, the virtues of Christian


\textsuperscript{136} This will be discussed further in Chapter Four: Punishment.


\textsuperscript{138} See, for instance, GM I.14.
morality are practiced with the hope of eradicating suffering and conflict. On the contrary, Nietzsche posits an alternative way in which to cope with the reality of conflict and suffering. By deferring to our vanity and pride, he offers a way that man can alleviate the harm done and find relief, a way which overcomes *ressentiment* and the desire for revenge.

It is important to note that Nietzsche’s affirmation of mercy should not be interpreted as a form of compassion, benevolence, or altruism. Rather, mercy is indicative of power, pride, and egoism. While justice traditionally entails the mutual recognition of victim and perpetrator, and thus a recognition of the victim and the perpetrator as equal, mercy does not. Mercy is an acknowledgement of inequality. That it to say, “through the act of mercy, rulers remind those who attack them of their impotence, and in doing so, remind themselves of their own potency” (Ure 2007, 62). Through the act of mercy, the powerful man re-establishes his sovereignty by assuming that the perpetrator is actually subordinate and thus incapable of truly harming him.

According to Nietzsche, the merciful man will allow those who have harmed him to go unpunished because he reasons, “what are my parasites to me?” (GM II.10). The powerful, man of mercy speaks thus: “I am mighty enough to put up with an obvious loss; that is a proof of my power” (WS 34). In addition, mercy represents self-sufficiency and genuine self-legislating since the merciful man is able to remedy harm or injury without the help of the courts and any other form of third-party mediation. Therefore, it seems reasonable to say that mercy’s aim and attractiveness consists in restoring an order of rank between the sovereign and the impotent, the honorable and the despised. Through mercy we soothe the injuries others inflict on our narcissistic self-sufficiency by denying them recognition as individuals on a par with ourselves. (Ure 2007, 62)

While mercy is typically thought of as a gift to those it is bestowed upon, in opposition to this, Nietzsche says that mercy is a gift for those who enact it. Through mercy the man who was

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harmed heals his vulnerability, restores his pride, and denies the offender the recognition he desires. In this way, mercy is more effective than punishment and revenge.

4.6. Justice, Pathos of Distance, and the Necessity of Enemies:

Nietzsche’s opposition to the “justice” that originated with slave morality is also connected with his concern for the individual. He insists that the implementation of equal rights and thus, equality for all, is done at the expense of the individual. Nietzsche believes that “any future society should be organized in a way that will facilitate the systematic education of sovereign and strong individuals” (Jelkić 2006, 400). Yet, a hierarchical society, not an egalitarian one, best serves this purpose. It is important to note, as Jelkić does, that “an aristocratic regime of whatever kind cannot, as such, guarantee the attainment of the goal advocated by Nietzsche – what is absolutely essential is a pathos of distance” (Jelkić 2006, 401). This is because Nietzsche places significant value upon “the chasm between man and man, class and class, the multiplicity of types, the will to be oneself, to stand out” (TI ‘Expeditions of an Untimely Man,’ 37). What Nietzsche refers to as “pathos of distance” is a matter of making distinctions and acknowledging nuances. Societies that endorse inequality and distance among men, and thus “pathos of distance,” are more beneficial to man because man is able to flourish and become stronger, healthier, and more profound. Such social orders facilitate the creation of multifarious states within man’s soul, states that expand and grow in depth and complexity.

According to Nietzsche, hierarchy and inequality are societal necessities because life “needs height, it needs steps and conflict between steps” (Z ‘Of the Tarantulas’). In order to gain height, there must be antagonism, struggle, conflict, disharmony, etc. For one cannot climb if there are no steps and one cannot ascend if there are no greater heights. Disparity and variance yield friction and opposition, which from Nietzsche’s perspective, are not only necessary and

140 See, for instance, EH, Case of Wagner, 4.
essential, but intrinsic to life. For this reason, Nietzsche places significant value on striving against one another and possessing enemies. This is demonstrated in part through Zarathustra who reminds his followers multiple times of the importance and value of possessing enemies.141 On this point, Zarathustra asserts, “there should be more and more war and inequality among them” (Z ‘Of the Tarantulas’). However, it is important to note that “war in his [Nietzsche’s] work is used both metaphorically and non-metaphorically to designate the whole range of relations of force and adversity that he considered to be constitutive of the social realm” (Drolet 2013, 31).142 Thus, his notions of war and his affirmation of enemies should not be reduced to, or equated with, a war of guns and bombs.

Zarathustra’s instruction to possess enemies, to strive against one another, and to oppose one another is in part constitutive of one’s value. In other words, Nietzsche believes that a man’s value is in part determined by the enemies he possesses. Nietzsche contends that man lowers himself by choosing low enemies. For this reason, he insists that we must strive to have worthy enemies. Nietzsche explains that man should expel energy only in response to his equal, where those who are not his equal are unworthy of his concern and consideration. Although man is permitted to hate his enemy, Nietzsche advises against despising and having contempt for them. Interestingly, although Nietzsche advises against having contempt for one’s enemy, he allows for hatred. Possibly this is because hating entails a strong dislike, whereas contempt entails despising. Literally, to despise another means “to look down,” and one should not look down on

142 Nietzsche’s writings are filled with military imagery yet that does not entail that he is an advocate of war. Sometimes Nietzsche uses the term “war” to describe his philosophical campaigns. For instance, in the beginning of Twilight of the Idols, he describes the book as “a grand declaration of war” (TI “Forward). Other times “war” is used to describe the nature of existence which is one of struggle or conflict. Nietzsche states, “life is a consequence of war, society itself a means to war” (WP 53). Yet, Nietzsche was aware that he would be misunderstood and at times he goes so far to state that he is not referring to war of blood and violence. For instance, in Ecce Homo he writes, “this is war, but war without powder and smoke” (EH “Human, All-Too-Human With Two Sequels,” 1).
one’s enemy since, for Nietzsche, enemies can only become so if they are one’s equals. Nietzsche insists that one ought to display pride and respect, rather than contempt and disdain, towards one’s opponents. Instead, he insists that man ought to be proud of his enemy. We are told by Zarathustra, “my enemies too are part of my happiness” and further, “you must be proud of your enemy: then the success of your enemy shall be your success too” (Z ‘The Child With the Mirror’; Z ‘Of War and Warriors’). However, hatred would not be a misrecognition of an enemy since it would demonstrate man’s recognition that this is a counter force that opposes himself, a force that will destroy him if he does not oppose it. Nietzsche further explains, “equality before the enemy: the first presupposition of an honest duel. Where one feels contempt, one cannot wage war; where one commands, where one sees something beneath oneself, one has no business waging war” (EH ‘Why I Am So Wise,’ 7). Thus we learn that equality and mutual respect are presuppositions for relations among enemies.

For Nietzsche, the ability to possess enemies is also indicative of strength and nobility. While possessing a noble nature entails many things, one is an “innate order of rank” and by extension, the instinctual recognition of one’s equal, which is intuited in the presence of another like oneself (BGE 263). Nietzsche writes that nobility entails “that one knows how to make enemies everywhere” (WP 944). A similar remark is made in Ecce Homo where he states, “being able to be an enemy, being an enemy – perhaps that presupposes a strong nature; in any case, it belongs to every strong nature” (WP 944; ‘EH Why I Am So Wise,’ 7). If noble and great, man’s duties extend only as far as his equals and thus, “justice can be hoped for (unfortunately not

143 Note that Nietzsche insists upon being proud of one’s enemies in several places (e.g., Z ‘Of War and Warriors’; Z ‘Of Old and New Law-Tables,’ 21; GM 1.10). Thus, one ought to assume its importance as a result of its emphasis.
144 If noble, contempt for one’s enemy would be inappropriate, although contempt for the common people would not since those who are common and mediocre really are lower on Nietzsche’s account.
145 Note that those who are weak, resentful, and powerless conceive of their enemy very differently that those who are noble and strong. For instance, Nietzsche explains that the slave does not respect his enemy but turns him into “the evil one” (GM 1.10).
counted on) only *inter pares*” (WP 943). Moreover, those who are noble enact justice through recognizing that there are some who are by nature of a lower rank and, in being naturally inferior, must sacrifice themselves. For Nietzsche, accepting the natural inequality of existence “is justice itself” (BGE 265).

The man who is noble only has obligations to those that are his equals, but with regard to those that are inferior in value and rank, he has full autonomy and can treat them as he, the noble, prefers. Refraining from violence or the oppression of one’s equal, can, at times be appropriate, but refraining from such behaviors with those who are unequal to oneself is unhealthy and a form of decline. Thus, nobles respect their equals in the form of restraint and discipline, and in this way, according to Nietzsche, they honor the relations between them and practice justice through this respect. By honoring the exchange of rights and privileges between themselves and their equals, they honor themselves. In addition, nobles “respect their enemies as opportunities for productive engagement” (Sokoloff 2006, 509). Contrary to this, members of the herd interpret enemies in terms of danger and suffering, and for this reason, they are unable to conceive of the enemy as anything other than evil.

Thus, “what is at stake in the dismissal of a whole historical vocabulary of commonality – justice, rights, and equal citizenship – is the reinstatement of exclusionary politics” (Wolin 2016, 477).146 Nietzsche’s praise for criminals, and those who stand apart or above the herd, is a form of exclusionary ranking that undermines the notion of justice as abstract equality (and fairness). While the aim of conventional politics “is to make life tolerable for the greatest number,” Nietzsche maintains that those who are great aim beyond mere comfort and preservation (HH 438). In addition, he believes that “high culture establishes not only superiority

but a ‘pathos of distance’ from the herd and its corrupting influence” (Wolin 2016, 477).

Historically, societies dominated by the masses have aimed at the equalization and limitation of power and strength, yet Nietzsche describes such societies as hostile to life since life entails “battle and inequality and war for power and predominance” (Z ‘Of the Tarantulas’). In aristocratic societies, “the herd does not have any power, and therefore does not keep in check those who stand out among them who deserve rank and recognition, or in other words, individuals are free to act upon their will to power in natural ways” (Denneson 1999, 5). The separation among men and the freedom to act without restriction contributes to, and forces, the overall supra-moral improvement of man – “the continual self-overcoming of man” (BGE 257).

Moreover, it is the responsibility of strong natures to not necessarily rule, but to “prepare a future life-affirming culture, in which oppositions are liberated and can intensify one another” (Müller-Lauter 2002, 81). 147

4.7. Exemplary Individuals:

Nietzsche’s political and ethical thinking are largely concerned with exemplary figures and great individuals. The value of these individuals derives from the fact that they defy and restructure the boundaries of human nature. Through creating new conditions and new possibilities they contribute to humanity’s overall enhancement and evolution. For Nietzsche “human existence is justified only by the presence of those exemplary individuals who re-define the horizons of human perfectibility” (Conway 1997, 7). Central to the creation of such individuals is the existence of law and freedom. Despite Nietzsche’s critique of justice and law, he insists that such things are not only necessary but beneficial since they are forces of opposition and resistance. Insofar as individuals struggle against such institutions, “these same

institutions produce quite different effects; they then in fact promote freedom mightily” (TI ‘Expeditions of an Untimely Man,’ 38). For Nietzsche,

> the constraint exercised by rigid laws need not act as an obstacle or inhibitor of freedom that arrests human agency and the flow of becoming; they can also act as a stimulant that accelerates, intensifies, and refines Becoming, precisely by provoking those experiments in human creativity and self-transformation that enhance, deepen, and extend the range of human powers. (Siemens 2010, 211)

However, as his critique illustrates, he opposes all legal orders and rights that prevent human flourishing and enhancement. Nietzsche’s emphasis upon the necessity of hierarchy, inequality, and enemies is indicative of his naturalism and is thus “an attempt to implant natural order into human society” (Jelkié 2006, 400). Therefore, it is important to understand that Nietzsche does not oppose order as such. The problem for Nietzsche consists in how “to find the right measure (Maass) of law, so that law works not only against life, but with and against it” (Siemens 2010, 193). In other words, “the problem here is how to conceptualize an affirmative form of negation, a form of legislation that, in negating life, affirms and enhances it” (Siemens 2010, 193).

Some scholars, such as Philippa Foot, are extremely critical of Nietzsche’s opposition to, and dismissal of, the traditional notion of justice. She argues, for instance, that universal equality is necessary for justice and that Nietzsche makes an egregious error by rejecting equality for all and the notion of justice that it hinges upon. Moreover, she alleges that the virtue of justice cannot be “accommodated within Nietzsche’s picture of splendid individual’s finding each his own value and ‘his own way’” (Foot 1994, 9). However, what Foot fails to see is that Nietzsche rejects equality because it yields inequality and further, he rejects the traditional notion of justice because it conceals the desire for vengeance and feeling of ressentiment. Nietzsche aims to bring about a healthier, more active engagement with the world where man focuses not on dominating and controlling others but on disciplining and controlling himself.148 He persistently critiques

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148 This is not to say that Nietzsche is opposed to dominating others. For instance, he acknowledges numerous times that the instinct to rule is one of man's basic drives. See, WP 787; WP 936; WP 1047; BGE 230.
‘reactive’ behavior such as seeking revenge and punishing others, and instead insists upon active, self-assertive behavior as purer expressions of life-affirming strength. However, if we accept Nietzsche’s conception of justice then by extension, we must also cease punishing. While much of his critique of modern justice concerns the fact that it creates inequality, effaces difference, and fosters vengeance, it also reflects his belief that man must transcend his animalistic drive to punish.
CHAPTER FOUR
PUNISHMENT

1. Introduction

It is well-known that Nietzsche discusses the concept of punishment at length in the second essay of *The Genealogy of Morals*. However, a close reading reveals that Nietzsche is greatly concerned with punishment and that the theme of punishment is dispersed throughout his writings. Nietzsche makes many references to this topic, although he does not present his thoughts in a systematic, coherent manner. Nevertheless, it is possible to ascertain his perspective on punishment by cross-referencing and analyzing his many remarks. This is no easy task since his thoughts on the topic are various and fragmented and oftentimes overlap with similar concepts such as justice and revenge. While it is difficult to establish a complete and coherent picture of his perspective on punishment, one thing seems clear: he is extremely critical of the practice.

Nietzsche’s polemic against punishment, like justice, seems to be directed at its modern manifestation and the type of punishment associated with slave morality. Contrary to the ancient practice of punishment, this later use of punishment, Nietzsche claims, arises not from strength and power but weakness and *ressentiment*. In response to this modern form of punishment, he puts forth a consistent and relentless critique of punishment that is at times extreme and uncompromising. For instance, he claims that nothing is more destructive and unhealthy than punishment, that “there exists no more noxious weed!” (D 13). Elsewhere he depicts the world as contaminated by the mere concept of punishment: “the whole conception of the world is polluted...
by the idea of punishment” (WP141). He even goes so far as to insist upon the necessity of “the re-education of the human race” because humanity has been educated “by the fantasies of jailers and hangmen” (D 13). Nietzsche’s contempt for the practice is so great that he describes punishment as more reprehensible than crime. He states, “a strange thing, our kind of punishment! It does not cleanse the offender, it is no expiation: on the contrary, it defiles more than the offense itself” (D 236).

While Nietzsche’s remarks about punishment seem to suggest that he is categorically opposed to the practice, this is not the case. Indeed, his many references to punishment are overwhelmingly negative but positive statements can be found throughout his writings. For instance, he acknowledges that “if we were to dispense with punishment and reward, we would lose the strongest motives driving men away from certain actions and toward other actions” (HH 105). At one point, Nietzsche even affirms punishment in relation to those who “belong to the race of criminals” (WP 740). He states, “in that case one should make war on him even before he has committed any hostile act” (WP 740).

Central to Nietzsche’s critique of punishment is his genealogy of punishment, which aims to demonstrate the origin of the practice. Nietzsche is critical of the claim that punishment came about to punish the wrongdoer and he instead argues that it was initially implemented to forge a memory within the human-animal and to ultimately force this creature to remember social norms. His genealogy also traces the way in which punishment became a matter of exchange and compensation in terms of creditor-debtor relations. Lastly, his genealogy illustrates that

149 While Nietzsche puts forth a critique of both reward and punishment, he seems to treat the latter with more disdain and contempt.
150 It should be noted that this appears to be an isolated comment. In reading numerous remarks about the criminal, this is the only one, in Nietzsche’s published writings, that refers to the “race of criminals.” The aphorism in which Nietzsche makes this reference is in both WP 740 and WLN 10.50. It ought to be noted that they are the same aphorism, although a slightly different translation.
punishment has no essence and thus, there is no single reason as to why man is punished. In addition to his genealogical critique, Nietzsche rigorously critiques the philosophical premises and principles that substantiate punishment as a legitimate practice. I am in agreement with James B. Halsted, who explains that “Nietzsche’s polemic...deals more with attacking the values that are presupposed by the system than against the system itself” (Halsted 1991, 38). Nietzsche concludes that the traditional theories and underlying assumptions that justify punishment are founded upon irrational and incoherent principles, and for this reason, ought to be rejected.

As discussed in Chapter Two, Nietzsche dismisses autonomy, causation, and free will and thus the traditional conception of moral agency. “By rejecting free will, Nietzsche… demolishes the fundamentals of the related system of judgment and punishment” (Grillaert 2006, 44). Furthermore, dismissing the metaphysics of free will, and the moral principles it gives rise to, entails that we ought to reject the punitive justice it necessitates. Ultimately, Nietzsche’s critique is aimed at demonstrating that punishment cannot be sustained as a legitimate practice. His goal consists in providing sound reasons for eradicating the practice as well as sublimating the will to punish. He proclaims, “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” (D 202).

However, it ought to be noted that Nietzsche’s opposition to the practice does not stem from feelings of compassion or empathy for those who are punished. Rather, Nietzsche considers the will to punish an obstacle to individuality and greatness. He explains that man punishes to experience an increase in power. However, through the act of punishing, man’s power is directed externally upon the other, rather than internally upon man himself, which accounts for why man is unable to obtain the maximum degree of power. According to Nietzsche, man should direct his
power inward in the service of self-creation and self-cultivation rather than outward toward domination and subjugation. Engaging in punishment prevents man from self-creation and self-enhancement and for this reason he should strive to overcome his desire to punish.

2. Nietzsche’s Historical, Genealogical, and Psychological Account of Punishment

In *Human, All-Too-Human*, Nietzsche discusses punishment as a deterrent and as a form of self-defense or self-preservation.\(^\text{151}\) However, his mature thought marks a turn in his thinking about responsibility and punishment. In the second essay of *The Genealogy of Morals* Nietzsche sets forth a genealogy of punishment that describes what he considers to be the actual origins of the act of punishing. This genealogy is in part a response to the traditional explanation according to which the practice of punishing came about to punish the wrongdoer for what they had done. In place of this explanation, he claims that punishment is of primitive origins, arising in the service of the powerful as a tool for instilling a memory within the human-animal. Nietzsche maintains that punishment was not applied “because one held the wrongdoer responsible for his deed, thus not on the presupposition that only the guilty one should be punished” (GM 2.4). In doing so, he severs the link between crime (e.g., violations of moral responsibility) and punishment through arguing that punishment was historically prior to any notion of moral responsibility.

2.1. Punishment and the morality of mores:

In explaining the origins of punishment, Nietzsche dismisses theories that claim punishment was invented for the sole purpose of punishing those who were responsible for doing harm and thus, those who were guilty. As mentioned in Chapter Two, punishment was used by primitive proto-humans as a means of taming and conditioning the animal-man to prepare him

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\(^\text{151}\) Nietzsche discusses punishment as a deterrent in HH 70 and HH 105 and he discusses punishment as a means of self-defense and self-preservation in HH 102 and HH 104.
for communal life. Hence, Nietzsche states, “wrath and punishment are our inheritance from the animals” (WS 183). In particular, the powerful utilized punishment in order to transform the forgetful animal into a being with the ability to remember and make promises. Over time, man came to the realization that the best way to instill memory was to inflict pain.\footnote{Nietzsche insists that the idea that “pain is the most powerful aid to mnemonics” is affirmed by examining historical practices. See, GM 2.3.} Nietzsche states, “man could never do without blood, torture, and sacrifices when he felt the need to create a memory for himself” (GM 2.3). Moreover, he claims that the intensity of punishment was related to man’s ability to remember. Nietzsche explains,

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. (GM 2.3)

Through punishment, man was liberated from his temporary desires and fleeting impulses and instilled with the capacity to remember. This process took place within a larger historical context called “the morality of mores” in which man was made uniform, calculable, and ultimately responsible through the application of pain and punishment. This process culminated in instilling man with societal norms and making him capable of promising and enacting obligations. Therefore, it resulted in the domestication of man and achieved “the end that is the repression of instinct” (Jiménez 2008, 210).\footnote{Note that I translated the above into English; the original article is in Spanish and states, “para conseguir el fin que es la represión del instinto.” Edison Carrasco Jiménez, “Nietzsche y su visión del derecho penal.,” Revista de la Universidad Bolivariana 7, no. 21 (2008): 209.}

Nietzsche explains that for much of history misdeeds were interpreted as “foolishness” and/or “folly” rather than as evil or sinfulness (GM 2.23). A transgression was not considered an act of free will but “an event brought into the world by an agency almost divine” (Bergmann 1988, 34). In the ancient past, “the human being is not delimited from or juxtaposed to nature, but is regarded in these cultures as engulfed by it” (Bergmann 1988, 33). This view of man and
his relationship to nature is contrary to modern narratives in which man is said to be distinct from nature. Yet, as discussed previously, Nietzsche rejects this narrative and instead claims that man is a part of nature. Moreover, concepts such as “free will, intention, negligent, accidental, accountable” were not considered when meting out primitive punishments (GM 2.4). As mentioned in Chapter Two, such concepts were moral developments that occurred later in human history. Transgressions were understood as disruptions of the natural world and punishments were “meant to restore again the natural harmony, or the natural lawfulness that has been disturbed” (Bergmann 1988, 33). Those who meted out judgments and punishments did not consider the subject of punishment to be guilty but viewed him as “an instigator of harm… an irresponsible piece of fate” (GM 2.14). The same is true for the man who was punished; he did not interpret himself as guilty. Rather, both parties who participated in the act of punishment viewed it as an act of fate.

The historical use of punishment was understood as an expression of anger, resulting from a harm done. It took place similarly to how parents punish their children, “from anger at some harm or injury, vented on the one who caused it” (GM 2.4). Nietzsche explains that this anger is limited by the principle of equivalence, which suggested that the harm done could be “paid back” in the form of pain, where those who were injured or harmed vented their anger upon those who originally caused it. Nietzsche claims that the principle of equivalence and the notion that there existed “an equivalence between injury and pain,” has its origins in the contractual relationships that arose between the creditor and the debtor (GM 2.4).

However, for the creditor to believe that the debtor would in fact provide repayment as promised, a guarantee had to be established; the creditor had to have assurance that the debtor would be impeccable with his word. In order to create a sense of security in the mind of the
creditor, the debtor made a contract with the creditor where upon failure to repay, something else is offered as a form of substitute payment, thereby ensuring that repayment would occur in one form or other. For failure to pay as originally promised, a form of compensation originated that granted the creditor the right to that which only the debtor possessed. That is to say, the debtor offered something else that he possessed as a form of repayment, “something he had control over; for example, his body, his wife, his freedom, or even his life…even his bliss after death” (GM 2.5). Nietzsche explains that the creditor could “inflict every kind of indignity and torture upon the body of the debtor” and that over time this form of compensation translated into legal evaluations indicating how much of the debtor’s body could be cut off to counterbalance the said debt (GM 2.5).

2.2. Cruelty is Festive:

In lieu of money or possessions, the creditor was given the right to inflict pain upon the debtor, to mistreat him, to make him suffer. But why did participating in another’s suffering suffice as compensation and “to what extent can suffering balance debts or guilt?” (GM 2.6). Nietzsche explains that witnessing the suffering of others was enjoyable and being the cause of that suffering was even more so. He writes, “to the extent that to make suffer was in the highest degree pleasurable, to the extent that the injured party exchanged for the loss he had sustained, including the displeasure caused by the loss, an extraordinary counterbalancing pleasure: that of making suffer – a genuine festival” (GM 2.6). In the instance that literal,

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154 It is important to note that the debtor’s pain and suffering was not a form of moral punishment, and some scholars go so far as to argue that it does not even constitute punishment at all, whether moral or not. For instance, Maudemarie Clark states, “it seems right to deny that such infliction of suffering (for example, the taking of a pound of flesh from the person who cannot repay a debt) constitutes a case of punishment, even though it occurs as a result of a judgment that the debtor owes this suffering (or the opportunity to inflict it) to the creditor” (Clark 1994, 21). According to Clark, the creditor is not punishing the debtor but merely obtaining payment. However, the principle of equivalence that limits the exchange between the creditor and debtor later gives rise to the moral and legal notion of punishment as a form of exchange.

155 Note that Nietzsche thinks this was not only the case with our primitive ancestors but is also true today. However, most modern men will not be able to admit that they experience pleasure due to inflicting pain (upon another).
material recompense could not be provided, restitution was provided in the form of pleasure and enjoyment; the creditor was granted “the pleasure of being allowed to vent his power freely upon one who is powerless” (GM 2.6). The creditor was given the opportunity to participate in a privilege that existed only for those of high social rank, a right that existed only for the masters, namely the right to mistreat another who was inferior. 156 Although the creditor was not a master himself, in the instance of causing the debtor to suffer, he was able to gain pleasure and enjoyment by exercising his power by way of mastering the impotent. Moreover, this pleasure and enjoyment intensified as the distance in rank between the creditor and debtor increased.

Nietzsche maintains that the joy and festivity gained through cruelty were a natural aspect of life in the ancient world and that almost all of ancient man’s pleasures were intimately connected to practices of cruelty. 157 Man’s ability to increase his delight and pleasure through causing suffering to others has such a long history that Nietzsche describes cruelty as “one of the oldest festive joys of mankind” (D 18). He claims that through the practice of cruelty, man witnesses the effect of his power over another and thereby gains a pleasant feeling from it. 158 In other words, to witness the suffering of another was to perceive man’s own domination over another. Yet Nietzsche explains that man’s power can be revealed only through the knowledge that another is suffering because of something he did. Nietzsche states, “to see others suffer does one good, to make others suffer even more: this is a hard saying, but an ancient, mighty, human, all-too-human principle to which even the apes might subscribe” (GM 2.6). According to Nietzsche, the ancients enjoyed being spectators of pain, suffering, and torment because their

156 It is important to note that punishment in the form of compensation is no longer exclusively enacted by the powerful and, for this reason, is distinct from the earlier, more primitive use of punishment used by the powerful to instill memory in the animal-man.
157 Nietzsche discusses cruelty and the desire to make suffer in several places. See, D 18, 77, 113; HH 103, 317, 452; GS 13; BGE 229.
158 This idea is discussed in several places. For instance, see HH 103 and GOM 2.6.
happiness was intimately connected to such practices and festivals and in the case of punishment, “there is so much that is festive” (GM 2.7).

2.3. Understanding the Origin and Utility of Punishment:

In its origin’s punishment played a significant role in transforming the human-animal into a legal subject. It was a precondition of culture and social life; the development and maintenance of the community, as well as man’s sociality, required the use of punishment. It is important to note that initially punishment was utilized in the service of power “to create conditions in which promises could be made” (Skinner 2006, 24). However, punishment underwent an alteration in which it became a form of compensation enacted in the service of weakness. This form of punishment emerged out of a basic economic relationship as a form of exchange between the creditor and debtor.

Nietzsche’s genealogy illustrates that punishment was not invented for the purpose of punishing the wrongdoer and that theories that purport this to be the function of punishment are misguided. He claims that “previous genealogists” have “naively” sought “out some ‘purpose’ in punishment, for example revenge, or deterrence” (GM 2.12). In On the Genealogy of Morals Nietzsche addresses our confusion about, and our misappropriation of, the function and origin of punishing and explains that oftentimes the utility of a practice is presumed to also account for its origin. However, he insists that this way of thinking is mistaken and he cautions against assuming that the purpose or utility of a thing can provide the reason as to why a thing came into being in the first place. He writes, “the cause of the origin of a thing and its eventual utility, its actual employment and place in a system of purposes, lie worlds apart” (GM 2.12).

Nietzsche’s thinking regarding the origin of punishment entails that the practice first emerged in a historical context and was later readapted to various ends and purposes, which
themselves were interpreted and reinterpreted as possessing different meanings and values. He explains this process in terms of the will to power, claiming that all that exists comes into being, transforms, mutates, alters, and is constantly redirected by way of “some power superior to it” (GM 2.12). Nietzsche insists that the various meanings and interpretations become subject to a superior power and are thus subdued and transformed into a new meaning, which in so doing annihilates the meanings and purposes that came before. Thus, a thing’s purpose or function is concealed by myriad transformations. The same logic can be applied to punishment. Nietzsche explains that “purposes and utilities are only \textit{signs} that a will to power has become master of something less powerful and imposed upon it the character of a function” (GM 2.12). The entire history of a practice, or anything at all, is nothing less than a succession of various processes of subtle adaptation and transformation, which are in a sense independent of one another and are therefore, not necessarily related.

Nietzsche insists that this “historical method” ought to be applied to the practice of punishment, which came into being in one form or another and, like all things, at some point became subjected to a superior force that altered the original form and meaning, resulting in new directions and purposes (GM 2.13). This methodology leads Nietzsche to conclude that punishment entails two distinct elements of which one is fixed and unchanging and the other fluid and fluctuating. The first of these elements accounts for the permanent and enduring aspects of punishment, which include the act itself, the procedure, and the custom of punishing. According to Nietzsche, “war...has provided all the \textit{forms} that punishment has assumed throughout history” (GM 2.9).
The second element accounts for those features of punishment that are subject to change and transformation such as its meaning and purpose. To further illustrate how this historical method applies to punishment Nietzsche explains,

In accordance with the previously developed major point of historical method, it is assumed without further ado that the procedure itself will be something older, earlier than its employment in punishment, that the latter is *projected* and interpreted *into* the procedure (which has long existed but been employed in another sense). (GM 2.13)

Punishment involves a long history of various transformative processes and the corresponding resistances they encounter, which culminates in a synthesis of meanings that reveals “how one and the same procedure can be employed, interpreted, adapted to ends that differ fundamentally” (GM 2.13). In an attempt to illustrate this complexity and the difficulty in defining punishment in a clear, determinate manner, Nietzsche lists a number of procedures and meanings of punishment that have been utilized throughout human history. For example,

Punishment as a means of rendering harmless, of preventing further harm…. as recompense to the injured party for harm done…. as the isolation of a disturbance of equilibrium…. as a means of inspiring fear of those who determine and execute the punishment…. as a kind of repayment for the advantages the criminal has enjoyed hitherto…. as a festival…. as the making of memory…. as a declaration of war. (GM 2.13)

Nietzsche insists that over time the various interpretations and meanings of punishment have merged and combined into a single, unified concept. The diverse purposes to which punishment has been employed throughout history have amassed in modernity, giving the impression that the notion of punishment can easily be defined, since it possesses one distinct meaning. Nietzsche insists, “a lengthy historical sequence of changes in the uses of procedures (torture, incarceration) has led to a ‘concept’ that has no consistent, logically analyzable complex of meanings” (White 1990, 44). However, he alleges that the meaning of punishment is not merely difficult to determine but is strictly *indefinable* since it is rooted in history. “Only that which has no history is definable” (GM 2.13). In the modern era it is impossible to know with certainty
why man is in fact punished, although there was a point in the history of humanity when the now complex synthesis of meanings could have been deconstructed and disentangled.

However, Nietzsche is cognizant that punishment is often spoken about as though it were one practice, with one meaning or purpose, but he insists that this logic is a misconception resulting from the constant rearranging and shifting of meanings that naturally occurs when values shift from generation to generation. As such, Nietzsche contends that there is no true meaning of punishment but only the appearance of one.\textsuperscript{159} Throughout human history, one of the various meanings or interpretations of punishment, such as rendering harmless, dominates the others and gives the impression that “rendering harmless” is the true purpose of punishment. While it may appear as though there is one true meaning of punishment, in reality, there is no essence of punishment “in the sense of a set of necessary and sufficient conditions that distinguishes the punitive from the nonpunitive infliction of harm” (Clark 1994, 220).

Therefore, the second essay of On the Genealogy of Morals ought to be read in part as an attempt to make the aforementioned claims evident, rather than as a detailed study of the true nature of punishment. Note that Nietzsche’s genealogy of punishment demonstrates that the essence of punishment is not moral in nature since this notion is undermined by the fact that punishment entails a variety of functions and uses. While punishment does not serve a singular purpose or a distinct aim, it is “a social function, an instrument that satisfies the utilitarian requirement that social order be secured from forces that endanger it” (Sedgwick 2013, 141). Finally, although punishment is oftentimes interpreted as a means of enacting justice, we learn from Nietzsche’s genealogy of punishment that there is no necessary connection between the two.

\textsuperscript{159} This also seems to also apply to morality and moral values such as “good” and “evil” since, for Nietzsche, there is no one true morality. In addition, he argues that the values of “good” and “evil” have undergone various transformations and re-characterizations throughout history.
2.4. The Lawbreaker and Punishment in the Community:

In addition to describing the origins of punishment as a form of compensation in relation to the creditor-debtor relationship, Nietzsche also describes the relationship between the community, its members, and punishment in terms of this relationship. Membership in the community is secured by way of a pledge through which each man promises to refrain from acts of hostility and malice in order to remain secure and protected by, and within, the community. In other words, communal membership requires each man to suppress his will to power and live in accordance with the rules, customs, and laws of the community. While the community requires its people to repress and restrain their natural instincts and thus, their will to power, the community itself need not practice any such restraint. Whereas man feels responsibility for his actions and experiences guilt and shame when he is disobedient, “states do not feel responsible for their actions as do individuals” (Denneson 1999, 2). Thus, the state can act without limit or restriction while man may not. Although most individuals are held in check through the threat of punishment and the fear that awaits disobedience, the criminal is representative of the man that engages in crime despite the risk.

In societies where all members are considered equal, criminal acts are generally categorized as “violations of the principle of equilibrium” (WS 22). Therefore, crime is considered a means of disturbing the balance, and punishment is a means of restoring the now unequal scales. When man fails to comply with the rules of society, “punishment, as a means of substitute payment, is now the debt one owes to society” (Clark 1994, 29). As creditor, the community has power over the debtor, or criminal, which manifests as the right to punish. Whatever benefits the criminal obtained through violating the law are countered by the losses he will receive by way of punishment.
However, Nietzsche argues that punishment is not merely a means of restoring the balance but “something more” (WS 22). It functions as a “far greater counter-weight” than that which the criminal initially sought to achieve through violating the law because the losses are compounded; the punishment will be applied beyond the restoration of equilibrium (WS 22). Through the act of punishment, the community not only seeks compensation, but further acts to remind the lawbreaker of the value of community-membership by thrusting him back into the state of nature where the criminal is without protection of any sort “and now every kind of hostility may be vented upon him” (GM 2.9).

2.5. Punishment and Power:

According to Nietzsche, the frequency a given communitypunishes and the various methods employed in this process correspond to the level of power a community possesses. He explains that communities in their infancy are weak and impotent and for this reason they are threatened by miscreants of all kinds. To ensure the community’s unity and survival, strict and severe penal laws are put in place. In addition, since the community is still in a vulnerable state, the criminal as such is a threat to the security and stability of the whole and as a result, every transgression is punished. To the contrary, communities that are strong and secure need not punish as much, nor as severely, as those that are weak and unstable. That is to say, as a community’s power and wealth increase, the “creditor” becomes more merciful and humane. Moreover, as the community becomes more secure and stable its members grow more respectful and obedient to the laws and customs. Since social obedience no longer requires the constant use

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160 However, it is not the existence and execution of the practice as such that demonstrates whether a community is powerful and strong, but the motivation that gives rise to the practice. Nietzsche observes that the outward expression of weakness and fear at times approximates that of strength and power and therefore his assessment of strength extends beyond the mere act (of punishing). This explains why Nietzsche is critical of modern western society despite its desire to lessen and/or abolish punishment; he believes that modern society’s desire to stop punishing derives from weakness, not strength. This will be discussed further below.
of force and the constant threat of punishment, penal laws and procedures become more relaxed; the community reaches a point in its development in which every transgression is no longer a threat to the social stability and survival of the community. It is at this point that it becomes no longer necessary to punish every infraction.

Conscious of its own power, the community no longer considers the criminal as such a threat, but particular actions. That is to say, specific deeds, rather than specific individuals, are those which the legal order seeks to curtail or extinguish. The powerful community is able “to treat every crime as in some sense dischargeable, and thus at least to a certain extent to isolate the criminal and his deed from one another” (GM 2.10). In addition to allowing some miscreants to go unpunished, the procedures and methods transform. Specifically, as a community’s power increases, the severity by which it punishes decreases. The methods of punishment become less severe and “the penal law always becomes more moderate” and ultimately, “how much injury he [the creditor] can endure without suffering from it becomes the actual measure of his wealth” (GM 2.10). This demonstrates that for Nietzsche, “power… is a key determiner of the extent to which punishment is the hallmark of the sphere of justice” (Sedgwick 2013, 141). When the community, or creditor, grows powerful enough, they are able to be merciful and to allow transgressions to go unpunished. Hence, as previously discussed, mercy is a demonstration of power and strength. Moreover, Nietzsche maintains that mercy ought to take the place of punishment and for this reason, among others, he affirms relinquishing the desire to punish.161

3. Nietzsche’s Critique of Punishment

While Nietzsche’s genealogy undermines the claim that punishment was invented for the purpose of punishing (those who are guilty), this is only one aspect of his overall critique of punishment. Oftentimes Nietzsche speaks disparagingly of punishment and his overwhelming

161 This is part of Nietzsche’s privileged alternative view which will be discussed in further detail below.
contempt for the practice suggests that he is categorically against punishment. However, a close reading reveals that his opposition to punishment is directed at punishment in its modern form. Unlike the ancient practice of punishment, which was an expression of the will of the ruling-class and thus indicative of strength and power, punishment in its modern form is oftentimes a manifestation of “reactive feelings” such as revenge and ressentiment, enacted by the will of the impotent, in an attempt to gain power. When punishment was utilized by nobles it expressed the will to life. However, in modernity the practice is now a denial of life. In its modern form “punishment effectually empowers weakness, or disempowers power, and is thus evaluated as unjustifiable” (Skinner 2006, 7).

Although Nietzsche's many references to punishment are critical, they amount to a rejection of the modern institution of punishment rather than the practice as such. Nietzsche alleges that the modern practice of punishing is connected to slave morality in the form of political institutions and moral theories. Furthermore, his critical remarks are oftentimes directed at the two dominant theories of punishment, deterrence theory and retributive theory, and amount to a rigorous attack on the moral justifications associated with each theory, namely consequentialism and deontology. His critique attempts to demonstrate that the justifications


163 A brief explanation of the two dominant theories of punishment can better contextualize Nietzsche’s nuanced attack on each. Classical retributivism is most often associated with the philosophical views of Kant and Hegel of which punishment is said to be the way in which justice is enacted. Beyond being a requirement of justice, retributivism justifies punishment with three main principles. First, the violation of the law requires that the criminal should suffer and, in this way, the criminal gets what they deserve by way of punishment. Second, since crime causes an imbalance, punishment acts to restore the balance that was initially disrupted. Third, the offender’s past behavior suffices to justify his punishment. Contrary to the retributivist theory of punishment, classical deterrence theory, which was first articulated by Cesare Beccaria and further developed by Jeremy Bentham, maintains that the primary purpose of punishment is not retribution, but deterrence. Punishment is practiced to discourage future wrongdoing which simultaneously illustrates to society that crime will not go unpunished. Crime is understood as augmenting pain, displeasure, and/or unhappiness for individuals and/or society. As such, punishment is practiced to reduce the amount of crime and the amount of pain and displeasure inflicted.

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for punishment, as well as its supposed purpose, are irrational, contradictory, and misleading and he concludes that each theory fails to logically justify the practice of punishing. In addition to this, he alleges that the modern institution of punishment, like the notion of traditional justice and equal rights, hinders the development of great individuals and reinforces the dominance of the herd. Ultimately, Nietzsche proclaims that both man and society should no longer punish.

3.1. Modernity and the Abolition of Punishment:

Nietzsche maintains that all societies that guide “men with reward and punishment have a low, still primitive kind of man in view” (WP 737). Ultimately, he insists that society should overcome its desire to punish and no longer engage in punishing. Despite this, when modern society concludes that the practice of punishing must be lessened and eventually abolished, Nietzsche offers neither approval nor praise. Nietzsche's lack of appraisal concerns the motivations and values behind this particular abolition of punishment, which he believes are the result of fear and weakness, rather than magnanimity, mercy, or strength. Nietzsche explains that modern society is distrustful of the justice that punishes, characterizing it as a practice that exploits the vulnerable and weak. The herd acts, or rather reacts, to the practice and its imagined consequences, concluding that the practice must be abolished because it perpetuates pain and

upon individuals and/or society. Generally speaking, classical deterrence theories are mostly articulated in terms of utilitarianism and are oftentimes associated with the political theory of liberalism. Note that Nietzsche understands both the use of punishment, as well as the desire to eradicate it, as expressions of the normative values of the collective weak.

Nietzsche discusses the relationship between society, power, and punishment in three passages to which I wish to draw attention. In GOM 2.10 Nietzsche discusses a society that is motivated to punish less often and less severely because it is powerful and conscious of this power. In BGE 201 and TI 'Expeditions of an Untimely Man,' Nietzsche addresses a modern community, which is also motivated to punish less and even seeks to abolish the practice in its entirety. However, a significant distinction exists between the community discussed in GM and those discussed in BGE and TI. In particular, the latter two are motivated to punish less not because they are powerful, but because they lack power; their desire to abolish the practice derives from fear and weakness. Nietzsche associates strength and power with overcoming the desire to punish so long as the motivation to no longer punish derives from a place of strength. If Nietzsche is read as claiming that the presence or absence of the practice as such is indicative of power and vigor, then it might appear as though he is contradicting himself in the three aforementioned passages. He focuses not merely on the practice as such, but the motivation that gives rise to the practice, and those that Nietzsche praises overcome the desire to punish as a result of strength.
suffering. Even though the suffering is directed at those who have harmed society, and thus those who presumably deserve it, the community reasons that punishing is superfluous since the only necessity consists in ensuring that the criminal is incapable of causing harm.

Nietzsche considers this form of thinking to be cause for concern since modern society has grown so yielding and subdued “that among other things it sides even with those who harm it, criminals, and does this quite seriously and honestly” (BGE 201). He insists that refraining from the desire to punish is not only a reactionary display of weakness and fear, but a form of self-deception and hypocrisy because it is portrayed as a virtue. Since “modern procedures of punishment have been modified by judicial acts of sympathy and consideration, Nietzsche believes that such practices are restatements of an earlier ideal – Christian pity” (Halsted 1991, 40). Furthermore, Nietzsche rejects the herd’s selfless narrative regarding their reasoning for lessening and eventually doing away with punishment, claiming instead that the herd seeks to abolish the practice for selfish reasons, in particular their fear of suffering, danger, exploitation, and power.

According to Nietzsche, the herd’s approach to punishment is motivated by “their deadly hatred of suffering generally” and the fact that they have grown “soft and tender” (BGE 201). He explains that in comparison to their ancient counterparts, modern man is not familiar with pain and this lack of familiarity informs his general hatred of it. In the ancient past, mankind experienced and witnessed significant amounts of pain and suffered and grew accustomed to it. Since it was a part of daily life, man taught himself how to endure it. Nietzsche claims that in the past “one received ample training in bodily torments and deprivations and one understood even a certain cruelty against oneself and a voluntary habituation to pain as a necessary means of self-

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166 Nietzsche is extremely critical of pity; one reason being that it does not enhance those of high rank and instead oppresses them. The negative effects of pity are discussed further in Chapter Five: The Criminal.
167 See, for instance, NF-1884 26[189] — Nachgelassene Fragmente Sommer–Herbst 1884.
preservation” (GS 48). However, in the modern world pain is described as something terrible and looked upon as something to be avoided. Nietzsche alleges that “pain is now hated much more than was the case formerly; one speaks much worse of it” (GS 48). Today, even the thought of pain is experienced as “scarcely endurable” (GS 48). As a result, modern humanity has come to loathe and condemn it.

In modernity, punishment is reinterpreted as the cause of misery and suffering rather than that which prevents it. It is believed that punishment not only creates such things, but also provides the very narrative that requires that such things be eradicated. The institution of punishment perpetuates the very idea that punishment is a means by which to eradicate all that causes fear, pain, and suffering. Therefore, the herd reasons that punishment as such ought to be abolished. Nietzsche notes, “every severity, even in justice, begins to disturb the conscience” (BGE 201).

In addition to this, modern society directs itself toward eradicating and neutralizing all forms of power, exploitation, and domination. While the institution of punishment serves to suppress all danger, oppression, and exploitation, it too is an instrument of power and domination. Thus, modern society concludes that the institution and practice of punishing is not eradicating such things but perpetuating them and therefore, the institution must also be done away with. As a result, the herd’s overwhelming fear of power and domination drives it to disempower even themselves.

According to Nietzsche, the modern aim to no longer punish derives from the virtues of modernity, which “are conditioned, are demanded by our weakness” (TI ‘Expeditions of an Untimely Man,’ 37). He alleges that such values are symptoms of degeneration, decadence, and decline, demanded by the same ressentiment-motivating weakness he rejects. Modern society
desires to be free of pain, danger, and suffering and thus, “merely getting free seems to be the goal” (WP 776). In light of this, Nietzsche explains that will to power expresses itself “among the oppressed, among slaves of all kinds, as will to ‘freedom’” (WP 776). The herd believes that happiness, comfort, and ease will come about if they achieve freedom from danger, discomfort, suffering, and pain. Yet he alleges that believing in such logic is foolish and maintains that the annihilation of one thing will not necessarily bring about its opposite.\footnote{See, for instance, WP 722.} Furthermore, for Nietzsche, the desire for contentment and well-being is not a goal, but an end, an end that reduces man to something “ridiculous and contemptible,” in turn signaling man’s decay (BGE 225). He believes that those things that are considered evil, painful, or dangerous can be life-promoting and species-promoting, contributing to the overall enhancement of man. Since pain and suffering are a part of life, the desire to eradicate such things is a denial of life for Nietzsche.

As discussed in previous chapters, man cannot grow, become strong, or flourish without opposition, resistance, difficulty, suffering, and the like. For this reason, Nietzsche advises that man should neither succumb to suffering, nor avoid it, but struggle against it and overcome it. He believes that “a world without struggle and its attendant suffering, therefore, is to be deprecated” (Thiele 1990, 24). Moreover, for Nietzsche, modern man’s desire to be free from pain and suffering is foolish since many of humanity’s advance can be attributed to suffering, pain, and cruelty. These things have all helped to enhance and advance society and humanity.\footnote{Like Arthur Schopenhauer, Nietzsche believed that suffering is intrinsic to life. However, although Nietzsche was greatly influenced by Schopenhauer, he diverges from him in believing that the goal should not be to rid oneself of suffering, but to embrace it. Nietzsche insists that (overcoming) suffering is necessary for man to grow in strength and flourish. Hence his famous maxim, “what does not kill me makes me stronger (TI ‘Maxims and Arrows,’ 8).} Hence, Nietzsche states, “the discipline of suffering, of great suffering – do you not know that only this discipline has created all enhancement of man so far” (BGE 225). Both society and man have
become strong and powerful as a result of struggling against, and overcoming, conflict and difficulty. On this point Nietzsche explains,

The nations which were worth something, which became worth something, never became so under liberal institutions: it was great danger which made of them something deserving reverence, danger which first teaches us to know our resources, our virtues, our shield and spear, our spirit – which compels us to be strong. (TI ‘Expeditions of an Untimely Man,’ 38)

Through enduring pain and suffering humanity has gained discipline, depth, strength, greatness, ingenuity and the like and it is for this reason that Nietzsche finds it valuable and insists that he and those like him prefer “it higher and worse than ever” (BGE 225).

3.2. Punishment and the State:

Despite society’s desire to treat those who are punished with more compassion and sympathy, the state still enacts penal justice, which is the legitimate use of punishment by the state. According to Halsted, “Nietzsche observes that a precondition of modern secular punishment is that the legal institution must demonstrate its right to punish law breakers” (Halsted 1991, 40). Nietzsche explains that the legitimacy of this practice is said to consist in the state’s right to punish which is apparently founded upon its right to self-preservation and self-defense. Initially, punishment was a way in which “the political organization protected itself against the old instincts of freedom” (GM 2.16).

However, Nietzsche argues that the state’s right to punish constitutes a misuse of the term “right.” He insists that rights are “acquired through treaties” and contracts, “but self-protection and self-defense do not rest on the basis of a treaty” (WP 728). In opposition to social contract theorists such as Hobbes, Nietzsche refutes the historical narrative in which the origination of the

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170 The state’s explanation for punishing suggests that the state punishes neither for utilitarian reasons, such as deterrence, nor for retributive purposes, such as punishing lawbreakers that are presumed to be deserving of punishment.

171 As has previously been discussed punishment was also a means of taming and conditioning man to obey the rules and norms of society and in practice man’s will to power was restricted. In this way, punishment was utilized in the creation and maintenance of culture and states.
state is understood in terms of contracts. Furthermore, he alleges that the right to punish cannot be justified in terms of self-defense since not all violations of the law constitute a significant threat to state security. If self-defense and self-preservation can legitimately be claimed as rights then, Nietzsche argues, so too could a state’s desire to conquer its neighbors and/or satisfy its desire for power. Since punishment in the form of penal justice functions as a means of preserving and defending the state, it is a means by which the state preserves its power, although it possesses no legitimate right to do so.

The state protects and preserves itself through the threat of punishment from all who fail to adhere to social custom. One way in which this is evidenced is that society continues to “punish” the criminal in the form of disciplinary measures, such as surveillance and probation, long after the criminal emerges from his punishment. Yet, as Foucault observes, “the conditions to which the free inmates are subjected necessarily condemn them to recidivism” (Foucault 1995, 267). Punishment “is nothing more than an attempt to maintain the mediocre status quo of the herd by imprisoning (or in some cases, executing) those who deviate from it” (Denneson 2015, 3). Thus, punishment is aimed at suppressing the strong and powerful as well as disciplining those who, in any, fail to conform to the status quo. Nietzsche claims that “one should reduce the concept ‘punishment’ to the concept: suppression of a revolt, security measures against the suppressed (total or partial imprisonment)” (WP 740). The value of punishment is not moral in nature but socio-political since it is instrumental in maintaining society at a level of mediocrity. On this point, Nietzsche claims that all “civil institutions… e.g., the fatherland; the family; order;

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173 According to Foucault, “the execution no longer bears the specific marks of the crime or the social status of the criminal” (Foucault 1995, 12). Foucault’s remark suggests that punishment effaces difference and as such, denial of uniqueness becomes part of the penalty for crime. Therefore, the egalitarianism that Nietzsche criticizes extends even to punishment. The dominating thought is that each criminal is the same since each is a criminal, regardless of the crime. To the contrary, Nietzsche maintains that not all criminals are the same and that society should make distinctions between different types. In Chapter Five this idea will be discussed further.
law)” put on a “hypocritical show” and present themselves as “products of morality” (WP 316). Since all such institutions are structured in accordance with the herd and “the most mediocre type of man, as protection against exceptions and exceptional needs,” they are essentially deceptive and constructed of lies (WP 316).

However, Nietzsche explains that we have been taught “to believe in the necessity of the state” and its right to punish (HH 101). As a result, we have become desensitized to the cruelty enacted on the part of the state on behalf of its supposed right to punish. Generally speaking, cruelty is rejected and condemned by society, yet state-sponsored cruelty is allowed and permitted. This is because man has been indoctrinated to believe in the justification for such cruelty, namely, the state’s security and defense. In other words, Nietzsche explains that “we are not as sensitive to this cruelty as we are to that cruelty whose justification we reject” (HH 101).

Moreover, nationalist beliefs, such as the belief in the necessity of the state, are a means by which the state legitimizes its power and authority and thus, its overall domination of society and the people within. Although many men lack the courage and ability to act cruelly, nationalist beliefs also coerce men to act in opposition to their personal desires and values in the service of the state. Nietzsche explains that the state takes on a bureaucratic structure and through the separation of labor it is able to influence man to act in its name. Moreover, actions that are considered cruel, immoral, or evil are reevaluated in terms of obedience and duty (to the state). In this way man is also able to evade responsibility for his actions. In other words, when acting in service of the state man reasons that he is just doing his job and obeying orders.174

3.3. The Moral Right to Punish:

Apart from the legal right to punish, the right to punish has also been claimed on moral grounds. Morally speaking the right to punish is justified with reference to various moral

174 See, for instance, WP 718.
theories, such as deterrence theory and retributive theory, as well as assumptions concerning human nature. Both deterrence theory and retributive theory are founded upon the idea of moral agency and for each theory “the right to punish derives from the metaphysics of free will” (Balke 2003, 710). As illustrated in Chapter Two, Nietzsche dismisses the principles of moral agency and the idea that man is essentially free, rational, causal, and autonomous. Much of Nietzsche’s critique of punishment is directed at the aforementioned moral theories that justify the practice of punishing in modernity, despite the fact that he oftentimes fails to address them directly by name. Nietzsche evaluates the various premises within each theory and demonstrates that punishment is founded upon irrational and incoherent principles. In addition, he proves that the consequences of the practice contradict the purported aim of each theory. Ultimately, Nietzsche’s critique suggests that punishment can no longer be sustained as a legitimate practice.

In The Wanderer and His Shadow, Nietzsche considers whether the doctrine of free will is a sufficient explanation for determining that man is responsible, and thus punishable. He explains that when determining whether man is to be punished, it must first be determined that man is indeed responsible and thus that he committed malice freely, rationally, and intentionally. Therefore, in order to establish fault, man must have intended upon wrongdoing. The doctrine of free will supposes that if man knows the good, then he does the good, of which there is no possible explanation for him choosing to do the worst while being conscious of the better. However, if due to ignorance or error man does not know or recognize the good, then he should not be punished. Here, Nietzsche seems to be alluding to the Platonic problem and the idea that man acts in accordance with what he believes to be good, which is only the apparent good, and thus, not the real good. Therefore, if man acts in accordance with his conception of the good, and

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there is an error in that conception, then he commits a mistake and does what is not the good.\textsuperscript{176} In this instance man cannot be justifiably punished since he lacks the consciousness of that which is better.

On the occasion that man is punished, it is because he knew what was good but chose to do otherwise. Thus, the offender “intentionally renounced his reason” (WS 23). Man is only punishable when he intentionally prefers the worse choice to the better. However, if rationality is the seat of intention, then it does not seem possible that man can deliberately act irrationally. Hence, Nietzsche asks, “but how can any one be intentionally more unreasonable than he ought to be?” (WS 23). Here, Nietzsche is likely referring to the Kantian problem and the idea that man is simultaneously responsible for his actions when his actions turn against the good.\textsuperscript{177} When active, the faculty of reason is described as the dominant mode of thought to the exclusion of all others and thus it is a contradiction to claim that one can intentionally reject reason since reason guides intention; it is illogical to say that one is intentionally unintentional. Moreover, since reason is said to always guide man toward the good, it cannot be the cause of an action that is other than good. In deciding against the good, man utilized his free will and thus acted without motive or reason. However, this instance is not a legitimate use of punishment since man failed to act in accordance with reason and punishment is only justified in those instances in which reason was intentionally renounced. Nietzsche concludes that there is a logical contradiction involved in the way in which a punishable act is determined, and for this reason he states,

\textsuperscript{176} Aristotle believes this is the result of a weak will. That is, to know the good and to not do the good is the consequence of a weak will.

\textsuperscript{177} According to Kant we are free only insofar as we act rationally and thus, independently of our natural inclinations. Yet since the will is determined solely by reference to reason, the only thing human beings can do is be good. If we are not responsible for our action when it is determined by natural inclinations, then we are not free in that action, it seems, and therefore we are not responsible for that action because our will is not determined by something independent of natural law. Since we have the option of determining it by natural law or not, there must be some transcendental faculty of choice that stands behind it that decides between the two cases. That is what is really at issue when we choose to be determined by natural inclinations versus choosing to be determined by reason.
“according to your own principles, you must not punish, you adherents of the doctrine of free will” (WS 23). Ultimately, voluntaristic theories of punishment, such as those advanced by Immanuel Kant and Jeremy Bentham, lack a legitimate right to punish.

Nietzsche also considers the right to punish in an aphorism titled “Can We Forgive?” and concludes once again that man has no such right (WS 68). In this aphorism he problematizes the logical presuppositions of the concept “forgiveness,” which are coextensive with the notion of responsibility and punishment. Like the notion of punishment, forgiveness rests on the belief that man cannot only be held responsible for his actions, but more, that man is fully responsible for his actions. This is because it is assumed that man has free will and can thus freely and intentionally choose one action over another. As discussed in Chapter Two, Nietzsche dismisses free will and instead maintains that man is subject to necessity. On the topic of necessity and forgiveness, Michael Ure notes that for Nietzsche “it is irrational to speak of forgiving other human beings as it is to say that we forgive an avalanche sweeping us away” (Ure 2007, 57). Therefore, Nietzsche denies that man has the right to forgive because it rests on the right to accuse and punish, which he claims, man lacks.

Man has no right to place blame because mankind is innocent. Hence, Nietzsche states, “we have nothing to forgive” (WS 68). He concludes, “finally, if the evildoers had really known what they did, we should still only have a right to forgive if we had a right to accuse and to punish. But we have not that right” (WS 68). It is important to note that Nietzsche does not appear to be advising us not to forgive. He is not simply saying that we should not forgive because people know not what they do; rather, we should not even think in terms of forgiveness, since that entails that a wrong was done for which one must be forgiven.
3.4. The Arbitrary Determination of Guilt in a Court of Law:

According to Nietzsche, the criminal does not possess free will and for this reason it is irrational to insist the criminal is guilty and deserving of punishment. To elucidate this point, as well as the fact that the principles of punishment are contradictory and self-negating, Nietzsche takes aim at the way in which man is deemed guilty in a court of law. He argues that in a court of law, the criminal’s punishment is generally determined in relation to the level by which the judge is shocked and disturbed. Since initially the judge does not know the criminal’s case history, his only measure is the act as such, and it is this that the judge finds completely “incomprehensible” (WS 24). Unlike the judge, who perceives a dis-order in the criminal’s behavior, the criminal sees an order to his actions. He knows what took place leading up to the crime and therefore, he understands his crime as fitting within a larger series of interconnected events.

Since the criminal’s punishment is made in relation to the judge’s perception of the crime and the degree to which the judge is shocked, Nietzsche claims that it is the job of the defense attorney to abate the judge’s shock by presenting the mitigating circumstances. Reflecting upon the legal representation of the criminal, Nietzsche insists that the criminal’s lack of responsibility should constitute the main argument of defense. The criminal’s lawyers should present the criminal’s case history while also maintaining that the object of punishment is wrongly applied to the criminal. That is to say, the defending council should argue that the criminal does not possess free will but only acted as he must.

In a court of law, the criminal’s past is assessed and evaluated in order to establish guilt.¹⁷⁸ Foucault notes that the biographical investigation “establishes the ‘criminal’ as existing

¹⁷⁸ On this topic, Michel Foucault explains, “the observation of the delinquent ‘should go back not only to the circumstances, but also to the causes of his crime; they must be sought in the story of his life, from the triple point of view of psychology, social position and upbringing, in order to discover the dangerous proclivities of the first, the harmful predispositions of the second and the bad antecedents of the third… Behind the offender, to whom the
before the crime and even outside it” (Foucault 1995, 252). However, Nietzsche alleges that
determining punishment in relation to each man’s past conflicts with the moral justifications of
punishment that require that punishment be meted out in accordance with fairness and
proportionality. Nietzsche asks, “measuring the punishment by the degree of knowledge we
possess or can obtain of the previous history of the crime – is that not in conflict with all
equity?” (WS 24). In addition, he reasons that this process is an arbitrary means of calculating
punishment and claims that if the aim is to establish guilt and accountability, then “it is arbitrary
to stop at the criminal himself when we punish his past” (WS 28).

Man’s nature is fashioned not by man himself but by several forces, external factors, and
circumstances; he is the compilation of past events, peoples, and ideas. Even man’s motives,
which are said to be the cause of man’s actions are varied and many, and Nietzsche contends that
these too are not determined by man. Richard Schacht explains that Nietzsche

argues that they [the individual] cannot be held accountable for the particular character and relative strength
of the various motives from which their actions issue; for these reflect the operation of the same forces
within and without the individual through which his nature is fashioned. (Schacht 1996, 447)

According to Nietzsche, if accountability is to be rendered, it follows that it is unreasonable to
seek accountability solely within man because no man is a *causa sui*. Since myriad influences
and forces amalgamate to form an individual, an exploration into the criminal’s past must extend
into the *cause* of the criminal’s past. That is to say, since man is punished for his past deeds, yet
he is not the origin or the cause of such deeds, then the logic must be followed through and the

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cause of man’s deeds must also be judged. On this point, Nietzsche states, “we ought to go farther back and punish and reward the cause of his past – I mean parents, teachers, and society” (WS 28).

Ultimately, once the criminal’s entire history is known, it will become apparent that “he was bound to act as he did” (WS 24). Thus, the case history will demonstrate that the criminal could not have acted otherwise. Since the criminal is only to blame if he could have acted otherwise than he did, the criminal’s guilt must be removed and it must be concluded that the criminal is not to blame. However, if guilt is to be established and punishment is to be rendered then, Nietzsche insists, “eternal Necessity” ought to bear it (WS 24). Yet “if we will not grant the absolute excusability of every crime” then we “should draw the inevitable conclusion from their doctrine of ‘free will’ and boldly decree: ‘no action has a past’” (WS 28). That is to say, “isolate guilt and not connect it with previous actions” (WS 28).

3.5. Punishment as a Stimulant for Guilt:

Aside from the various utilities to which punishment has been employed throughout history, there is one that persists “in popular consciousness as the most essential one,” namely the belief that punishment arouses the feeling of guilt within the guilty individual (GM 2.14). In particular, “one seeks in it the actual instrumentum of that psychical reaction called ‘bad conscience,’ ‘sting of conscience’” (GM 2.14). According to Nietzsche, it is this supposed benefit that lends the greatest support to the act of punishing, thereby maintaining punishment as a valuable social practice. However, as discussed in Chapter Two, guilt did not originate through the act of punishment since the latter existed prior to the development of the feeling of guilt. Furthermore, guilt, or “the pang of conscience,” marks the internalization of punishment.180 On account of this, “the institution of punishment itself cannot be based on or initially contain any

180 See, for instance, WP 204.
notion of guilt or personal fault” (Zuckert 1983, 58). As previously discussed, “in its origins [punishment] it had nothing to do with desert or responsibility” (Finnis 1999, 91). Yet, humanity has “obscured the origin of punishment by attributing a new function to it, the inculcation of a sense of guilt” (Zuckert 1983, 60). Thus, in the modern era, punishment is thought to be a stimulant for guilt.

Nietzsche argues that the belief in guilt as the primary effect of punishment is derived from a psychological misunderstanding since “it is precisely among criminals and convicts that the sting of conscience is extremely rare” (GM 2.14). Furthermore, he maintains that the external application of “punitive force” throughout history failed to successfully contribute to the internal development of guilt (GM 2.14). Instead of acting as a stimulant for guilt, the practice of punishing coalesced throughout history into a method for preventing the feeling of guilt from developing. In Daybreak and On the Genealogy of Morals, Nietzsche alleges that among criminals, punishment rarely, if ever, stimulates the feeling of guilt or a desire to atone. Instead, he claims that punishment results in a “heightening of prudence, in an extending of the memory, in a will henceforth to go to work more cautiously” (GM 2.15). It influences the criminal to be more careful in executing his future affairs, but not more regretful concerning his past ones. Rather than suffering from the “sting of conscience” and a crippling sense of guilt, the criminal usually experiences a sense of shame or disappointment for having made a stupid mistake. Although the criminal suffers, it is only in the sense that through some misstep he is

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182 According to Nietzsche, one reason that punishment fails to instill guilt within the criminal is because the criminal is unable to perceive his actions as reproachable and repugnant. This is because the criminal witnesses the state committing the same actions without repercussion. This is discussed further in the next chapter.
183 See, for instance, D 366 and GM 2.14.
“now being deprived of his customary way of life” (D 366). Thus, the criminal suffers only in regard to wondering what went awry and where he went wrong.

3.6. Punishment, Proportionality, and Retributive Theory:

The retributive theory of punishment conceives of punishment as a form of payment or penance in which the criminal is punished in relation to his degree of guilt. Supported by egalitarian principles that require proportionality, this theory entails that “punishment should hurt in proportion to the magnitude of the crime” (WP 743). Retributive theory understands punishment as a means of restoring the imbalance that resulted due to crime. However, Nietzsche argues that such thinking is absurd since punishment cannot counter an imbalance. Furthermore, he states, “remorse can’t undo any deed; neither can ‘forgiveness’ or ‘atonement’” (WLN 10.108). He explains that society presumes that the guilt of the offender is correlated with the suffering of the victim whereby the amount of guilt is presumed to be equal to the amount of suffering. However, Nietzsche is extremely critical of this presumed relationship between cause and effect as it relates to guilt and punishment and maintains that we are mistaken in thinking that the guilt of the perpetrator is equal to the pain and suffering experienced by the perpetrated. He explains that the belief in guilt being equal to pain arises because “we conclude by analogy that something hurts another, and through our memory and power of imagination we ourselves feel ill at such a thought” (HH 104). Nietzsche insists that this belief is misguided because it operates “as if an exchange relationship existed between guilt and punishment” (WP 740). However, for Nietzsche, no such relationship exists.

In order for this principle to be implemented in practice, Nietzsche insists that “you would have to measure the susceptibility to pain of every criminal” (WP 743). This entails that punishment can only be determined on a case-by-case basis, which conflicts with the pre-
established penal codes. Nietzsche claims that it is not possible to actually know the degree to which pain has been inflicted upon another, nor is it possible to know how others experience pain and displeasure. Thus, he asks, “does this not mean: a previously determined punishment for a crime, a penal code, ought not to exist at all?” (WP 743). Nietzsche’s question seems to also extend from his critique of egalitarianism. Since modern practices of punishment aim toward egalitarianism, they in effect disregard the uniqueness and particularity that is constitutive of all events and individuals. Nietzsche urges society to progress beyond its “detestable criminal codes” and “the desire to counterbalance guilt with punishment” (D 202). As Halstead notes, Nietzsche “concludes that the logic of this democratic type of punishment, in theory and in practice, is self-negating” (Halsted 1991, 41). Since the modern institution of punishment conflicts with the principles to which it claims to adhere, Nietzsche declares that punishment can no longer be maintained as a rational practice.

3.7. Punishment, Consistency, and Deterrence Theory:

One of the general assumptions of deterrence theory is that the influence of deterrence is related to the certainty of punishment as well as its severity. It is presumed that the impact of deterrence is greater when there is a high probability that punishment will follow crime and when the severity of punishment outweighs the benefits of the crime. In *The Wanderer and His Shadow*, Nietzsche considers the way in which punishment is perceived by the criminal as arbitrary and inconsistent. In an attempt to illustrate this, he draws an analogy between the punishment that a criminal receives and the children a woman conceives. Nietzsche states, “to most criminals punishment comes just as illegitimate children come to women. They have done the same thing a hundred times without any bad consequences” (WS 28). Thus, just as a woman can engage in intercourse numerous times without getting pregnant, so too can a criminal engage
in crime numerous times without being punished. Sexual intercourse does not always result in pregnancy and similarly, crime does not always result in negative consequences such as punishment. Nietzsche’s point is that punishment is not rendered consistently because it is not applied each time man commits a crime; it is only applied and carried out when man is charged as guilty and thus, only after he is apprehended for committing a crime. According to Nietzsche, the criminal is aware of this inconsistency and knowingly commits crime because punishment does not always follow.

Nietzsche further alleges that the rationale behind determining the degree and severity of punishment is not only arbitrary but also counterintuitive. In order to illustrate his point, Nietzsche compares the punishment of two types of criminals, the career-criminal and the one-time offender. Traditionally, when the career-criminal is caught and brought to a court of law, the general rules of punishment require that punishment be rendered in proportion to his criminal nature. In other words, since the criminal has engaged in habitual criminal actions, the punishment is made to be severe. One-time offenders, or those who rarely, if ever, commit crime, are dealt with in the opposite manner. Custom dictates that the punishment be lessened and made more moderate since criminal actions are uncommon and exceptional with regard to the criminal’s overall nature. These two types of criminals and their corresponding punishments illustrate how, for Nietzsche, the determination of punishment is arbitrary. Moreover, according to Nietzsche, punishment is not measured from the standpoint of the criminal, nor from that of the victim since the crime is abstracted and depersonalized. Instead, crime is exclusively measured from the standpoint of society, and the losses it endured as a result of the criminal’s actions. However, Nietzsche offers an alternative approach to handling each type of criminal
which is derived not from the perspective of society, but from that of the criminal, as well as common sense.

Nietzsche explains that it may seem logical to punish the habitual criminal more harshly than the criminal who has only committed a solitary crime, but this is most likely because it is what is customary. Contrary to the present method he suggests that the severity of punishment be correlated with both the character of the transgressor and the frequency of crimes committed. Consider the career criminal, who according to Nietzsche has developed a penchant for crime. As a result, this man experiences greater difficulty in trying to abstain from committing transgressions, which have now developed into a habit. Nietzsche reasons that the punishment ought to be considered in light of such factors and therefore the criminal’s transgressions should “appear more excusable” as a result (WS 28). Nietzsche argues that the habitual criminal ought not to be punished more harshly and with greater severity since he has developed a proclivity for crime that is now difficult to resist. Rather, it is the criminal who commits crime rarely, or possibly just once, who should be punished with more strictness. Punishment is traditionally lessened in those instances in which the man leads a “model life” but Nietzsche problematizes this traditional approach because it is in these instances that crime presents itself in great contrast to the man’s character. This man does not possess an inclination toward crime and therefore when considering his character in relation to the individual transgression he committed, there is a great disparity. Thus, the transgression is more prominent and overt with the individual who leads a “model life” and, for this reason, Nietzsche insists their punishment ought to be greater.

3.8. Punishment and Atonement:

Nietzsche explains that in the modern era punishment manifests in relation to the moral requirement that entails that the guilty must atone for the harm they have caused. This principle
derives from the retributive theory of punishment which considers punishment to be a means of atoning for past transgressions. Punishment is considered a form of expiation that serves the interests of the offender since it allows him to discharge his guilt and restore his place within society. However, Nietzsche dismisses this narrative and insists that punishment in its modern form does not function as a means of atonement. He explains that in ancient penal practices punishment sufficed as a payment whereby the criminal was liberated from his guilt. Religious principles were embedded within ancient penal laws, which contributed to the belief that punishment functioned as a form of expiation and purification. Man believed in the cleansing and purifying power of punishment and consciously and willingly accepted his punishment. For this reason, punishment functioned to bring about real health.\textsuperscript{184}

However, Nietzsche claims that punishment in the modern world does not have the same effect. In the modern world punishment does not purify nor improve; instead, it contaminates and corrupts. Nietzsche insists that punishment can only function as a means of purifying if crime is understood as something that pollutes and corrupts. Yet he asserts, “punishment does not purify, for crime does not sully” (WP 740). In On the Genealogy of Morals Nietzsche explains,

\begin{quote}
that which can in general be attained through punishment, in men and in animals, is an increase of fear, a heightening of prudence, mastery of the desires: thus punishment tames men, but it does not make them ‘better’ – one might with more justice assert the opposite. (GM 2.15)
\end{quote}

Thus, according to Nietzsche, both the ancient and modern practice of punishment result in the taming of man. Moreover, Halsted explains that “Nietzsche underscores the fact that because modern penal practices seek to use punishment to awaken feelings of guilt in the criminal, one cannot at the time expect it to have any expiatory value” (Halsted 1991, 41). Similarly, Parejko notes that Nietzsche “examined the mechanics of atonement, finding atonement an impossibility,

\textsuperscript{184} See, for instance, WP 742.
for society would never allow the anonymity of the ex-criminal” (Parejko 1974, 14). While society presents punishment as a means of atoning, Nietzsche alleges that punishment is not a means of atoning and further that society does not allow for the criminal to atone. This is in part because the criminal is a law unto himself “and this the community could never allow” (Parejko 1974, 15). Thus, the criminal is punished because his allegiance is to himself rather than to society. In modernity, the criminal is prevented from redeeming himself via punishment and for this reason it can be concluded that modern punishment does not function as an actual means of atoning or making good with society. Instead, Nietzsche remarks, “one emerges from punishment as an enemy of society” (WP 742).

Punishment, when complete, does not remove the stigma of criminality and restore the individual to a status worthy of respect and dignity. The criminal is never liberated from the criminal-identity and the corresponding moral derision to which he is subjected. Rather, the criminal always remains a criminal. Nietzsche states, “the ex-priest and the released criminal keep making faces: what they desire is a face without a past” (GS 78). Since the criminal is unable to liberate himself from his past and his criminal status, Nietzsche alleges that “today punishment isolates even more than the crime” (WP 742). Even after the punishment ceases, the state keeps the criminal in check and continues to exert its power over the criminal. This insight is demonstrated today in the form of criminal-identities such as “ex-con” and “felon.” Similarly, the criminal record is an indelible mark of criminality. In this way, the criminal is prevented from

186 This can be seen in modernity in the form of the criminal record, probation, or the status of felon which is the modern version of the scarlet letter.
atonning. Yet, Nietzsche insists that “one should not deprive the criminal of the possibility of making his peace with society” (WP 740).\(^{187}\)

Nietzsche also alleges that “punishment does not expiate, forgiveness does not extinguish, what is done is not undone” (WP 394). Similarly, we are told by Zarathustra, “no deed can be annihilated” (Z ‘Of Redemption’).\(^{188}\) Man cannot reverse what has been done because the past is permanent and unalterable. Nietzsche explains that the will is impotent in the face of time and thus, the past is where the will’s power ceases since the will is unable to will backwards and change what has already been done. Zarathustra states, “this alone is revenge itself: the will’s antipathy towards time and time’s ‘It was’” (Z ‘Of Redemption’). Zarathustra also tells us that willing is a form of liberation, although with restriction since it is unable to liberate itself from the constraints of time and therefore “the will itself is still a prisoner” (Z ‘Of Redemption’). This causes anger, suffering, and “teeth-gnashing” and the will becomes a “malefactor” and “an angry spectator of all things past” (Z ‘Of Redemption’). Nietzsche explains that the will’s inability to “will backward” manifests as revenge, as a desire to make others suffer as it does. That is to say, the will seeks to “free itself from its affliction” and invents freedom in the form of revenge (Z ‘Of Redemption’). Here, Nietzsche again points out that impotence leads to revenge and that those who are impotent seek to disempower the powerful through revenge. Moreover, Paul Loeb explains, “the only difference is that the will now aims to justify its deed of revenge by calling them ‘punishment’ and by claiming that those whom it makes suffer deserve to suffer” (Loeb 2001, 29). However, taking revenge and making others suffer is ineffective since it does not lessen the will’s own suffering, nor does it absolve a past mistake or erase a past deed. Thus, “no further punishment, not even the most elaborate of revenges, can undo the fact that a

\(^{187}\) It ought to be noted that Nietzsche states an exception to this. He believes that criminals should be allowed the possibility of atoning except for those who belong to the criminal race. See, WP 740.

\(^{188}\) See, also WP 235.
deed has been done” (Gould 1985, 525). Ultimately Nietzsche wishes that mankind could relinquish and overcome its desire for revenge. Thus, Zarathustra confesses “for that man may be freed from the bonds of revenge: that is the bridge to my highest hope and a rainbow after protracted storms” (Z ‘Of the Tarantulas’).

3.9. Punishment and Revenge:

Nietzsche argues that within the modern European Christian paradigm punishment is most often a manifestation of the desire for revenge. In referring to revenge as punishment, man deludes himself into believing that he is acting virtuously. Hence, Zarathustra proclaims that “‘punishment’ is what revenge calls itself: it feigns a good conscience for itself with a lie” (Z ‘Of Redemption’). Despite this, Nietzsche alleges that punishment should not be understood exclusively as revenge. As Robin Small notes, “he believes there is an overlap between punishment and revenge, even if they are not simply the same thing” (Small 1997, 57).

However, Nietzsche insists that punishment is misrepresented as an exclusively and essentially moral practice, which conceals the fact that punishment is a form of revenge. Since justice is rendered through punishment, modern western society values punishment as a virtue. From the standpoint of society and Judeo-Christian morality revenge is considered immoral and evil. Yet society adopts the perspective that they are not enacting revenge but enacting the virtue of justice when punishing. In this way punishment conceals toxic emotions and pardons cruel behavior. Nietzsche claims that a form of self-deception is at work within society because it fails to reflect upon the various motivations involved when enacting punishment and fails to see the way in

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189 Note that Nietzsche states that being free from revenge is the “bridge” to his “highest hope.” Therefore, overcoming the desire for revenge (and punishment) is not his “highest hope,” but a prerequisite to reaching it.
190 Sometimes Nietzsche treats revenge and punishment as though they were synonymous (see: WS 33 and Z ‘Of Redemption’). In other instances, he distinguishes between the two by referring to both punishment and revenge (see: AOM 78 and Z ‘Of the Virtuous’). The relationship between punishment and revenge in Nietzsche is complex and multifaceted since at times they are described as one and the same whereas at others they are treated as distinct.
which punishment operates as a form of revenge. In one of the longest aphorisms discussing revenge, he describes two forms of revenge to demonstrate the way in which punishment is revenge.192

According to Nietzsche, the first form of revenge is enacted almost unconsciously and automatically in response to being hurt. Motivated by fear and the intent to protect oneself, this form of revenge is enacted for self-preservation, rather than any thought of harming the perpetrator. The perpetrator is of no thought nor consequence because the victim is primarily concerned with his own well-being and safety rather than harming the perpetrator. In the second form of revenge, the perpetrator is of primary concern whereby the victim focuses not upon himself and his own security, but on harming the perpetrator. The victim considers when the perpetrator is vulnerable and weak and acts to inflict pain and injury in the same measure it was originally inflicted upon him. Nietzsche refers to this latter form of revenge as “the revenge of readjustment” because the victim’s honor is restored by means of his counterattack (WS 33). However, if money, property, or status was lost through the initial injury, this variety of revenge will not suffice to restore such things.

Nietzsche points to the fact that these two courses of action are designated by the same word but differ in motive such that the first form of revenge is motivated by fear and self-defense whereas the second is due to a lack of fear and a desire to cause harm. In addition, the first form of revenge is future-oriented since it is done to prevent further harm whereas the second form is past-oriented since revenge is enacted in response to that which has already taken place. While these two forms of revenge are performed outside of a court of law, that alone does not entail that punishment only take the form of revenge in such instances. Rather, when a man seeks legal

192 See, WS 33 where Nietzsche discusses two forms of revenge and the way in which revenge relates to punishment.
means to secure revenge, both varieties of revenge are united in the act of punishment. This is because society enacts punishment to ensure its defense, prevent additional harm, and restore its honor. Nietzsche contends that it is for these reasons that “punishment is revenge” (WS 33).

3.10. Punishment, Improvement, and Power:

In addition to critiquing how the moral overtones of punishment obfuscate the fact that punishment is a form of revenge, Nietzsche also takes aim at the way in which the moral rhetoric conceals the psychological and spiritual cruelty that the practice engenders. Punishment, as practiced by modern society, is oftentimes rendered in the form of incarceration. Considered to be a more humane form of punishment, incarceration replaced ancient punishments that consisted in forms of physical cruelty and violence. Contrary to improving those who are punished, punishment produces negative effects by engendering defiance and indignation. Nietzsche explains, “punishment makes men hard and cold; it concentrates, it sharpens the feeling of alienation; it strengthens the power of resistance” (GM 2.14). Moreover, he worries that the psychological effects of modern methods of punishment (e.g., incarceration) are so severe that they outweigh the effects of historical practices of punishment that were generally focused on physical pain and bodily torture. Nietzsche insists that a simple tour of any jail or penitentiary will illustrate that “miserable, mean conditions make one miserable” (HH 72).

Nietzsche considers it “absurd” that men are kept in prison for the entire length of their sentence.

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193 Although liberalism is premised on its opposition to cruelty, it fails to acknowledge the psychological and moral cruelty of incarceration. This cruelty is also concealed by the liberal penal reforms of the 19th century which focused exclusively on the inhumanity of physical forms of punishment.

194 Note that the prison is based on the deprivation of liberty. Incarceration is an egalitarian punishment insofar as all members of society are supposed to possess equal liberty and therefore, the deprivation of liberty affects all equally. As discussed in the previous chapter, Nietzsche rejects egalitarianism since it effaces difference, uniqueness, and diversity.

195 While Nietzsche alleges that modern, carceral conditions make “mean,” Foucault adds that the conditions of prisons create criminals. He states, “the prison cannot fail to produce delinquents. It does so by the very type of existence that it imposes on its inmates: whether they are isolated in cells or whether they are given useless work, for which they will find no employment, it is, in any case, not ‘to think of man in society; it is to create an unnatural, useless and dangerous existence’” (Foucault 1995, 266).
He states incarceration amounts to “1) Grausamkeit 2) Vergeudung von Kraft, die im Dienste der Gesellschaft wirken könnte 3) Gefahr, ihn rachedurstig zu machen, da er die überflüssige Härte empfindet, also moralische Verschlechterung” (eKGWB 42[51]). Moreover, he alleges that incarceration is as much, if not more harmful, than previous forms of punishment that existed under feudal monarchy and ancient regimes. For this reason, he describes ancient and/or monarchical methods of punishment as preferable to current, modern methods. Nietzsche states, “if it happens that punishment destroys the vital energy and brings about a miserable prostration and self-abasement, such a result is certainly even less pleasant than the usual effects of punishment” (GM 2.14).

According to Nietzsche, the modern institution of punishment not only yields negative results such as psychological and physiological harms, it also fails to reform or improve the criminal. As discussed above, the various justifications for punishment as well as the supposed benefits of the practice fail to establish the legitimacy of punishment. Since punishment cannot be justified on moral grounds, the value of punishment cannot be said to be moral. Nietzsche concludes that the practice of punishing has little to no moral benefit and could therefore be terminated without negative moral impact.

While Nietzsche rejects the moral narrative that presents punishment as a means of improving those who are punished, he also claims that “the purpose of punishment is to improve those who punish; that is the last resort of the apologists for punishment” (GS 219). Thus, punishment improves those who administer punishment, not those who are subjected to it. However, this claim seems to represent the herd’s view, rather than Nietzsche’s view, since he believes that punishment harms both the man who punishes and the man who is punished.

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196 “1) Cruelty 2) Waste of force that could work in the service of society 3) Danger of making him vindictive because he feels the unnecessary harshness, that is, moral deterioration” (eKGWB 42[51]).

197 This aphorism is short and unclear. One can only make assumptions regarding Nietzsche’s intended meaning.
Although Nietzsche fails to provide a definitive reason as to why the herd believes punishment improves those who punish, possible explanations can be found by referring to the surrounding aphorisms as well as his writings as a whole. For instance, punishment is interpreted as an instance of acting virtuously because it is considered to be one way in which justice is rendered. Those who understand punishment in this way are looked upon approvingly by society for acting in accordance with social norms of virtue. In addition, since acting virtuously is considered a duty, and thus something that one ought to do, punishing is a way in which one fulfills their duty to society and the state. However, while Nietzsche acknowledges that man believes himself to be motivated by duty and virtue, Nietzsche insists that man most often acts selfishly.

Nietzsche also observes that complaining, condemning, and punishing often function as a means of alleviating suffering; “the sufferer prescribes for himself the honey of revenge as a medicine for his suffering” (TI ‘Expeditions of an Untimely Man,’ 34). In this regard punishment improves those who punish since it suffices to abate suffering and achieve some solace. Moreover, condemning and punishing functions as a means of solace since it is through these means that the punisher enjoys a feeling of increased power. Nietzsche writes, “every poor devil finds pleasure in scolding – it gives him a little of the intoxication of power” (TI ‘Expeditions of an Untimely Man,’ 34). Punishing others is a socially acceptable way to satisfy the instinctual drive for cruelty and power. Through this practice the punisher experiences a pleasant feeling because he observes the effects of his power upon another. When man observes the effects of his will upon others it also functions as a means of self-affirmation. Thus, the man who punishes is “improved” because he experiences a pleasant feeling accompanied by an increase in the feeling of power. For these reasons Nietzsche insists that the act of punishing arises not from selfless
motives concerning virtue but from the selfish drive for power and the desire to maximize one’s own power.

Nietzsche considers condemning and punishing to be fruitless attempts to gain power because it is due to a lack of power and strength that man engages in such things in the first place. He states, “complaining is never of any use: it comes from weakness” (TI ‘Expeditions of an Untimely Man,’ 34). Nietzsche believes that men who are weak intentionally hurt others to give the impression that they are strong and powerful since only those who lack power must punish in order to gain power. Yet, what is gained is the mere illusion of power, of which Nietzsche observes, “an increase in the belief in power is easier than an increase in the power itself” (WS 181). In The Gay Science Nietzsche explains that hurting others is not a genuine expression of power, but the mere manifestation of man’s desire for power and a way in which to gain external affirmation and approval.\(^\text{198}\) Zarathustra says of such individuals, “you invite in a witness when you want to speak well of yourselves” (Z ‘Of Love of One’s Neighbour,’ 87). Nietzsche alleges that men who are weak “purposely show themselves unjust and hard, in order to leave behind them the impression of strength” whereas men who are powerful have no such need (AOM 64). When powerful men punish others it is not done intentionally, in an attempt to prove that they are truly powerful, but as a byproduct of acting. Kaufmann explains, “only the weak need to convince themselves and others of their might by inflicting hurt; the truly powerful are not concerned with others but act out of a fullness and an overflow” (Kaufmann 1974, 194). Thus, while the weak need the other in order to gain power, the strong only engage with the other due to an excess of power.\(^\text{199}\)

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\(^{198}\) Note that Nietzsche insists that both helping and hurting others are manifestations of the desire for power, but they are not displays of power as such.

\(^{199}\) It ought to be kept in mind that Nietzsche argues that the weak do not actually gain power through hurting others; what they gain is the illusion of power.
Nietzsche insists that punishment not only prevents man from effectively gaining power, but further prevents him from achieving his maximum amount of power. According to Nietzsche, men who rely on others to secure, maintain, and increase their power are not able to achieve the maximum degree of power since they obtain their power, as well as their self-worth and self-affirmation, externally. This is why Nietzsche stresses that punishing is a precarious method for increasing power; it leaves man vulnerable because man’s self-worth and self-image are dependent upon others. Man possesses greater power when his power exists over and apart from others.

Nietzsche claims that “it is the experience of being powerless against men, not against nature, that generates the most desperate embitterment against existence” (WP 55). He explains that the lack of power and strength within oneself, as well as the recognition of another as more powerful than oneself, oftentimes gives rise to the desire for revenge and punishment. Thus, impotence “clouds our horizon with the prospect of revenge, scorn, punishment, and failure” (GS 13). When a man desires revenge but is unable to carry it out due to weakness or impotence “a chronic suffering, a poisoning of the body and soul” is produced (HH 60). Kaufmann explains further that “being oppressed and having to repress one’s desires may lead to cruelty and the desire to hurt” (Kaufmann 1974, 194). However, when man desires revenge and acts upon this desire, Nietzsche likens this to being “struck with a violent – but temporary – fever” (HH 60). That is to say, such men do not become consumed with thoughts of revenge and punishment but allow the desire to express itself before it becomes oppressive and poisonous. However, the feeling of revenge and the desire for punishment are not only aroused by a lack of power since Nietzsche also connects self-loathing and self-consciousness with a strong desire for revenge.²⁰⁰

²⁰⁰ Nietzsche alleges that the connection between self-consciousness and the desire to punish and harm originated with Christianity of which he states, “here, discontentedness with oneself, suffering from oneself is not…an
In *The Gay Science*, he states, “whoever is dissatisfied with himself is continually ready for revenge, and we others will be his victims” (GS 290). This sentiment is again reiterated when Nietzsche remarks, “such a person who is utterly ashamed of his existence… who has become poisoned through and through… eventually ends up in a state of habitual revenge – will to revenge” (GS 359). Zarathustra warns that revenge also develops in part due to a “soured self-conceit, repressed envy, perhaps your fathers’ self conceit and envy” (Z ‘Of the Tarantulas,’ 123). Therefore, according to Nietzsche, the desire for revenge and punishment arises from several sources such as a lack of power, self-doubt, self-hatred, and envy.

Nietzsche speaks disparagingly of the various ways in which punishment arises as illustrated in *The Anti-Christ* when he asks “what is bad?...everything that proceeds from weakness, from envy, from *revengefulness*” (A 57). He contends that the will to revenge is a manifestation of decadence and impotence that clouds the psyche of the “incurable self-despisers, as well as the incurably vain” (GS 359).\(^\text{201}\) In response to those who possess a powerful desire for revenge and punishment, Nietzsche advises caution and skepticism. “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” (Skinner 2006, 2). Nietzsche describes those who are bent on revenge and punishment as “*born enemies of the spirit*” who have “turned out badly” (GS 359). They “are people of a bad breed and a bad descent” (Z Of the Tarantulas 124). Hence, Zarathustra proclaims that we should “mistrust all in whom the urge to punish is strong” (Z Of the Tarantulas 124).

\(^{201}\) For instance, Zarathustra asserts, “I would rather be even a pillar-saint than a whirlpool of *revengefulness!*” (Z ‘Of the Tarantulas’). A pillar-saint is a type of Christian-ascetic that dwells on pillars, one who preaches, fasts, and prays from pillars. It is significant that Zarathustra would rather be a pillar-saint, something that he strongly despises, rather than a man consumed with revenge.
4. Nietzsche’s Privileged, Alternative Perspective

It is evident from Nietzsche’s various critiques that he regards punishment as a custom that can longer be practiced legitimately. Moreover, his critiques illustrate his belief that punishment arises from a place of weakness, which prevents man from developing his full power and potential. However, it seems that the main reason punishment is an object of reflection for Nietzsche is because he considers it to have not only perverted the nature of man and existence, but to have also prevented mankind from flourishing and progressing to a state of greatness and nobility. Beyond his critique he expresses his desire to eliminate punishment from the world. For instance, in *Daybreak*, he anticipates that “men of application and goodwill” will “take the concept of punishment which has overrun the whole world and root it out” (D 13). A similar sentiment is expressed by Zarathustra who hopes that man will soon “grow weary of the words ‘reward’, ‘retribution’, ‘punishment’, ‘righteous revenge’” (Z Of the Virtuous 11). Moreover, in *Twilight of the Idols* Nietzsche writes, “we immoralists especially are trying with all our might to remove the concept of guilt and the concept of punishment from the world and to purge psychology, history, nature, the social institutions and sanctions of them” (TI ‘The Four Great Errors,’ 7).

With the aim of eradicating punishment and its effects, Nietzsche offers various alternatives to the practice. In place of punishing, he advises that when subjected to harm man should focus on how he was benefited rather than how he was harmed. Another alternative consists in “stepping aside” or “looking away.” Nietzsche also undermines the idea of punishment as an expression of some transcendent notion of morality or divine law, by reinterpreting punishment in natural, rather than metaphysical terms. Punishment, for Nietzsche, is a natural drive, an animalistic instinct that ought to be sublimated. In recharacterizing
punishment, he demonstrates that no one has a moral right to punish and he ultimately concludes, “one will not acknowledge the right of anyone to punish” (WP 739). 202

4.1. An Alternative to Punishment and Revenge: Benefit from the Harm Done:

In Ecce Homo, Nietzsche illustrates the way in which he personally responds to those who harm him. He explains that revenge and retaliation are not actual options for him because he forbids himself “all countermeasures, all protective measures, and, as is only fair, also any defense, any ‘justification’” (EH ‘Why I Am So Wise,’ 5). Nietzsche’s “kind of retaliation consists in following up the stupidity as fast as possible with some good sense” (EH ‘Why I Am So Wise,’ 5). In response to “some small or very great folly” he states, “I find an opportunity for expressing my gratitude to the ‘evil-doer’” (EH ‘Why I Am So Wise,’ 5). It is important to note Nietzsche’s language here. He avoids moral rhetoric and describes acts committed against him as the result of foolishness, ignorance, recklessness, etc. Moreover, instead of responding to the “folly” or “stupidity” in terms of revenge, Nietzsche looks to how he can benefit. Thus, he states, “I ‘repay’ it – you may be sure of that” yet such repayment does not consist in exchanging like for like (EH ‘Why I Am So Wise,’ 5).

This maxim is also illustrated in Thus Spoke Zarathustra in the form of a fable titled “Of the Adder’s Bite.” While Zarathustra is fast asleep an adder comes along and bites him, which causes him to awake from his slumber and yell out in pain. Instead of screaming and cursing the snake for the pain it inflicted, Zarathustra cries out, “No, don’t go… you have not yet received my thanks!” (Z ‘Of the Adder’s Bite’). Zarathustra proceeds to thank the adder for awakening him because Zarathustra must be on his way. Thus, even though the snake bit him, Zarathustra

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202 Similarly, Nietzsche states, “one still misunderstands, e.g., even among jurists who think themselves enlightened, the oldest and most valuable significance of punishment – one does not know it at all; and as long as jurisprudence does not put itself on a new footing, namely on that of comparative history and anthropology, it will persist in the useless struggle between fundamentally false abstractions that today pass for ‘philosophy of right’ and that are all based on contemporary man” (WP 744).
offered his thanks because the bite awakened him “at the right time” (Z ‘Of the Adder’s Bite’).

Instead of seeking revenge or punishing those who harm us, Zarathustra advises, “prove that he has done something good to you!” (Z ‘Of the Adder’s Bite’). 203 However, Zarathustra’s advice does not amount to an endorsement of the Judeo-Christian imperative of blessing and forgiving one’s enemies. Nietzsche believes that man should not respond to an injustice with goodness or kindness because it is not healthy, nor human, to be silent and digest such feelings. He proclaims that “silence is an objection” that culminates in a “bad character” (EH ‘Why I Am So Wise,’ 5).

Instead, Nietzsche suggests that man ought to focus upon the way in which they have benefited, rather than the way they have been harmed. Thus, in dealing with how to respond to being harmed, he advocates responding in a non-complimentary way.

Nietzsche claims that the best way for man to deal with his enemies is not to “requite him good for evil” because this will cause the man to be ashamed (Z ‘Of the Adder’s Bite’). In place of shaming others, of which Nietzsche is highly critical, we are told by Zarathustra that it is “better to be angry than make ashamed!” (Z ‘Of the Adder’s Bite’). 204 In The Gay Science, Nietzsche characterizes as bad all “who always want to put to shame” and identifies the desire “to spare someone shame” as “the most humane” (GS 273; GS 274). Nietzsche’s critical stance against putting to shame in part derives from his belief that shame is toxic, offensive, and damaging to one’s pride. 205 Man has always been ashamed of his nature and his instincts and for this reason Nietzsche proclaims that shame “is the history of man” (Z ‘Of the Compassionate’).

Moreover, man’s perpetual shame has prevented him from enjoying and loving himself and his

203 While this is Nietzsche’s advice for when harmed by an “enemy,” he offers different advice when harmed by a friend. He suggests that we ought to say, “I forgive you what you did to me; but that you did it to yourself – how could I forgive that” (Z ‘Of the Compassionate’). In other words, Zarathustra says that he can forgive his friends for harming him but that they have harmed themselves, he has no forgiveness. Yet how have Zarathustra’s friends harmed themselves? On my reading his friends have harmed themselves by expending their power externally, toward, for instance, dominating others, rather than directing it internally, towards bettering themselves.

204 Nietzsche expresses this sentiment in GS 359, Z ‘Of the Adder’s Bite’ and Z ‘Of the Compassionate.’

205 See, for instance, GS 359; Z ‘Of the Compassionate;’ WP 12; WP 47.
existence and since he suffers, he desires that others suffer too. Hence, Nietzsche insists that
shame leaves man bitter and bent on revenge. However, not all men desire to make others feel
ashamed; only “the noble man resolves not to make others ashamed: he resolves to feel shame
before all sufferers” (Z ‘Of the Compassionate’).

Although it is not acceptable to belittle or make ashamed, Nietzsche claims that it is
acceptable to “curse back a little!” (Z ‘Of the Adder’s Bite’). This demonstrates that despite
Nietzsche’s rigorous critique of revenge and punishment, he does not categorically oppose such
things. Rather, he acknowledges that revenge is so varied and nuanced that “the avoidance of
revenge is hardly within man’s power” (WS 259). He believes that “it is human” to enact “a little
revenge” and express a little anger (Z ‘Of the Adder’s Bite’). However, if feelings of anger and
indignation arise, man must control them and allow them to flow outward to prevent such
feelings from turning into ressentiment or the desire for revenge; the external (and natural)
expulsion of energy is preferable to its internalization. In explaining Nietzsche’s thinking,
Walter Kaufmann notes that “Nietzsche assumes that the little revenge would allow the offended
person to get his grievance out of his system, while no revenge at all would mean that the
afflicted would henceforth be consumed by ressentiment” (Kaufmann 1974, 372). Therefore, a
small dose of revenge is healthier than being silent and repressing such emotions and drives.
Moreover, since all states of resignation, forbearance, and meekness are indicative of man’s
inability to enact revenge due to a lack of strength, Nietzsche states that he has “little respect for
anyone who lacks both the capacity and the good will for revenge” (GS 69).

206 Nietzsche often cautions against repressing one’s feelings, drives, or instincts. His perspective should be
understood in light of his hypothesis, will to power. Life essentially strives to discharge and release energy and thus,
repression of one’s drives and instincts is life-denying and life-negating.
4.2. An Alternative to Punishment: Step Aside, Look Away:

As discussed in Chapter Three, Nietzsche affirms a form of justice in which man renounces the will to punishment and revenge. In place of the justice that gives each their due, Nietzsche affirms mercy. This idea is expressed in Book Four of The Gay Science, where Nietzsche introduces a possible alternative to judging and punishing. While sharing his thoughts and goals for the upcoming year he confesses,

I want to learn more and more to see as beautiful what is necessary in things; then I shall be one of those who makes things beautiful. Amor fati: let that be my love henceforth! I do not want to wage war against what is ugly. I do not want to accuse; I do not even want to accuse those who accuse. Looking away shall be my only negation. And all in all and on the whole: some day I wish to be only a Yes-sayer. (GS 276)

A similar sentiment is expressed in a later aphorism where Nietzsche discusses punishment. He asserts,

Let us not contend in a direct fight – and that is what all reproaching, punishing, and attempts to improve others amounts to. Let us rather raise ourselves that much higher. Let us color our own example ever more brilliantly. Let our brilliance make them look dark. No, let us sooner become darker ourselves on their account, like all those who punish others and feel dissatisfied. Let us look away. (GS 321)

When taken together, these remarks indicate that Nietzsche considers judging and punishing a form of “war” or confrontation that has little to no value. He maintains that all attempts at “improving” others should be avoided because they leave man “darker” and “dissatisfied.” Judging and punishing degrades, belittles, and oftentimes yields more self-deprecation and self-contempt. Throughout history morality has been credited with man’s overall improvement. However, Nietzsche insists that morality has not improved mankind. Instead, he claims that mankind has failed to perceive the “contradiction between ‘becoming more moral’ and the elevation and strengthening of the type of man” (WP 391).

Nietzsche suggests that influencing others to change themselves is more efficacious than pitying and punishing. The only way to improve others, although difficult and uncertain, is by example, and thus by role-modeling “ever more brilliantly.” This perspective is presented in his
early work, as illustrated in *Daybreak*, when Nietzsche questions as to “whether one is of *more use* to another by immediately leaping to his side and *helping* him… or by *creating* something out of oneself that the other can behold with pleasure” (D 174). Nietzsche believes the philosopher is one such person who can role-model healthy, self-affirming ways to live and “the philosopher best accomplishes this job of educating others, not through abstract doctrines and treatises – at least not initially – but by way of personal example” (Hicks and Rosenberg 2003, 6). Nietzsche not only considers philosophers to be exemplars but also those who are great and noble. Philosophers live for themselves, create themselves and master themselves, and in doing so they help others by modeling a valuable and healthy life. They educate and inspire through creating their own character and values and by demonstrating a self-styled life. Those who are great relate “to others in terms of overflowing abundant, creative energy, inspiring and transforming others” (Ansell-Pearson 1994, 50). Yet, Nietzsche claims that many will not benefit from such role models because most are “dependent, not on great men, but on ‘principles’” (WP 764).

Nietzsche also explains that when we try to change others, oftentimes the only successful change that occurs, is to ourselves. He proclaims,

> let us stop thinking so much about punishing, reproaching, and improving others! We rarely change an individual, and if we should succeed for once, something may also have been accomplished, unnoticed: we may have been changed by him. (GS 219)

Another reason Nietzsche cautions against trying to improve others is because “every single time something is done with a purpose in view, something fundamentally different and other occurs” (WP 666). Nietzsche regards purposes as merely interpretations of specific aspects of an event and suggests that possibly the concept of “a purpose” is a byproduct of the various forces and

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207 Steven V. Hicks and Alan Rosenberg, “Nietzsche and Untimeliness: The ‘Philosopher of the Future’ as the Figure of Disruptive Wisdom,” *Journal of Nietzsche Studies* 25 (Spring 2003): 6.
drives that led to the “purposive action” – an epiphenomenal occurrence. Therefore, a purpose is a symptom of acting rather than the cause of action as such. Thus, the overall aim to change others by such methods is not efficacious and oftentimes brings about undesired and unintended results.

Instead, Nietzsche advises that we “raise ourselves that much higher” and rather than punish, reprimand, or “improve” others, we should instead choose to “look away” or “step aside.” This position is reiterated in *Thus Spoke Zarathustra* when Zarathustra advises to the “frothing fool” one last piece of advice: “where one can no longer love, one should – *pass by!*” (Z ‘Of Passing By’). Later in that text, Zarathustra teaches us why passing by is valuable. He explains that “there is often more bravery in containing oneself and passing by: in order to spare oneself for a worthier enemy” (Z ‘Of Old and New Law-Tables,’ 21). Therefore, passing by is a matter of conserving one’s energy for more valuable pursuits. Moreover, passing by is not a matter of weakness and impotence where man is unable to respond due to a lack of strength. Rather, the ability to pass by is indicative of strength and power. Kaufmann explains what Nietzsche means in the following way, “to have claws and not to use them, and above all to be above any *ressentiment* or desire for vengeance, that is, according to Nietzsche, the sign of true power; and this is also the clue to his persistent critique of punishment” (Kaufmann 1974, 372). Thus, we learn that Nietzsche has little respect for those that punish and reproach others

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208 Nietzsche advises that one ought to “look away,” “pass by” or “step aside” in several aphorisms. For instance, see, GS 276; GS 371; Z ‘Of Passing By’; Z ‘Of Old and New Law-Tables,’ 21. However, I am uncertain as to whether there is some nuance or subtlety that exists among the various expressions that might serve as a means of distinguishing one from the other. This would not be a surprise since Nietzsche is known to choose his words carefully, yet if there is some distinguishing feature among the three phrases, I failed to observe it.

209 It is well-known that Nietzsche was influenced by Aristotle’s philosophy and in particular Nietzsche’s thoughts on greatness seem to have been inspired by Aristotle’s “megalopsychia,” or greatness of soul. Hence, it is no surprise that Nietzsche’s directive to “pass by,” and his persistent belief that those who are great need not take revenge, is reminiscent of Aristotle’s “great-souled” man. Aristotle states, “nor is he mindful of wrongs; for it is not the part of a proud man to have a long memory, especially for wrongs, but rather to overlook them” (Aristotle, *EN* IV.3, 1125a3-5, trans. McKeon). However, Nietzsche departs from Aristotle concerning punishment since, generally
although he values and praises bravery which consists in a form of containing oneself, or “passing by.”

Despite Nietzsche’s advice, it is important to note that the act of “passing by” could be interpreted as an affirmation of the malefactor’s actions. When viewed from an objective perspective, bestowing mercy upon the wrongdoer in the form of “looking away” could be understood as a form of tacit approval. For reasons such as these, there are some scholars, such as Alan White, who express concern for Nietzsche’s principle of “passing by.” White insists that it would not be possible, nor pragmatic, to apply the principle of “passing by” or “stepping aside” in all scenarios. White makes a valuable insight by pointing out that acting with indifference towards dictators and serial killers is not necessarily the most beneficial and effective course of action. White states,

this principle may guide us reliably in dealing with couch potatoes we happen not to love; the child molester and the serial murderer, however, provide us with problems of a different sort. It is not possible, always, – and perhaps not desirable, generally – merely to ‘pass by’ a Hitler, Stalin, or a Charles Manson (White 1990, 120)

However, White’s thinking is somewhat misguided. Nietzsche's directive does not advise that individuals must always “look away” or “pass by.” To the contrary, a certain degree of wisdom is necessary in determining when man ought to pass by and when man ought to engage in confrontation. White overlooks the fact that Nietzsche suggests that man should only pass by those opponents that are unworthy so that he can preserve his energy for those opponents who are worthy.

speaking, Aristotle adopts a retributive theory of punishment although it can be argued that his theory also possesses a reformative element as well.

While I used the phrase “objective perspective,” it should be noted that Nietzsche does not believe that man can truly perceive objectively.

It is important to add that White asks, “does it follow that, if we view them [Hitler or Charles Manson] from the ‘Nietzschean’ perspective I have been describing, we are obliged to allow them to do as they will?” (White 1990, 121). While White responds that “it does not,” he explains that since it is up to each individual to decide whether to pass by, responses will vary; some will “resist” these men, whereas other will choose not to.
However, Nietzsche does not affirm an unhinged and unrestrained form of bravery, but a disciplined and wise bravery. Man must be able to judge not only when to be brave but also against whom to be brave. Man must know how to fight and how to be an enemy but, more importantly, man must determine which battles to fight, when to become an enemy, and which enemies to oppose. Bravery is not demonstrated through the act of fighting and assuming the status of an enemy, but through a disciplined restraint in which man consciously and intentionally conserves himself for those conflicts that are valuable and those enemies who are worthy. Courage is not demonstrated through fighting as such, but in knowing when to devote one’s time and energy to an enemy. According to Nietzsche, man displays courage and bravery through “containing oneself” – through “passing by” and thereby retaining his energy for a worthier opponent or a more valuable cause.

It is important to note that the concept of “passing by” does not mean that man should not defend himself. Nietzsche has contempt for those who never defend themselves, describing those who are “quick to please” as “baser” and “dog-like” (Z ‘Of the Three Evil Things,’ 2). This perspective is also expressed by Zarathustra, who berates the man “who will never defend himself, who swallows down poisonous spittle and evil looks, the too-patient man who puts up with everything, is content with everything: for that is the nature of slaves” (Z ‘Of the Three Evil Things, 2). Zarathustra is critical of cowardly behavior, equating all that is cowardly with that which is bad. Man must know not only when to engage but also when to disengage, but that does not mean that man should be servile, complacent, or yielding. Man must learn how to conserve energy and how to recognize the times in which it is necessary to live in a state of reduced energy. Moreover, Nietzsche cautions against losing control and becoming enraged. He

212 However, Zarathustra tells us that a healthy ego and a healthy selfishness “spits at slaves of all kinds” (Z ‘Of the Three Evil Things,’ 2).
maintains that a strong and powerful nature “manifests itself by waiting and postponing any reaction” (WP 45). Man must learn how to “pass by” and “step aside” and therefore, man should be careful and disciplined in choosing when and with whom to wage war.\textsuperscript{213}

4.3. Beyond the Will to Punish:

Nietzsche’s ethical precept (i.e., step aside, pass by, look away) represents an alternative to punishing and seeking revenge. While the herd believes “there must be punishment and justice,” Nietzsche insists that we must move beyond reactive behavior and transcend the will to punish entirely (Z ‘Of the Tarantulas’). His reasoning for this concerns in part that the will to punish is a vestige of slave-morality, for which Nietzsche has contempt. As Drolet notes, “Nietzsche saw the greatest task of humanity as one of deliverance from the resentment of slave morality and its source, revenge” (Drolet 2003, 46).

In the case of punishment, it is often taken as proof that mankind has risen above its animal nature and aligned itself with morality and the moral law. In opposition to such thinking, Nietzsche claims that punishment was inherited from animals. However, it was not inherited from other animals but from primitive proto-humans. Punishment marked man’s transition from the state of nature to society; it was utilized in creating a memory, making man responsible, and teaching man social customs and traditions. Thus, the will to punish is described by Nietzsche as an \textit{instinct} left over from our animal origins. The ancient practice of punishing also gave rise to various edicts that later transformed into moral principles. According to Nietzsche, human beings would have remained animals if it were not for the various lies and falsities that were instilled within the human psyche through morality.\textsuperscript{214} Since punishment aided in breeding a number of

\textsuperscript{213} Nietzsche cautions that one must be vigilant when it comes to engaging in wars and conflicts, but also in terms of giving and loving. In general, one must act modestly and disciplined when giving, whether in regard to an enemy or a friend. Giving out of love expends energy, as does engaging in confrontation and conflict.

\textsuperscript{214} See, for instance, HH 40.
faculties into the human-animal and preparing man for the social realm, it is described by Nietzsche as a “gift of the cradle” (WS 183). However, he argues that “man does not become of age” until he returns this gift (WS 183). Furthermore, he states, “some day we shall no longer be reconciled to the logical sin that lurks in all wrath and punishment, whether exercised by the individual or by society” (WS 183).

Nietzsche also describes men who have a strong desire to punish and hurt others as acting in accordance with values and customs from an era that has long since passed. He refers to such men as “backward men” and insists that “we must think of men who are cruel today as stages of earlier cultures, which have been left over” (HH 43). Nietzsche claims that such men possess a “backward nature” since their character and actions align with the mores and customs of a previous culture rather than their own. They are “rough, violent, and impetuous spirits” and are thus, remnants of “an age when rule by force prevailed” (HH 26; HH 614). Although they are considered moral by a previous culture’s standards, they are nevertheless backward. Yet, such men are proof that the values, customs, and the culture in which they live are not strong enough to counter those that have been deeply ingrained long ago.

The person who punishes is not morally virtuous or imparting justice upon the wrongdoer but acting instinctually. On account of this, we ought to de-moralize punishment and re-interpret it in naturalistic terms as an instinct, as the will to punish. This recognition allows us to move away from the Judaeo-Christian moral paradigm and to approach existence from a natural perspective, exempt from moral valuation. This coincides with Nietzsche’s aim to “translate us back into nature,” and to thus remind us that human beings are animals. Recognizing that

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215 Nietzsche provides no explanation as to why he refers to punishment as a “gift of the cradle,” yet I interpreted this phrase in consideration of his later work (e.g., GM). Quite possible I have incorrectly interpreted Nietzsche’s meaning.

216 Nietzsche seems to only use this phrase, i.e., backward men, in Human, All-Too-Human. However, he uses it several times in that. See, for instance, HH 26; HH 42; HH 43; HH 614; HH 633.
punishment is a drive, rather than the moral virtue of justice, opens up a space to cultivate and discipline this drive. Nietzsche explains that the goal is to “master the passions, not to weaken or exterminate them!” (WLN 9.139). He believes that superior and great natures do not give into their drives and act in a wild and uncontrolled manner, since “in the soul, no less than in art, in ethics, and in politics, laissez aller is a mark of decadence and a recipe for dissipation” (Thiele 1990, 63). However, Nietzsche also insists that great natures do not repress their drives and impulses either.

As discussed in Chapter Two, Nietzsche urges man to create himself and become a true individual.217 One aspect of this entails overcoming the desire for physical violence and cruelty and thus, the will toward domination and punishment. “Revenge evades self-responsibility and only attempts to augment one’s power by exploiting and mistreating external objects” (Golomb 2002, 26).218 Since Nietzsche believes we have a responsibility to the self, we must overcome the desire for revenge and no longer permit ourselves to avoid self-responsibility. In The Wanderer and His Shadow Nietzsche explains that historically strong men used “not only Nature but even societies and weaker individuals as objects of rapine” exploiting them completely before moving on (WS 181). However, the extreme exploitation and excessive domination of such men were manifestations “of revenge against his cramped and worried existence” (WS 181). From Nietzsche’s perspective, such individuals were not truly great and powerful because they were riddled with revenge and unable to approach life in a healthy way and thus, with amor fati.

217 It could also be argued that “creating” is an alternative to taking revenge and/or punishing. Since revenge and punishment are unable to redeem the past, man must seek alternative ways in which to liberate himself from the past and the torment that often accompanies it. According to Nietzsche, the most efficient means by which to alleviate pain and suffering is to create. Nietzsche emphasizes several times that willing is a form of creating and for this reason, willing is also a form of liberation. He states, “to redeem that past of mankind and to transform every ‘It was’, until the will says: ‘But I willed it thus! So shall I will it – ’” (Z ‘Of Old and New Law-Tables,’ 3). See, for instance, Z ‘Of the Blissful Islands’; Z ‘Of Old and New Law-Tables,’ 3; Z ‘Of Old and New Law-Tables,’ 16.

In place of cruelty in the form of punishment, Nietzsche affirms self-command. This “is achieved by one’s ability to bring about a ‘transfiguration of nature,’ a purification of the primitive, course element of force into refined, creative power” (Golomb 2002, 21). Nietzsche’s praise of greatness and noble individuals such as the Übermensch excludes “those who give vent to brute force or naked aggression” (Golomb 2002, 21). He believes that “triumph over blind nature and basic instincts, including the drive toward aggressive supremacy, is a sign of the powerful person” (Golomb 2002, 21). However, note that what Nietzsche has in mind is the sublimation of our drives, in particular the drive to punish, and thus not the annihilation of them. In Daybreak he contends, “we are still on our knees before strength – after the ancient custom of slaves” (D 548). However, while discussing “the great human being” and “the genius” Nietzsche explains that strength and power must be utilized for different ends. He states,

I mean the spectacle of that strength which employs genius not for works but for itself as a work; that is, for its own constraint, for the purification of its imagination, for the imposition of order and choice upon the influx of tasks and impressions. (D 548)

While Nietzsche embraces violence, conflict, and war “he did so thinking that, once men will have freed themselves from slave morality instincts and from all repressions of destructive affects, then these effects will have lost their violent character” (Drolet 2013, 46). Moreover, Nietzsche explains, “we desire strong sensations as all courser ages and social strata do” yet he makes it evident that his reference to “strong sensations” ought to “be distinguished from the needs of those with weak nerves and the decadents: they have a need for pepper, even for cruelty” (WP 119). Therefore, strength and power should not be utilized for cruelty nor for punishment but, “all strength applied to development of strength of the will” (WP 132).

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219 Note that for Nietzsche the violence and domination directed at others (Gewalt) is contrasted with power (Macht), which is directed internally and used for self-creation and self-mastery.
Mankind must not succumb to this instinct/drive (i.e., to punish) although it need not extinguish it in its entirety either. Instead, Nietzsche urges man to sublimate the will to punish and thus man must unlearn what has been taught for centuries as truth. Hence, Nietzsche’s dictum that those who love do so beyond good and evil and beyond reward and punishment. Zarathustra proclaims “when you are exalted above praise and blame, and your will wants to command all things as the will of a lover: that is when your virtue has its origin and beginning” (Z 1.22, 1). As opposed to individuals weak in character who might beckon to “justice” or revenge to reconcile a problem, individuals who are secure and confident in themselves respond to problems with the strength of their spirits, understanding that “all great problems demand great love” (GS 345). Moreover, Nietzsche states, “for this is your truth: You are too pure for the dirt of the words: revenge, punishment, reward, and retribution. You love your virtue as the mother her child; but when was it heard of a mother wanting to be paid for her love?” (Z ‘Of the Virtuous’). Here, Nietzsche utilizes the relationship between mother and child to model how man ought to relate to his virtues and values. A mother demands no recompense for her love and affection, yet freely and unconditionally loves her children. In addition, she is not driven to love because of possible gain or benefit but loves unwittingly, without reservation. Traditionally, man’s virtues provided various benefits and rewards through the form of pleasurable feelings, increases in power, affirmations of one’s pride and one’s self, justifications of one’s value and worth, etc. Yet, Nietzsche insists that mankind should not choose their virtues for the reason of possible gain or benefit.

4.4. The Use of Punishment: Preservation of a Higher Type:

Although Nietzsche insists upon overcoming the will to punish, he also acknowledges that it may be temporarily necessary to utilize punishment to ensure the “preservation of a higher
type” (WLN 2.76). Preserving a higher type by way of punishment is best understood from the perspective of hierarchy of rank; one way to ensure that higher, greater individuals exist is to suppress those that are lower, weak, common. The aristocratic function of punishment can also be explained in terms of will to power since a power or force can act as a means of suppression of a lower type “until it becomes just a function” (WLN 2.76). Nietzsche’s various critical remarks about punishment are partly on account of the fact that oftentimes in modernity punishment functions in the opposite sense. That is, it functions to suppress those who are great and noble and in this way, punishment suppresses a higher type rather than a lower. As discussed above, Nietzsche disparages the state’s use of punishment as a means of enforcing and maintaining the status quo and contends that “the ‘state’ as a court of law is a piece of cowardice, because the great human being is lacking to provide a standard of measurement” (WP 750). From the aristocratic perspective, or a rank order of value, punishment functions to subdue the lower. The social necessity of punishment relates to bringing forth the highest individuals and preserving those of higher rank, which requires the use of the masses, the herd. Although Nietzsche discusses the herd in utilitarian terms he does not go so far as to claim that they are useless. Instead, he points out that the mediocre masses are a prerequisite for a strong culture; it is “the prime requirement for the existence of exceptions; a high culture is conditional upon it” (A 57). In this way Nietzsche regards “the ‘exploitation’ (Ausbeutung) of weaker powers by stronger ones as a necessary and essential aspect of an aristocratic social structure” (Ansell-Pearson 1994, 50).

In modern society punishment has become a necessity. That is to say, punishment is not a means of resistance in response to a stimulus but a necessary and automatic response. On this point Nietzsche maintains that “fatality and degeneration are something that completely
abolishes all meaning of reward and punishment” (WP 737). Moreover, he regards “a certain inability to ‘control’ oneself,” as indicative of the “general exhaustion” of “our late culture” (WP 734; WP 737). Nietzsche’s claims can be reconstructed in the following way: patience, restraint, and a certain willingness to endure in response to certain stimuli characterize strong individuals and strong societies whereas automatic, involuntary, and immediate reactions are indicative of weak individuals and societies. He insists that the man who has turned out well, and thus the man who is noble, healthy, and strong, “reacts slowly to all kinds of stimuli” (EH ‘Why I Am So Wise,’ 2). Similarly, in GM he notes that when a society grows in power and strength, the penal law also evolves, resulting in a certain level of tolerance in relation to crime. The state no longer automatically responds to crime as such but begins to view crime as “dischargeable” (GM 2.10). Thus, we learn that Nietzsche relates strength and power to the ability to react patiently and with consideration, rather than automatically and without thought. This suggests that overcoming the desire to punish requires a certain level of strength and power in order to resist responding in like kind.

In conclusion, Nietzsche’s view of punishment “requires us to give up our usual way of thinking about punishment as an inevitable consequence of crime” (Davis 2003, 112). This is because his reflections on punishment undermine the fundamental mode of logical thinking that sets up the relationship between crime and punishment. Moreover, in place of responding in the form of punishment when harmed, Nietzsche provides us with valuable alternatives that amount to responding in a non-complimentary way. Those alternatives consist of determining how being harmed is beneficial, role-modeling strong, life-affirming behavior, and stepping aside, or, looking away. However, while he dismisses punishment in its traditional form, surprisingly, he

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220 See, for instance, WP 45 and WP 47.
does not dismiss the subject of punishment, the criminal. Thus, “although denying the right to
punish and its collateral moral theory, [Nietzsche] does not exclude the figure of the criminal
from his writings” (Balke 2003, 710). For Nietzsche, the criminal is of great value and
importance. While society fears and disparages the criminal and seeks to suppress and extinguish
him, Nietzsche, in opposition, claims that society is conditioned by decadence and that hope for
the future of humanity resides with the criminal.
CHAPTER FIVE
THE CRIMINAL

1. Introduction

As discussed in the previous chapter Nietzsche dismisses punishment, but he does not dismiss the criminal. A careful reading of Nietzsche reveals that the criminal figures large in his philosophy, and generally speaking, his thoughts on the criminal amount to a defense of the criminal. Ultimately, he aims to de-stigmatize and de-criminalize crime and the criminal. However, his many remarks make evident that he rejects the traditional notion of the criminal as well as crime. For Nietzsche, there is no crime as such and further, he believes “that the individual commonly known in criminal law as the ‘recidivist’ or ‘criminal type’ is a social construct” (Nowlin 1992, 275). Criminality, for Nietzsche, is not only or always related to legality. He recharacterizes the nature and behavior of the criminal as arising from psychological, social, and biological conditions rather than moral failure. Unlike conventional thinkers, Nietzsche is more focused on “the problem of norms, rather than of criminal deviation” (Boasson 1963, 468). He describes the criminal as a byproduct of civilization, who as a result of having to repress his natural instincts and drives, declines physiologically and psychologically, which causes him to become ill. Thus, one of Nietzsche’s greatest insights concerning

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criminology is the idea that criminal behavior “is caused (instead of followed) by a guilty conscience” (Boasson 1963, 457).

Instead of discussing the criminal in the moral language that is so often used to describe him, Nietzsche discusses the criminal in non-moral terms and thus in opposition to convention. In doing so, he redirects us away from the traditional moral characterization of the criminal as corrupt, selfish, misguided, and harmful. Furthermore, Nietzsche seeks to “reevaluate the criminal both in terms of his relationship to the community and to the species” (Parejko 1974, 13). He challenges us to reexamine our moral convictions concerning the criminal and his crimes and urges us to reassess the way we understand the criminal and his role in society. In a letter to Jacob Burckhardt Nietzsche explains, „Ich wollte meinen Parisern, die ich liebe, einen neuen Begriff geben – den eines anständigen Verbrechers“ (Letter BVN 1889, 1256). Nietzsche introduces an alternative conception of the criminal as natural, strong, and uniquely valuable. In presenting this perspective, he refers to Dostoevsky’s testimony regarding the prisoners he lived amongst in Siberia, for whom Dostoevsky reserves nothing but praise. Dostoevsky stressed that his fellow inmates did not represent the worst of society or those who were beyond atonement; rather, they were strong, honorable men, “carved out of about the best, hardest and most valuable timber growing anywhere on Russian soil” (TI ‘Expeditions of an Untimely Man,’ 45).

Nietzsche rejects the traditional view in which the criminal is seen as something to be neutralized


It is interesting that Nietzsche refers to himself as a “decent criminal.” However, it is no surprise considering his writings that he regarded himself as a criminal. This passage reveals Nietzsche’s perspective that society is unfamiliar with the idea of a “decent criminal.” The idea that society is only familiar with one type of criminal will be discussed further below.
and/or extinguished. Instead, he maintains that the criminal must be seen as both necessary and beneficial to society as well as humanity.

2. Nietzsche’s Historical, Genealogical, and Psychological Account of the Criminal

   It is well known that Nietzsche rejects the conception of morality that posits the existence of universal, eternal, categorical principles. Contrary to this, Nietzsche suggests that morality originates with custom and tradition and acting morally entails conforming to custom and tradition. Moreover, that which is “good” or “moral” is not grounded in altruistic or unegoistic acts but in “obedience to customs,” which Nietzsche defines as “the traditional way of behaving and evaluating” (D 9).\(^{225}\) Contrary to his position in Human, All-Too-Human, Nietzsche acknowledges in Daybreak that human beings are indeed morally motivated, yet he insists that the distinction between those who are moral and those who are immoral is that the former conform to custom whereas the latter deviate.\(^{226}\) Thus, Nietzsche states, “to be moral, correct, ethical means to obey an age-old law or tradition” (HH 96). Whereas those who adhere to custom are considered moral, those who do not are deemed evil and bad, and “in general, they are criminals” (D 20).

   Rather than invoking a metaphysical explanation for the obedience to custom and tradition, Nietzsche suggests that obedience follows from a belief in punishment or negative consequences.\(^{227}\) That is to say, it is believed that if man violates tradition, then a harmful

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\(^{225}\) It is important to note that Nietzsche dismisses the idea of “unegoistic” or “selfless” acts. For instance, he states, “never has a man done anything that was only for others and without any personal motivation. Indeed, how could he do anything that had no reference to himself, that is, with no inner compulsion (which would have to be based on a personal need)? How could the ego act without ego?” (HH 133). Moreover, in his later writings Nietzsche insists that the bad conscience created “the conditions for the value of the unegoistic” (GM 2.18).

\(^{226}\) Although Nietzsche acknowledges that morally motivated acts exist, he holds the position that the presuppositions concerning such acts are false.

\(^{227}\) Reward and punishment motivate obedience. For instance, Zarathustra states, “You want to be paid as well, you virtuous! Do you want reward for virtue and heaven for earth and eternity for your today?” (Z ‘Of the Virtuous’).
outcome will ensue. However, in Kaufmann’s interpretation of Nietzsche, he states that

Nietzsche

also thought that the reason why people obey the laws others impose on them is that they want power. They believe that this is the way to get ahead and become influential and successful; they fear that an infraction of custom might cause society to retaliate and to diminish their power. (Kaufmann 1974, 250)

However, Kaufmann’s reading is misguided because it suggests that obeying custom is a conscious process. For Nietzsche, the ritual of obeying custom is instinctual; it is historically prior to the rise of rational explanation. As Sedgwick rightly explains, historically the morality of custom is “the ‘solid’ ritualistic sphere of doing what is customary because it is customary, the obedience to authority because it is authority” (Sedgwick 2013, 70). Thus, primitive man adhered to custom without thought or reason and only over time identified himself in terms of his obedience to custom.

Nietzsche claims that custom, and thus morality, are opposed to that which is natural. Morality functions, in part, to suppress man’s animal-nature and thus his natural drives. For this reason, Nietzsche argues that the will to morality is a will toward (re)directing humanity away from its “pure” and “primordial” roots.228 He acknowledges that morality, and the metaphysical falsehoods and illusions that are coextensive with it, have accelerated man’s evolution from animal to man, yet he also claims that morality obfuscated the historical reality of this evolution, which is really a taming and disciplining of the animal that is man.229 Although this alteration was said to be a form of bettering man, a means of “improvement,” of making man more “humane,” Nietzsche claims that it was really a means of corrupting man.230 He perceives the suppression of man’s animal nature as a dulling of his best drives and an extinguishing of his

228 Nietzsche discusses this notion in several places. For instance, see TI ‘Maxims and Arrows,’ 6; WP 98; WP 150; WP 351; WP 400; WP 405; WLN 10.53; EH ‘Why I Am a Destiny,’ 7.
229 This is discussed in Human, All-Too-Human where Nietzsche states, “without the errors inherent in the postulates of morality, man would have remained an animal” (HH 40).
230 Nietzsche describes morality as having many functions of which the suppression of the animal in man is but one.
keenest instincts whereby man is made more docile, dependent, and harmless. He argues that, “man is, relatively speaking, the most unsuccessful animal, the sickliest, the one most dangerously strayed from its instincts” (A 14). Moreover, morality accounts for the societal disdain extant in the Western world regarding all beast-like states, since such states recall a primitive human-animal prior to his entrance into society.

Nietzsche explains that the man who functions in accordance with his natural drives and instincts “necessarily degenerates into a criminal” (TI ‘Expeditions of an Untimely Man,’ 45). The criminal is an atavism; his existence harks back to an epoch, prior to man’s entrance into society. Through his deeds, the criminal illustrates his refusal to be tamed and controlled. Thus, Nietzsche’s understanding of criminality is not limited to the just punishment of individuals who committed crimes. Rather, he considers the criminal more broadly to encompass and embody those who, for one reason or another, fail to conform with social standards of morality, law, religion, etc.

However, it is important to note that the concept of the criminal arises only after the creation of the community and since a given community’s laws and customs are constantly in flux, the criminal’s status is also in flux. The laws governing right and wrong and the morals prescribing good and evil change from generation to generation. A given society may deem something immoral and wrong that another encouraged and praised as moral and right. As Nietzsche astutely points out, “what a time experiences as evil is usually an untimely echo of what was formerly experienced as good – the atavism of a more ancient ideal” (HH 149). Just as Nietzsche describes the history of morality and values as in flux, changing and evolving throughout time, the criminal is spoken of in a similar manner; the status of the criminal, in part, corresponds to the alteration of moral principles and convictions. While certain deeds are

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231 He concludes by saying that man is thus the most interesting animal.
rendered evil or immoral at one time and then good in another, so too is the person that committed such deeds. The criminal “is only a criminal from the point of view of a given community which itself is in constant transition” (Parejko 1974, 10). Thus, that which defines criminality is not absolute but changes from generation to generation. For this reason, Nietzsche describes as “backward” all who adhere to deep-seated norms and customs of a society that has long since passed. While such men are considered moral in accordance with a previous culture’s standards, they are considered immoral by the moral paradigm extant. Hence, Nietzsche argues that immoral “indicates that someone has not felt, or not felt strongly enough, the higher, finer, more spiritual motives which the new culture of the time has brought with it” (HH 42).

For Nietzsche, despite his frequent talk of ‘the criminal,’ there is no criminal as such, nor crime as such.\textsuperscript{232} The criminal is a social construct without an essence. In \textit{Twilight of the Idols}, Nietzsche writes,

\begin{quote}
let us generalize the case of the criminal: let us think of natures which, for whatever reason, lack public approval, which know they are not considered beneficial or useful, that Chandala feeling that one is considered not an equal but thrust out, as unworthy, as a source of pollution. (TI ‘Expeditions of an Untimely Man,’ 45)
\end{quote}

The criminal is the quintessential exception; he represents those who break with custom and tradition, and thus those who violate moral, legal, and religious principles.\textsuperscript{233} In general, society’s disapproval is directed at, though not limited to, three types of criminality, namely the individual, the lawbreaker, and the sinner.

\textsuperscript{232} Other scholars hold the same interpretation. See, Balke 2003, 705; Parekjo 1974, 9.

\textsuperscript{233} Traditionally, society does not consider all exceptions equally and Nietzsche also acknowledges this. For instance, the individual who fails to conform with morality is considered immoral, the individual who breaks the law is considered a criminal or a lawbreaker, and the individual who violates Judeo-Christian principles is considered evil or a sinner. At times Nietzsche distinguishes between them and discusses them as separate types but, generally speaking, he uses the criminal as a placeholder for those who fail to conform to social norms, whether legal, moral, or religious. Moreover, with regard to exceptions, Nietzsche departs from the dominant view and states, “there actually are things to be said in favor of the exception, \textit{provided that it never wants to become the rule}” (GS 76).
2.1. The Individual:

For Nietzsche, individuality is itself treated by society as paradigmatic of criminality. The individual is capricious and unpredictable, yet in its origins society’s success depended upon making man common and predictable. In an attempt to secure and perpetuate itself, society weaponized itself against the individual in the form of custom and law. Societal membership consisted in obedience to custom and law and therefore it required that the individual relinquish his autonomy.\(^\text{234}\) In addition, the community names and dictates what is customary and thus what is moral and legal. However, it does so in its own interest, which is oftentimes in opposition to the interests of the individual. According to Nietzsche, custom and tradition are not only opposed to the interests of the individual but are also harmful to the individual; in the form of morality, custom and tradition are weapons against individuality.

However, society praises those who adhere to the status quo, paying little mind to the negative consequences that ensue for the individual. While mediocrity, sameness and conformity are accepted and affirmed, any form of difference, strangeness, or uniqueness is marginalized and condemned.\(^\text{235}\) Self-interest and autonomy are prohibited and instead the individual is required to sacrifice himself for society, which Nietzsche expresses contempt for since the individual is used as a means to further the ends of society.\(^\text{236}\) This is an extension of his individualism, which runs throughout much of his writings. Moreover, societal values advocate altruism, which Nietzsche considers to be destructive because it requires that the individual must do what is harmful to himself, i.e., regard himself as less valuable than the other.\(^\text{237}\)

\(^\text{234}\) Although society considers the individual to be a threat, Nietzsche argues that society is a threat to the individual.
\(^\text{235}\) See, for instance, HH 225; BGE 212; Z ‘Of the Way of the Creator.’
\(^\text{236}\) However, his position is nuanced such that it depends upon what type of individual is being sacrificed for the ends of society. Nietzsche accepts the sacrifice of the common individual. However, sacrificing higher, greater individuals, such as the criminal type, for the needs of society, is not justified.
\(^\text{237}\) As mentioned above, Nietzsche dismisses the notion of altruism. Despite this, he is still critical of the fact that society affirms altruistic behavior since it is harmful to the individual.
aforementioned claims demonstrate, society is structured “to prevent people from becoming individuals” (Thiele 1990, 38).

Since all non-conformity is considered a danger and a threat to the whole, it is a risk to be an individual. When man acts in accordance with his own laws and principles, and thus not in accordance with those of society, he is reproached and castigated. From the perspective of society, “supramorality appears as immorality” and therefore, “to be an individual is to be immoral (Thiele 1990, 41-42). While society praises and rewards conformity and obedience, it is considered “a crime to go apart and be alone” (Z ‘Of the Way of the Creator’). Those who go their own way are assigned a variety of epithets, such as “criminals, free-thinkers, immoral persons, and villains” (D 164). The criminal is therefore an individual who does not follow the laws of his community but exists as a law unto himself. “He dares to take a solitary path when the community is enforcing a communal path. He dares to follow his feelings even though they have been strictly forbidden” (Parejko 1974, 15). Hence, the criminal, by definition, is not only a threat to society, but a double-threat. The criminal is a threat qua criminal and qua individual.

2.2. The Lawbreaker:

According to Nietzsche, the concept of the criminal arises only after the creation of society. Hence, “it is from the community that we get our definition of the criminal, for he is the one who will not cooperate” (Parejko 1974, 10). In describing the origin of the criminal, Nietzsche points to the creditor-debtor relationship that structures the relationship between society and its members. As a member of society, man reaps the benefits of this membership, such as protection, security, communal advantages, peace, trust, living without fear and the like. It is important to note, as Hatab does, that “the benefits of social life constituted the ‘debt’ that individuals owed to the group” (Hatab 2008, 92). Membership in the community is contrasted
with that of the “outside” where one lives subject to hostilities, violence, fear, uncertainties, and war. Each member of society is conditioned to act in the interests of the state. Thus, man is taught that he has a duty to the state that is fulfilled through his obedience and compliance. In other words, each member’s debt to society consists in his obedience to custom and law. Whereas the community’s identity is reflected in its social customs and traditions, laws signal that which is antithetical to the community’s identity. Laws illustrate the community’s conception of criminality, which generally consists in what the community defines as its antithesis, its neighbor. On this point, Nietzsche states that penal laws reflect that which the community perceives as “foreign, strange, uncanny, outlandish” (GS 43).

By violating the law, the criminal breaks his vow to society and harms society through his actions. That is to say, the debtor has not merely failed to repay the creditor but has committed a further violation and has assaulted his creditor. Therefore, the community responds to the criminal as it does an enemy, namely, by exclusion from society and communal benefits, and by treating the criminal as “an inferior, a weaker brother, an outsider” (WS 22). In societies early in their development, the criminal threatens not only the stability of the community, but the community’s very existence. As the community grows more powerful it responds to the criminal with leniency and mercy because the criminal’s actions are no longer a threat to the existence of society. In modernity the criminal’s power to destabilize the state is further reduced because individuals have come to believe in the necessity of the state, which has further empowered the state. Nevertheless, all “crime belongs to the concept ‘revolt against the social order’” (WP 740). Although the criminal might not be conscious of the significance of his act, any violation, no matter how minor, is a rejection of society as such.
The very act of committing crime is simultaneously a violation of the social contract and a rejection of the very conditions of the possibility of society. This accounts for why society aims to suppress the criminal even though society commits the very same acts. As Parejko points out, “every community has a hierarchy which allows an uneven distribution of justice. Rank sanctions copious evils” (Parejko 1974, 11). The community rationalizes its own acts as just and for this reason, such actions not only go unpunished, but are also approved. Therefore, “what the individual is loath to do on his own, the community does with blatant impunity” (Parejko 1974, 11). The community cannot forbid an action in itself because it would condemn itself through this prohibition. Therefore, it forbids actions that are directed within and against the community, although it permits, and even encourages, those very same actions when directed at the enemy. Since the actions of the state are directed at different ends than those of the criminal, the state’s actions are not viewed as unacceptable. The criminal witnesses the same actions being committed by the state, although with approval and without condemnation. As a result, the criminal observes that there are not intrinsically iniquitous and opprobrious actions, because they see “spying… violence, defamation, imprisonment, torture, [and] murder” being committed “with a good conscience,” in the name of justice, all of which escape the judgment and condemnation to which the criminal himself is otherwise subjected (GM 2.14). Furthermore, the criminal learns that crime is nothing in itself; rather, crime is what the community defines it as. From the criminal’s perspective, the community seems duplicitous, yet the community interprets itself as prudent and its actions as self-preserving. For this reason, the criminal accepts his punishment as a form of fate which he experiences “as simply the sanctioned form of abusive treatment for which they have been prosecuted, that penal justice is simply power and violence practiced with a ‘good conscience’” (Hatab 2008, 100).
2.3. The Sinner:

The concept of the criminal takes on a radically different status and meaning with the notion of the sinner. Through the concept of the sinner, Christianity created “the great, immortal criminal” (GS 78). Nietzsche explains that in an attempt to “improve” mankind, Christianity sought to tame the beast within man of which he states, “this frightful species which takes up the fight against the wild animal is called ‘priest’” (WP 373). To provide meaning to the suffering and pain that accompany the bad conscience, the priests invented the notion of “sin.” Therefore, the Christian priests locate the cause of suffering within the sinner, and thus, within man himself; “sin” is merely the name given to the state of internal cruelty and self-punishment that is the bad conscience. Nietzsche insists that the priests exploited guilt in order to create sin; essentially the material (legal) concept of debt (guilt) is moralized.

The priest’s hatred for all that is animal and natural is reflected in the concept of sin. Nietzsche argues that the priests had an “instinctive hatred for actuality” and their malcontent created an inner tension that manifested as a desire to harm, which the priests directed at all that caused fear and danger (A 39). In particular, the priests directed their hatred toward man’s strongest, most natural drives, which were condemned as selfish and subsequently forbidden. Hence, sins are manifestations of man’s natural drives, although in the most extreme form.

Solomon and Higgins point out that “the hostility of Christianity to our physical and psychological natures is evident in the list of sins that it considers most ‘deadly’ – pride, envy, greed, gluttony, sloth, lust, and anger” (Solomon and Higgins 2000, 99). Rather than teach man how to control and discipline his drives, Christianity required the impossible, namely, to

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238 See, for instance, GM 3.20.
239 Through the moralization of guilt and the concept of sin, legal concepts such as duty, guilt, and law assume “a uniquely moral meaning and significance: guilt, for example, no longer means (legal) debt, but (moral) sin” (Ansell-Pearson, 1994, 122).
extinguish them. Thus, in order to do good, man was required to suppress his powerful instincts and perform actions that were selfless. However, since man was incapable of performing unselfish actions, he began to despise himself and his nature.

All sin amounted to disobeying God’s will and thus the narrative of sin entailed that all pain and suffering were punishment for transgressions against God. Since the concept of sin provides meaning to what would otherwise be pointless suffering, the “sinner accepts his status as sinner” (WP 373). Accepting one’s status as sinner has a useful purpose. Assigning blame and accountability allows the sinner to endure his nature and existence; even if the blame is directed at himself, it suffices as a form of relief. The sinner would rather be guilty than suffer senselessly. However, since man’s (animal) nature accounts for his sinfulness, the sinner begins to conceive of himself as “guilty and reprehensible to a degree that can never be atoned for” (GM 2.22). The sinner’s crime against God is his very nature and, in this way, he never ceases to be a criminal.240

Nietzsche contends that the concept of sin and the subsequent identity of the sinner, have detrimental physiological and psychological effects. He explains, in order “to excite feelings of sin, to prepare the way for contrition, one has to reduce the body to a morbid and nervous condition” (WP 229). Moreover, the concept of sin facilitates man’s self-loathing and self-contempt, and in this way, the priest gains power over the sinner through his self-destruction. While the sinner must atone for his sins, the priest is his only means of being saved, of gaining forgiveness for his sins.241 Therefore, the sinner is uniquely subjugated by the priest such that the priest dominates man through the concept of sin. Yet, Nietzsche insists that “the most that is

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240 Whereas the criminal as lawbreaker violates the laws of the state, the sinner as criminal violates the laws of God.
241 Nietzsche argues that the will of God is in actuality the will of the priests. In addition, priests utilize sin to ensure and enact their power. Hence, Nietzsche states, “from a psychological point of view, ‘sins’ are indispensable in any society organized by priests” (A 26).
achieved is never healing” since through sin, suffering is compounded” (WP 248). In this way, the sinner is made sick.

Nietzsche describes the invention of sin as “the greatest event so far in the history of the sick soul” (GM 3.20). Nietzsche’s contempt for sin and its devastating effects are illustrated in following description of man. He states,

Like a caricature of a human being, like an abortion: he had become a ‘sinner’, he was in a cage, one had imprisoned him behind nothing but sheer terrifying concepts… There he lay now, sick, miserable, filled with ill-will towards himself; full of hatred for the impulses towards life, full of suspicion of all that was still strong and happy. (TI ‘The ‘Improvers’ of Mankind,’ 2)

Through sin, man was domesticated and made weak and harmless. “In physiological terms… making it sick can be the only means of making it weak” (TI ‘The ‘Improvers’ of Mankind,’ 2).

The consequences of Christianity’s attempt at man’s improvement caused none other than man’s unmitigated corruption, and thus Nietzsche claims that the invention of sin led to “superfluous cruelty” (D 53).

As will later be discussed, Nietzsche defines the criminal in terms of a state of sickness. However, in the form of sin, criminality is generalized to all since crime consists not only in legal wrongdoing, but moral wrongdoing as well. Moreover, through sin crime is broadened from particular transgressions to the person as a whole, in the form of the sinner. Just as the laws of the state prevent man from flourishing and becoming genuinely free and sovereign, so too does the concept of sin since “modern man… is in the grips of an ill-conceived notion of responsibility: he thinks of it in terms of sin” (Zamosc 2011, 124). Furthermore, Nietzsche states “the church sends all ‘great men’ to hell – it fights against all ‘greatness of man’” (WP 871). Hence, Nietzsche insists that man must liberate himself from the concept of sin and the sinful conscience.
3. Nietzsche’s Critique of the Criminal

3.1. Slander and Condemnation: Our Crime Against Criminals:

Nietzsche’s polemic against society’s treatment of the criminal is in part motivated by the fact that society assumes one general perspective of the criminal as worthless and deserving of slander and contempt. However, in *Human, All-Too-Human*, where Nietzsche’s first statement concerning the criminal is found, one learns that he considers society’s perspective false and misguided. The aphorism titled “punishable, never punished” contains a single sentence that reflects Nietzsche’s sympathies for the criminal; he states, “our crime against criminals is that we treat them like scoundrels” (HH, 66). It is important to note that this first direct remark concerning the criminal is critical, although his criticism is not directed at the criminal, but interestingly at society. While invoking the conceptual connection between crime and punishment, the title and the assertion that follows replace the typical figures corresponding to both crime and punishment. Traditionally, the criminal is considered a man who has committed a crime against society; however, Nietzsche inverts this conception and instead posits that society has committed a crime against the criminal through its ill-treatment and contempt. He states, “moral contempt causes greater indignity and harm than any crime” (WP 740). But why exactly does Nietzsche think that society is not justified in its treatment of the criminal? Isn’t the criminal deserving of his lowly status and treatment?

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242 My project examines Nietzsche’s thoughts on the criminal, punishment, and justice beginning with the works that are commonly associated with “Nietzsche’s middle period.” Nietzsche addresses the aforementioned topics in his “early period,” but I chose to limit my project by excluding that particular phase of his work and therefore, *Human, All-Too-Human* marks the beginning of my project.

243 While society is the acting authority that sanctions and distributes punishment, the criminal accepts and deserves said punishment. Thus, the criminal is both punishable, and punished and therefore it seems reasonable to assume that the title of HH 66 is not referring to the criminal.

244 See HH 66 and HH 70. When considering these aphorisms, as well as other surrounding aphorisms, on my reading Nietzsche is referring to society and its poor treatment of criminals.
Nietzsche’s opposition to society’s slandering and condemnation of the criminal derives in part from his rejection of the very idea of criminality as is traditionally understood. While Nietzsche admits that there are contemptible criminals, he insists that it is not due to their criminality; rather, there are just contemptible individuals. Furthermore, Nietzsche cautions against defining the whole of an individual in relation to a single deed. He states, “a single deed, whatever it may be, is zero compared to the entirety of what one has done, and may be counted out without falsifying the calculation” (WLN 10.108). Some actions are merely a response to a stimulus; they are not manifestations of the essence of an individual. Hence, Nietzsche asks, “a rage, a reach, a knife thrust: what of personality in that?” (WP 235). In addition, Nietzsche problematizes the moral presupposition that holds that there are actions that are intrinsically reprehensible. He insists that there is no eternal right or wrong, nor an absolute good or evil, and this is true not only of actions, but also of mankind, and the universe.

According to Philippa Foot, this idea has devastating consequences, particularly for the notion of justice, which as we have seen, Nietzsche rigorously attacks and dismisses. Foot claims that with Nietzsche's dismissal of universal values “it seems, that not even the most flagrant acts of injustice can be called evil in themselves” (Foot 1994, 7-8). However, Foot misinterprets Nietzsche’s perspective and adopts a flawed dichotomous moral framework for analyzing Nietzsche. She overlooks the fact that Nietzsche explicitly states, “it goes without saying that I do not deny – unless I am a fool – that many actions called immoral ought to be avoided and resisted” (D 103). He provides a caveat to this position and suggests that moral actions should be

\footnote{Nietzsche’s refusal to affirm traditional notions of justice, goodness, and morality does not entail that he necessarily affirms that which is “unjust,” “evil,” and “immoral.” While at times Nietzsche affirms acts that are in the category of what would be considered evil or immoral, he rejects such categories and therefore should not be judged in relation to them. Moreover, Foot misses one of Nietzsche’s major points, which is that notions of goodness, justice, and morality oftentimes warrant acts of injustice, cruelty, and evil. While Nietzsche may dismiss justice as is typically understood, he offers considerable praise for a form of justice that excludes revenge and punishment.}
done and immoral actions resisted “for other reasons than hitherto” (D 103). While Nietzsche does deny absolute values such as evil, he does so without abandoning moral discourse, which he instead situates within particular historical, social, and natural forces that give hypothetical or contextual meaning to them in various ways. Within Nietzsche’s framework, there can be no isolated analysis of actions, because they all belong to a whole, a whole that is made up of complex relations. Therefore, nothing can be good or bad in itself, since nothing exists by itself, in an isolated and unbound state. Everything that exists is bound to everything else and thus to expel one is to expel all. According to Nietzsche, man is not inherently evil or corrupt, nor is man inherently good or benevolent. This reasoning also applies to the criminal such that “the criminal is a criminal only in name, for nothing is good or evil in itself” (Parejko 1974, 9). Hence, Nietzsche urges us to resist moral judgments entirely and advises, “you should say ‘enemy’, but not ‘miscreant’; you should say ‘invalid’, but not ‘scoundrel’; you should say ‘fool’, but not ‘sinner’” (Z ‘Of the Pale Criminal’).

Nietzsche further argues that society is unwarranted in its slander of criminals in part because the criminal is not to blame. As has already been noted, Nietzsche insists that free will is a myth. All men act in accordance with necessity, which leads him to deny that individuals can be held responsible for their actions. Although Nietzsche dismisses absolute responsibility and guilt, he reasons that if blame and guilt exist at all, they do not reside within the criminal but within the whole of society. Hence, he claims, “guilt lies in the educators, the parents, the environment, in us, not in the murderer” (HH 70). Once again, Nietzsche inverts the typical

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246 This seems to be a reference to Nietzsche’s rejection of society’s reliance on metaphysical principles and explanations.
247 See, for instance, WP 293.
248 Recall that Nietzsche himself uses such terms in Ecco Homo to refer to those that harm him. This was mentioned in the previous chapter.
249 Nietzsche fails to refer to what might be considered “root causes” of crime, such as systemic inequality, racism, poverty, joblessness, etc. While Nietzsche’s claims in HH 70 and WS 28 can be interpreted as “root causes” of
figures associated with innocence and guilt and instead places blame upon society rather than the criminal. However, this is not an affirmation of the existence of guilt; instead, Nietzsche is merely emphasizing that man is a compilation of external forces and influences and thus, it is a further extension of Nietzsche’s opposition to the idea that man is a *causa sui*. Everyone’s nature is the result of ancient and historical influences, as well as circumstance, upbringing, education, etc. Since the criminal cannot be legitimately judged and blamed, he is thus undeserving of slander and condemnation. However, this does not entail that the criminal should be treated with pity and compassion.

3.2. Sympathy and Pity: Our Crime Against Criminals:

Although Nietzsche criticizes the way in which society responds to the criminal in the form of condemnation and condescension, he also dismisses society’s willingness to bestow pity and compassion upon the criminal, despite the disservice and damage the criminal enacts against it. Nietzsche insists that modernity is characterized by an ethos of sensitivity and weakness that has made man antithetical to suffering, hostility, and crudeness. As “slaves to the democratic taste” their two mantras consist of “‘equality of rights’ and ‘sympathy for all that suffers’ – and suffering itself they take for something that must be abolished” (BGE 44). According to Nietzsche, modern society has grown so amenable, polite, delicate, and meek that it now defends and protects those who injure it.250 On this point, he explains, “there is a point in the history of society when it becomes so pathologically soft and tender that among other things it sides even with those who harm it, criminals, and does this quite seriously and honestly” (BGE 201). This is because society deems the exploitation of those who are weaker as unfair and wrong.

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250 Although this is interpreted as progress and advancement, Nietzsche contends that “the softening of customs….is a consequence of decline” (TI “Expeditions of an Untimely Man,” 37). To the contrary, austere customs “can be a consequence of a superabundance of life” (TI ‘Expeditions of an Untimely Man,’ 37).
Furthermore, society reasons that a justice that punishes is counter to the moral progress and spiritual advances that have been made thus far, concluding that justice in this form is barbaric and too harsh. Pity is thought to be a more humane way of dealing with the criminal and it is considered to be an improvement upon the way in which the criminal was treated in the past. However, Nietzsche insists that the criminal is not in need of pity. Although society interprets pitying the criminal as kind and virtuous, Nietzsche insists that it is really detrimental and destructive.

In explaining his perspective, Nietzsche insists that pity is an “unconscious instinct of destruction” (WP 985). Moreover, the consequences of pity are the reduction and destruction of the vitality of those who are pitied. Therefore, Nietzsche identifies pity as “a squandering of feeling, a parasite harmful to moral health” (WP 368). Since, as Kaufmann notes, “pity includes a measure of condescension and sometimes even contempt,” pity is a means by which man injures the pride of others, causing them to feel ashamed (Kaufmann 1974, 368). Furthermore, Nietzsche explains that pity does not lessen suffering but increases it. He states, “the suffering of others infects us, pity is an infection” (WP 368). Nietzsche’s indignation for pity extends even to the criminal and it is for such reasons that Nietzsche proclaims, “I want to teach them what is understood by so few today, least of all by these preachers of pity: to share not suffering but joy” (GS 338).

While Nietzsche is concerned for the criminal-type and the way in which pity and sympathy affect him, his concern for the criminal in general pales in comparison to his concern for the great criminal and other noble-types. That is to say, he is most concerned with its effect upon the great criminal and the way in which “it has caused sickness in the higher types and

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251 See, for instance, BGE 201 and BGE 202.
252 See for instance, HH 50; Z ‘Of the Compassionate.’
therefore poses great danger” (Halsted 1991, 40). Nietzsche insists that “those who are evil or unhappy and the exceptional human being” are not in need of pity or forgiveness (GS 289). Rather, such individuals deserve “their philosophy, their good right, their sunshine” (GS 289). Nietzsche urges us to overcome pity and explains that doing so is a mark of strength and nobility.\(^{253}\) While a certain degree of pity is acceptable, Zarathustra advises that all pity and compassion should be done from a distance.

3.3. The Criminal’s Retrograde Influence Upon Society:

Nietzsche not only shows contempt for society’s treatment of criminals but also for the way in which society alters itself to respond to the criminal. In particular, society alters its structure, institutions, and values in order to counter and ultimately extinguish the threat of the criminal. According to Nietzsche, the way in which a society responds to its “enemies” is a measure of that society’s strength and power. Oftentimes Nietzsche discusses strength and power in terms of one’s response to sickness and disease. He believes that how one responds to, treats, and perseveres determines whether one is strong and powerful. This reasoning can also be applied to society and the way in which it reacts to the criminal. In other words, the way a society responds to its criminals is a way to measure that society’s strength and power.

According to Nietzsche, until a society is powerful enough, it wages war against the criminal. However, as the community grows in power, it begins to fear the criminal less and less because it no longer needs to worry about the criminal disturbing the social order. This is because the criminal is no longer powerful enough to threaten society. Nietzsche explains that a powerful society should acknowledge that it need only respond to those enemies that are equal in power to itself. Since a society that is powerful cannot be significantly harmed by its enemies (e.g., the criminal) it can ignore those that are weak and unable to harm it because they are not

\(^{253}\) See for instance, Z ‘Of the Compassionate”; BGE 270; EH ‘Why I Am So Wise,’ 4.
truly its enemy. That is to say, since the criminal cannot harm society, he is not equal to society, and thus, he is not society’s enemy. Though such a society might possess contempt for the criminal, it should not wage war with it. Powerful communities tend to treat their criminals with less severity and those that are truly great and powerful respond to the criminal not with leniency, but mercy; for such societies are able to allow those who harm it to go without punishment of any kind.

Generally speaking, crime is looked upon as being detrimental to society and since the criminal engages in crime they are seen as those who corrupt and pollute society. For this reason, society believes that the criminal must be suppressed and ultimately extinguished. Instead of acceding to the traditional perspective held by 19th century society which characterizes the criminal as a symbol of decadence whose very existence corrupts society, Nietzsche instead contends that it is not the criminal, nor their actions, that are “retrograde influences” but society’s response to the criminal. This position is illustrated by Nietzsche in The Wanderer and His Shadow where he expresses opposition to the way in which modern society deals with criminality, arguing that it approaches the criminal with a seriousness and strictness reminiscent of more primitive times.

Nietzsche maintains that the various experts and institutions that have been established throughout society to deal with the criminal contribute to the overall regression of society. He states, “all criminals force society back to earlier stages of culture…their influence is retrograde” (WS 186). In response to the criminal, society has created “the cunning detectives, the jailers, the hangmen…the public counsel for prosecution and defense” (WS 186). Interestingly in this passage Nietzsche demonstrates a concern for the masses in pointing out that the entire system that has been constructed in response to the criminal is “oppressive” not only to the criminal, but

254 Recall that Nietzsche believes one should only wage war with one’s enemies, and thus, one’s equals.
to society *en masse*, and thus, to those who are not lawbreakers. Deterrence is but one of the many utilities contained within the practice and institution of punishment that is aimed directly at non-criminals in order to ensure that people do not violate the law. In explaining Nietzsche’s view, Sedgwick remarks, “the way in which modern society deals with criminality by seeking to hold the person who commits evil accountable in the sternest possible terms is regressive. It is as if the criminal brings out the more primitive aspects of social relations” (Sedgwick 2013, 118). Thus, Nietzsche’s perspective is not that the criminal as such is oppressive; rather, oppression is generated from the entire apparatus of judgment established in response to the criminal.

However, Nietzsche maintains that the struggle against crime and the war against criminals is not only oppressive but additionally it is on the whole superfluous. He claims that crime results from a degenerate and decadent society, which he illustrates in *Will to Power* when he lists crime and criminality as one of the “consequences of decadence” (WP 42). He insists that society fails to accurately interpret the relationship between crime and decadence because with decadence “its supposed causes are its consequences” (WP 41). However, decadence is intrinsic to all peoples and societies; it is an essential aspect of life and therefore it cannot be eliminated or extinguished. As a society grows in strength and profundity, “the richer it will be in failures and deformities, the closer to decline” (WP 40).

On account of this Nietzsche insists that modernity is wrong in warring against decadence. Furthermore, such struggles are said to be moral in nature, yet they result in “no ‘improvement’” (WP 41). Nietzsche thinks it would be more advantageous for society to shift its focus away from containing and defeating the criminal and towards cultivating and nurturing the criminal. Society should not wage war against the criminal or against decadence; “what should be fought vigorously is the contagion of the healthy parts of the organism” (WP 41). Since
society’s current focus is “oppressive rather than elevating,” Nietzsche insists that society should redirect its focus toward promoting and facilitating the cultivation of healthy drives and strong individuals (WS 186). Ultimately society’s focus ought to be man’s enhancement and flourishing rather than man’s oppression and corruption.

3.4. A Strong Human Being Made Sick:

As mentioned previously, the criminal is only a criminal from the standpoint of society. The criminal exists in part because of the way in which society suppresses and limits the power of its members in an effort to maintain and increase its own power. Society enacts a prohibition on man’s natural drives, which results in man’s destruction and demise. Nietzsche contends that the fundamental drive of life is “the expansion of power” and therefore, the criminal instinctually desires to exercise his strength and power (GS 349). The drive toward exploitation, domination, seizure, or violence is not proof of immorality. Rather, the aforementioned drives are proof of life. Nietzsche insists that resisting and suppressing these basic organic functions is a denial of life since that which is alive must grow, expand, suppress, and exploit, not because it is immoral or evil, but merely because it lives. With regard to this point, Nowlin explains that “for Nietzsche, the criminal or ‘criminal type’ is an inevitable by-product of any society which constrains the natural will of the individual who, consciously or unconsciously, transcends its current moral or legal code” (Nowlin 1992, 281).

In *Twilight of the Idols*, Nietzsche asserts that “the criminal type is the type of the strong human being under unfavorable conditions, a strong human being made sick” (TI ‘Expeditions of an Untimely Man,’ 45). This type of individual acts out against decorum in part because he is not suited for his environment or is not gaining what he needs. He lacks “the wilderness, a certain…

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255 Note that there is one type of criminal that Nietzsche speaks of that falls outside of this characterization, namely those that belong to the criminal race, which will be discussed below.
freer and more perilous nature and form of existence in which all that is attack and defense in the
instinct of the strong human being comes into its own” (TI ‘Expeditions of an Untimely Man,’
45). Parejko explains that for Nietzsche the criminal “is a strong man who has been deprived of a
field upon which to discharge his strength” (Parejko 1974, 15). In other words, “he is a strong,
healthy animal who lacks conditions of existence sufficiently primitive for him to exercise the
right of his power” (Parejko 1974, 15). However, Nietzsche denounces the fact that humanity’s
natural inclinations have been deemed evil and/or characterized pathologically. He proclaims
that man’s imagined evil nature has instilled such great fear that it has prevented man from
trusting his drives and acting instinctually. Since the criminal is prevented from the various
natural ways to discharge his strength, the criminal’s “only natural opponent is the soil from
which they grew” (WP 204). Therefore, society becomes the opponent of all who become ill as a
result of the conditions of society.

It ought to be noted that the way in which Nietzsche describes the criminal is somewhat
paradoxical. Nietzsche suggests that social customs and conventions function as constraints
whereby man is forced to suppress his natural drives and instincts. In particular, social
constraints and prohibitions prevent high types from flourishing and becoming great. However,
Nietzsche’s narrative of the criminal suggests that the very conditions of society that prevent
great natures from coming into existence are those that stimulate the criminal to come about; the
criminal, in part, becomes a criminal through his opposition to society’s norms and conditions. If
society were not structured in a way that oppresses the criminal’s instincts, it would seem that
the criminal would lack the necessary impediments and oppositions that contribute to his coming
into being. The current conditions of society function as stimulants to those individuals who are
different, exceptional, and rare, facilitating a form of existence in which, according to Nietzsche,
the criminal is the ideal type. Hence, Nietzsche states, the conditions of society have become such that “every kind of apartness, every protracted, all too protracted keeping under, every uncommon, untransparent form of existence, brings men close to that type of which the criminal is the perfection” (TI ‘Expeditions of an Untimely Man,’ 45). However, Nietzsche is critical of the conditions of society since they result in keeping man mediocre and preventing great types from coming into being, of which Nietzsche considers the criminal one such type. Despite his criticism of such conditions, the criminal comes about by opposing them, as do most of Nietzsche’s ideal types.

According to Nietzsche, society condemns the characteristics of the criminal, which, if manifested in conditions outside of society (i.e., in the state of nature) would cause man to dominate and flourish. However, Nietzsche disparages the fact that society punishes man for doing what he does naturally as a human. In a different environment, namely, one outside of the confines of society, the characteristics of the criminal would make the human strong and powerful, securing his ability to survive in the state of nature. Hence, Nietzsche alleges that “every animal...instinctively strives for an optimum of favorable conditions under which it can expend all its strength and achieve its maximal feeling of power” (GM 3.7). For this reason, the animal loathes and despises all that interferes with, encroaches upon, or prevents it from procuring such conditions. As a result, over time the criminal learns to distrust his drives and instincts because when he acts in accordance with his instinctual nature it brings about “danger, persecution, disaster” (TI ‘Expeditions of an Untimely Man,’ 45). He is forced to live in a state of hiding, to assume a sort of clandestine existence, where he must suppress and conceal his instincts and desires because they conflict with those of society.\(^{256}\) Over time the criminal turns

\(^{256}\) That is to say, the criminal’s “virtues have been excommunicated by society” (TI ‘Expeditions of an Untimely Man,’ 45).
against himself and his natural impulses and instincts. The healthy, vital forces intermix with
“the depressive emotions, with suspicion, fear, dishonor” and bring about a sickness, a decline
(TI ‘Expeditions of an Untimely Man,’ 45). Furthermore, Nietzsche states, “to have to combat
one’s instincts – that is the formula for decadence: as long as life is ascending, happiness and
instinct are one” (TI ‘The Problem of Socrates,’ 11). Thus, the corruption of man ensues when he
lacks a harmonious relationship with his instinctual nature.

The conditions in which the criminal is forced to exist are, according to Nietzsche,
“almost the recipe for physiological degeneration” (TI ‘Expeditions of an Untimely Man,’ 45).
He describes the conditions of society as parasitic upon the criminal since such conditions further
agitate the bad conscience, which thereby contributes to the criminal’s psychological and
physiological demise. This, in part, accounts for why great and noble men are so rare. Nietzsche
explains,

> every power that forbids, that knows how to arouse fear in those to whom something is forbidden creates a
> ‘bad conscience’ (that is, the desire for something combined with the consciousness of danger in satisfying
> it, with the necessity for secrecy, for underhandedness, for caution). Every prohibition worsens the
> character of those who do not submit to it willingly, but only because they are compelled. (WP 738)

In addition to causing the criminal’s psychological and physiological decline, Nietzsche alleges
that the conditions of society also account for the creation of the criminal-type, or the recidivist.
Hence Nietzsche states, “the fatality behind a crime has grown so great that it has grown
incurable” (WP 742). Nietzsche explains that when man violates the laws of society, he is
subjected to punishment and as a result he is stigmatized by society and treated with contempt
and disrespect. Due to such ill-treatment, the criminal begins to degenerate physiologically. “In
turn, physiological deterioration of the accused brings about a kind of moral deterioration or
conscious lack of respect for societal norms and rules of conduct” (Nowlin 1992, 281). Although
Nietzsche alleges that punishment serves no moral purpose, in describing the way in which the
criminal is made psychologically and physiologically sick as a result of society’s ill-treatment, it could be argued that punishment does indeed possess a moral dimension. The moral effect of punishment is best understood on account of the fact that “the act of ‘blaming’ and the presumption of legal ‘guilt’ that punishment and detention entail also affects the moral understanding or conscience of the accused” (Nowlin 1992, 281). As a result, the criminal begins losing respect for society’s laws and customs, increasingly engages in individual instances of crime, and thereby takes on a criminal character. In this way society creates not only the criminal-type but also the recidivist.

Nietzsche conceives of the criminal as an individual who exists in a sick, degenerate state because he is ill-suited for society. The criminal is strong but degenerates to a state of sickness because the societal conditions in which he lives and exists are stronger and more powerful than him.257 This is in part because the conditions of society are made to benefit the masses, not the individual. Nietzsche explains that where there are masses, there is also a desire to be enslaved. However, “where men are enslaved, there are few individuals, and these are opposed by herd instincts and conscience” (GS 149). Thus, the individual, as the exception, generates mistrust in the herd; “the herd feels the exception, whether it be below or above it, as something opposed and harmful to it” (WP 280). Society marginalizes and excludes the man who is different, who does not follow the rules, and who goes his own way. Insofar as the herd dominates, “it bullies the exceptions, so they lose their faith in themselves and become nihilists” (WP 27). As a result, the criminal becomes sick in the sense that he suffers from his independence and nonconformity

257 Nietzsche discusses the criminal as a strong human being made sick primarily in an aphorism titled, “The criminal and what is related to him” (TI ‘Expeditions of an Untimely Man,’ 45). This aphorism is preceded by an aphorism titled “My conception of genius” in which Nietzsche discusses “great human beings,” “benefactors” of humanity, and “genius” (TI ‘Expeditions of an Untimely Man,’ 44). It is my contention that the proximity of these two topics was intentional on Nietzsche’s part, since he oftentimes describes the criminal in terms of greatness, genius, and benefaction.
in the form of guilt, doubt, and regret and he begins to perceive and experience himself with
disdain and contempt. Nietzsche explains that there is a significant “degree of inquisition,
mistrust, and intolerance needed to deal with the exceptions as criminals and to suppress them –
to give them a bad conscience, so they suffer their exceptionalness as a disease” (WP 726).\textsuperscript{258}
Furthermore, this affliction is so corrosive and devitalizing that there can be no deliverance, no
way in which to redeem oneself.\textsuperscript{259} Hence, Nietzsche says of the state of criminality that it can be
an overwhelming and burdensome affliction.

As previously mentioned, Nietzsche claims that society itself is responsible for the
creation of the criminal. Specifically, the “tame, mediocre, gelded society” that is modern society
brings about the overall decline of an individual who is “raised in nature, who comes from the
mountains or from adventures of the sea” (TI ‘Expeditions of an Untimely Man,’ 45). Thus,
although the criminal possesses a strong nature, oftentimes the conditions of society prove
stronger. However, Nietzsche claims that not \textit{all} criminals decline and succumb to society and
the oppressive feelings of regret, contempt, and loathing that have been ingrained within the
human psyche in the form of the bad conscience. There are “cases in which such a human being
proves stronger than society” and Nietzsche claims that “Napoleon is the most famous case” (TI
‘Expeditions of an Untimely Man,’ 45). Therefore, there are some who overcome it, such as the
great criminal, of which Napoleon is representative. While some are able to bear the burden of
being a criminal, such as the great criminal, others succumb to the weight of it and perish from

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\item[258] However, the herd also responds to exceptions by transforming them into a function; all individuals of high rank,
“the stronger, more powerful, wiser, and more fruitful” are transformed into something of use (WP 280). The
exceptions are made to be of service to the herd in the form of “guardians, herdsmen, watchmen” (WP 280). In
doing so, the herd successfully lowers what was previously of high rank.
\item[259] Therefore, even redemption has its limits. When the limits of redemption are reached, Nietzsche suggests that
death is the only option. This will be discussed further in the next section.
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One such example of those who succumb to the weight of criminality is the “pale criminal,” which illustrates the effects of the bad conscience and will be discussed in the following section.

3.5. The Pale Criminal:

In *Thus Spoke Zarathustra*, Nietzsche dedicates an entire section to discussing the pale criminal, who represents the fate of most criminals. Although his thoughts on this criminal-type are not confined to this text alone, it contains the largest description of the pale criminal among his writings. Generally speaking, the pale criminal is representative of those unable to escape or overpower the conditioning and influence of the bad conscience. That is to say, the criminal engages in crime, yet regrets his crime afterwards, which causes him to become ill.

Nietzsche introduces us to the pale criminal in the form of a story about a man who commits a murder and then, to provide meaning to his crime, commits a robbery thereafter. Without the theft, there would be no motive for murder and his actions would be nothing but madness. Thus, we are told by Zarathustra that the pale criminal only commits a theft to conceal the randomness and madness of his initial crime. Therefore, “rationalization leads to a kind of surplus crime” (Gould 1985, 518). The pale criminal does not understand his deed, nor the drive which led to it and in an attempt to make sense of “an uncomprehended drive,” he falsely

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260 The great criminal will be discussed in further detail in the final section, “Nietzsche’s Privileged Alternative Perspective.”

261 This statement refers to Nietzsche’s texts that have been translated into English. I cannot speak to what might be contained with the *Nachlass* and other German writings.

262 In the translator’s introduction, Hollingdale describes the theme of this section as “its opposite; the ‘criminal instinct’” (Hollingdale, Introduction 1969, 32). That is to say, the criminal instinct is the opposite of the nature of virtue, which is discussed in the previous section “Of Joys and Passions.” It is my contention that this description is somewhat misleading since on my reading Nietzsche is not merely referring to the criminal instinct, but generally the regret that arises after an action as well as the effects of the bad conscience. While the section does discuss criminality, the pale criminal seems to be a failed criminal-type since he is unable to own his actions and instead succumbs to the effects of the bad conscience.

263 In addition to the discussion to follow, the story of the pale criminal seems to also illustrate two types of resentiment or, revenge, one of which concerns the “judges and sacrificers” who fail to bestow mercy and instead take revenge upon the pale criminal and his ego. The other is the pale criminal himself, whose revenge is directed internally, against himself.

attributes a corresponding motive, namely, that he desired to steal (Z ‘Of the Pale Criminal’). Yet, Nietzsche is critical of the pale criminal’s attempt at interpretation since it is always only a misinterpretation.

It seems reasonable to assume that Nietzsche is in part commenting on the way in which human beings are conceived of as acting intentionally and rationally. He resists this characterization because he sees humans as animals, governed not by reason, but by instincts and drives. Although human behavior is interpreted as rational, ordered, and intentional, Nietzsche insists that it is really singular, non-rational, and random. Within each man there is “a knot of savage serpents,” which pulls him in several ways, where an action is merely the result of a drive that won out (Z ‘Of the Pale Criminal’).265 The criminal’s repressed drives seek to express themselves and they direct themselves upon his environment, the environment upon which the pale criminal wants to do harm, since it has done harm to him. Thus, the pale criminal is but a symptom of his environment, his culture, and the rigid normative structure.

Furthermore, Nietzsche often cautions against the concept of the doer and the causal relationship that is said to exist between a man’s intentions and his actions. He states, “the thought is one thing, the deed is another, and another yet is the image of the deed” (Z ‘Of the Pale Criminal’). The deed and the image of the deed are not identical; the image of the act is a representation of the deed, laden with metaphysical commitments, that is more powerful and larger than the deed itself.266 While the pale criminal is able to commit the act of murder and a theft, he is unable to accept “the image of the deed” and thus the implications associated with it. Moreover, he fails to recognize that his memory of the crime, and thus his idea of it, is an

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265 It is my contention that the phrase “knot of savage serpents” is a reference to Nietzsche’s belief that having to combat one’s instincts leads to decadence. That is to say, “a knot of savage serpents” seems to suggest that man does not have a harmonious relation among his instincts and drives.

266 In several place, Nietzsche claims that the feeling of guilt after an action demonstrates that man’s nature is not equal to the action. See, for instance, TI ‘Maxims and Arrows,’ 10; EH ‘Why I Am So Clever,’ 1; WP 234; WP 235.
aggrandized image of his crime. When he reinterprets himself through this single deed, he redefines himself in relation to the exaggerated image that he conjured up. As Gould remarks, the pale criminal is unable “to get free of the ‘knowledge’ or the ‘interpretation’ that resides in the image” (Gould 1985, 515). The pale criminal internalizes the judgment as his essence and as a result he is no longer the exception, but the rule. According to Nietzsche, this is a common phenomenon, since oftentimes, after a deed, man experiences a feeling of “numbness and lack of freedom” (WP 235). The doer recollects the deed as if narcotized “and feels as if he were an accessory to it” (WP 235). However, Nietzsche tells us that we must refrain from such a response. Thus, he states, “the iniquitous interest that society may have in treating our entire existence from a single point of view, as if its meaning lay in bringing forth one single deed, should not infect the doer himself: unfortunately this happens almost all the time” (WP 235).

Nietzsche acknowledges that committing a crime is an instance of strength for the pale criminal, “the great justification of their little, pale existence” (WP 735). However, Nietzsche is critical of the fact that the criminal’s strength did not persist. The pale criminal was able to carry out the deed but unable to commit to it. Thus, Nietzsche states, “he was equal to his deed when he did it: but he could not endure its image after it was done” (Z ‘Of the Pale Criminal’). After the deed was done, “the evil which is now evil overtakes him who now becomes sick” (Z ‘Of the Pale Criminal’). The pale criminal is deemed evil and in being deemed evil, self-loathing and self-contempt arise, which ultimately leads to his physiological decline and eventually illness.267 For Nietzsche, this illustrates that the criminal had no right in performing the deed in the first place. “The ‘bite’ of conscience: sign that the character is not equal to the deed” (WP 234). However, he acknowledges that this is a common occurrence such that “a criminal is frequently not equal to his deed: he makes it smaller and slanders it” (BGE 109).

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267 See for instance, WP 735; WP 740.
From Nietzsche’s perspective, to remain equal to the deed would be to recognize the deed as a deed, and to therefore resist interpretation and moral judgment. For the pale criminal to mitigate his suffering, which is in a sense self-inflicted, he must abandon the judgment and various metaphysical commitments it entails. In doing so, the pale criminal should “forego the ‘fiction of the doer’ as well as the ‘fiction of the doing’” (Gould 1985, 527). He must embrace his fate, rather than escape it or disparage it. Nietzsche asserts, “I do not like this kind of cowardice toward one’s own deeds; one should not leave oneself in the lurch at the onset of unanticipated shame and embarrassment. An extreme pride, rather, is in order” (WP 235). As Nietzsche has noted multiple times throughout his writings, no deed can be changed, undone, or nullified. It is for this reason that he claims that it is pointless and meaningless to regret one’s past actions. The pale criminal’s regret and remorse sentences him to the past and as such he is condemned by the image of his deed. “For the Pale Criminal, the punishment has become the image of the deed, and in his judgment he has made this sentence his own” (Gould 1985, 525). However, we are told that “there is no redemption for him who thus suffers from himself, except it be a quick death” (Z ‘Of the Pale Criminal’). Thus, it is for these reasons that the pale criminal becomes sick and perishes from his crime.

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268 On my reading, this relates to the concept of willing-backwards and it alone constitutes revenge.
269 This phrase is reminiscent of an earlier remark. Nietzsche states, “one should offer the opportunity of suicide to the incurable criminal who has become an abomination to himself” (D 202).
270 The above section reflects my interpretation of Nietzsche’s pale criminal as described in the section “The Pale Criminal.” It is important to note that this notion is underrepresented in Nietzschean scholarship and the secondary literature. However, I want to draw attention to three scholars who did discuss this passage. In the book titled *Within Nietzsche’s Labyrinth*, Alan White devotes a section to the pale criminal. His interpretation is confined to the conflict between the body and the soul of which he attributes the latter to the pale criminal’s decline. Eventually White concludes that “the pale criminal is the victim of his soul. His soul damns his body’s desires as evil, and represses them for as long as it can. When it can do so no longer, it releases them as savages, to commit a senseless murder” (White 1990, 75-80). In addition to this interpretation is the psychoanalytic interpretation of Timothy Gould who argues that “the Pale Criminal is pale because he is in a kind of mourning” and he is sick because of his inability to relinquish his deed and its image (Gould 1985, 524). There is some overlap between the two accounts, particularly the emphasis upon the needs of the body and the soul, which highlights a possible inadequacy with my reading. Lastly, in his book *Nietzsche’s Justice: Naturalism in Search of an Ethics*, Peter R. Sedgwick discusses this narrative in terms of “the great contempt” and thus the pale criminal’s ego and his attempt at self-judgment. On my
3.6. The Benefit and Value of the Criminal-Type:

While Nietzsche has little respect for the pale criminal, he insists that the criminal-type serves various functions that are essential to the preservation and advancement of the community, and the species. Yet, he maintains that society is ignorant of the criminal’s role and value because it “retains the falsification of history in favor of the ‘good man’ (as if he alone constituted the progress of man)” (WP 1017). According to Nietzsche, the notion of the “good man” constitutes “the worst mutilation of man that can be imagined” (WP 141). The good man is a fiction that denies the interconnection between good and evil. He explains,

for every strong and natural species of man, love and hate, gratitude and revenge, good nature and anger, affirmative acts and negative acts, belong together. One is good on condition one also knows how to be evil...Whence, then, comes the sickness and ideological unnaturalness that rejects this doubleness...the invention of the good man? (WP 351)

Nietzsche interprets the concept of “the good man” as a consequence of weakness and exhaustion.²⁷¹ He claims that “every error, of whatever kind, is a consequence of degeneration of instinct, degeneration of will” (TI ‘The Four Great Errors,’ 2). This is also illustrated by Zarathustra when he asks, “what do we account bad and the worst of all? Is it not degeneration” (Z ‘Of the Bestowing Virtue,’ 1).²⁷² Although society characterizes the actions of the criminal as harmful and threatening, we are told by Zarathustra that it has been “the good and just,” not the evil and the wicked, who have done “the most harmful harm” to society and humanity thus far (Z ‘Of Old and New Law-Tables,’ 26).

Nietzsche insists that those who are virtuous and good cannot alone be credited with humanity’s evolution and progress since both the “good man” and the “bad man” play a role in the advancement of the species, although the function of each is different. For instance, “the reading, Sedgwick provides the most accurate interpretation of the passage as it relates to the relationship between criminality, suffering, and society. (See, Sedgwick 2013, 157-161).²⁷³ See, for instance, WP 54; WP 59.²⁷⁴ Nietzsche also equates degeneration with that which is bad in the previous quotation. He concludes by saying “one has thereby virtually defined the bad” (TI ‘The Four Great Errors,’ 2).
good cultivate the accepted, whereas the evil experiment with other forms of life” (Parejko 1974, 16). Hence, Nietzsche explains,

we think that hardness, forcefulness, slavery, danger in the alley and the heart, life in hiding, stoicism, the art of experiment and devilry of every kind, that everything evil, terrible, tyrannical in man, everything in him that is kind to beasts of prey and serpents, serves the enhancement of the species ‘man’ as much as its opposite does. (BGE 44)

Moreover, in Human, All-Too-Human, he argues that “deviating natures,” “the wildest forces,” and “that which is called evil” are necessary because they perpetuate and secure the growth and progress of humanity (HH 224; HH 246). At times, Nietzsche even goes so far as to say that “the strongest and most evil spirits have so far done the most to advance humanity” (GS 4). Despite this, the values of society function as a way in which society defends itself against the criminal. However, Nietzsche points out that such values are in part derived from the actions of the criminal and thus the very figure society tries to protect itself against.

As previously noted, Nietzsche understands morality as a dynamic and fluid force. The moral realm is neither eternal nor stable; it is in a continual state of change and transformation. Nietzsche argues that it evolves, mutates, and changes as a result of the actions of the criminal. That is to say, he attributes the constant reworking of morality and moral thinking to “the effect of successful crimes” (D 98). Furthermore, Nietzsche asks, “all the great works and deeds which have remained standing and not been washed away by the waves of time – were they not all, in the deepest sense, great immoralities?” (WLN 4.7). This explains why Nietzsche alleges that the irreverence and contempt directed at the criminal is unwarranted; it is due to the actions of the criminal-type that the values, norms, and customs of society change and evolve. “The criminal defies the borders envisioned by men of conventional aspirations, for this he should be commended” (Parejko 1974, 16). Hence, the criminal is deserving of respect and praise rather than ridicule and contempt.
Nietzsche explains that “what is new, however, is always evil, being that which wants to conquer and overthrow the old boundary markers and the old pieties” (GS 4). Although initially the man who participates in the breaking of custom is labeled by society “a bad man,” he will only remain as such until there is a shift in values. The actions of the criminal force a change in norms and values, which in turn forces the revaluation of the criminal’s status. Therefore, the status of the criminal and his crime transform because the standard by which he and his crime were originally judged also transforms. Although the criminal is initially categorized as immoral, evil, and/or sinful, when the societal values evolve as a result of the actions of the criminal, the criminal’s (moral) status changes as a result.

Nietzsche claims that men who are honored and revered today were subjected to similar conditions as the criminal. That is to say, “the color of the subterranean is on the thoughts and actions of such natures; everything in them becomes paler than in those upon whose existence the light of day reposes” (TI ‘Expeditions of an Untimely Man,’ 45). For example, Nietzsche mentions “the scientific nature, the artist, the genius, the free spirit, the actor, the merchant, the great discoverer” (TI ‘Expeditions of an Untimely Man,’ 45). However, future generations look back upon such individuals with a new standard and a new means of evaluating, realizing that their actions were not destructive but productive and beneficial. The negative status of the criminal transforms into a positive conceptualization once his deed has been accepted and history acknowledges the significance and necessity of his act. Hence, Nietzsche notes, “it is characteristic of every ‘progress’ that the strengthened elements are reinterpreted as ‘good’” (WP 123).

According to Nietzsche, “history treats almost exclusively of these bad men who subsequently became good men!” (D 20). One such example, although not referred to by
Nietzsche himself, is illustrated by the historical origin of the United States of America. At the time in which the American Declaration of Independence was written, such an act was not merely a criminal act, but an act of treason. Thus, the men who wrote this document and founded this country were initially considered traitors. However, their actions resulted in a change in values, which thereby transformed their status from traitorous criminals to visionaries and eventually, to the founding fathers of the United States of America. This example demonstrates in part why Nietzsche cautions against branding those who violate the status quo as criminals. Morality is not absolute, and neither is the status of the criminal. The judgment that initially characterizes the criminal as the ultimate antagonist to communal life alters with passing generations and reconceptualizes the criminal as a benefactor.

However, it seems that by articulating the paradoxical status of the criminal, Nietzsche is illustrating that the dominant moral paradigm is flawed and inadequate. Kathryn Pyne Addelson provides a means of understanding why this is the case. According to Addelson, the failure of morality consists in the fact that it prevents moral revolutionaries from being incorporated within the dominant moral paradigm. That is to say, traditional morality is unable to conceive of moral creativity, or moral revolution, as a form of moral change. The reason for this is that traditional moral paradigms are centered upon “notions of obligation, principle, and justification” (Addelson 2000, 293). Furthermore, any and all types of moral change are characterized as moral reform, which thereby excludes moral change in the form of moral revolution. The aim of moral reform consists in “the preservation of values” and thus “making our principles consistent,” annihilating any and all forms of injustice, and lessening pain and suffering.

273 Although an example of Nietzsche’s idea of criminality, he would disagree with several principles of the American Constitution. He would consider some of the aims and desires of the founding fathers to be manifestations of slave morality.


To the contrary, the task of moral revolution consists in “the creation of values” (Addelson 2000, 293). The moral revolutionary, or in Nietzsche’s language the great criminal, acts without proper, or traditional, justification.

Although the criminal may be acting in accordance with principles, such principles are not yet in existence since they belong to a new paradigm. The moral features of the moral revolutionary’s act cannot be properly characterized under the current moral paradigm. Since moral behavior is traditionally explained by way of principles and the corresponding justifications for said principles, the moral revolutionary is seen as immoral because their behavior cannot be justified by reference to the moral principles extant. Addelson points out that the dominant moral paradigms are narrow and limiting and for this reason it is “impossible to account for the behavior of the moral revolutionary as moral behavior” (Addelson 2000, 294). However, the behavior of the moral revolutionary is symbolic of the need for change within the current moral paradigm.

If the moral revolutionary is understood as acting morally at all, such behavior is deemed immoral, evil, or sinful under the current moral schema. The only way to understand the moral revolutionary’s behavior is by reference to the moral paradigm extant and it is for this reason his behavior is characterized as immoral. Addelson notes, “it is only after the revolution that he can justify what he has done – if the revolution is a success, that is” (Addelson 2000, 299).

Moreover, she remarks, when “seen in a Nietzschean light, moral revolution contains what is essential to morality in a way that morality in stasis does not” (Addelson 2000, 299). The traditional philosopher “offers the rationalization that is necessary to the herd, the rationalization

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275 As per Nietzsche’s descriptions of the “philosopher of the future” and the “free spirit,” it would be appropriate to characterize them as moral revolutionaries.
which operates *against* creation and change” (Addelson 2000, 299). While the aim of all moral reform consists in aligning actions with principles, moral revolution struggles against such conformity and aims beyond reform, at actual change. However, the principles that act as justifications for the actions of the moral revolutionary only come after the action itself. The moral revolutionary acts, and through their actions a new moral paradigm comes into being, and only after this do post hoc principles and justifications come into being.

While a moral revolution might only replace or reinterpret the old values and moral schemas, this is not the result Nietzsche seeks. Rather, he values the great criminal because he knows “that part of his task as a revolutionary of the people is to help them to overcome themselves, to help each create himself as a new kind of individual” (Addelson 2000, 303). Thus, the revolutionary’s task in part lies in role-modeling a healthy egoism and self-creation. From Nietzsche’s perspective, transcending the moral schema extant is not enough; rather, man must also transcend himself in the process. Therefore, the acts of the revolutionary, or the great criminal, should produce new values as well as a new kind of man.

However, in destroying values, Nietzsche warns against utilizing extreme violence in order to overthrow the current moral system. In *Daybreak* we are told, “take care not to exchange the state of morality to which we are accustomed for a new evaluation of things head over heels and amid acts of violence” (D 534). Instead, we must wait until a new nature develops and becomes dominant, resulting in a new form of evaluation. This will only occur after a long period of time because it requires the sublimation of the values and morals that currently maintain dominance. When societies become disorganized and weak, they often try to reinvigorate and revive themselves by means of “the seeking and claiming of power” (HH 465).
Overthrowing all social order and social institutions “can be a source of energy in an exhausted human race, but it can never be an organizer, architect, artist, perfecter of the human character” (HH 463).

3.7. Morality and its Negative Effect Upon the Criminal and Greatness:

In the modern era, the criminal-type is unable to garner anything but contempt and disrespect because society is structured to preserve and maintain the dominance of one type of man, the herd animal. Nietzsche alleges that the herd aims to secure itself, and only itself, and in doing so, it opposes and resists all “who have degenerated from it (criminals, etc.) and those who tower above” (WP 285). That is to say, the herd defends itself against all who deviate from the majority, who refuse to conform with the status quo, and thus all exceptions. According to Nietzsche, morality plays a central role in protecting society against the exceptions. Moreover, he claims that the intolerance toward all exceptions, which is characteristic of the modern era, is due to the fact that morality and virtue are emphasized and enforced. Since any form of exception or deviation produces feelings of fear, insecurity, and stress, the herd make use of security measures such as punishment to discipline the non-conformers and persuade them to remain within the confines of the majority. Thus, Nietzsche asks, “what is morality really?” to which he responds, “the instinct of decadence; it is the exhausted and disinherited who in this way take their revenge and play the master” (WP 401).

Laws and penal codes are two of the ways in which the herd protects and secures itself against the exception, and thus, the criminal. Morality has been established at the expense of higher types and thus “those who are in any sense independent and privileged” (WP 400). According to Nietzsche, strong, innovative individuals are being “sacrificed” in the name of

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276 Obedience and conformity instill feelings of comfort and security and therefore such behavior is praised and affirmed.
morality. In addition, morality suffices as a weapon for preventing the elevation of man “to its greatest magnificence and power” (WLN 5.98). Yet, Nietzsche stresses that the cost of deviating from morality, transgressing existing laws, and breaking with custom, is too high.

For instance, Nietzsche argues that the consequences for violating morality are so severe that it is better to be the victim of injustice than the perpetrator. Those who violate the law or deviate from the status quo make themselves an enemy of society and thereby forfeit the benefits and protections that ensue as a result of societal membership. To the contrary, the victim of injustice is better positioned because they “have the consolation of a good conscience, of hope and of revenge” (AOM 52). In addition, the victim garners sympathy and support from society as a result of society’s hatred of those who are perpetrators of evil and immorality. Although those who transgress and violate law and custom do so in an attempt to gain or benefit, the consequences of this are so damaging that the pain and suffering to which the victim is subjected is more desirable.

Furthermore, Nietzsche maintains that morality has erroneously been credited with man’s overall improvement. Although it is said to have been the cause of man’s growing more moral and more humane, Nietzsche insists that morality merely resulted in changing humanity rather than advancing it. He contends that humanity is not progressing toward a state of perfection but deteriorating into a state of decadence. Morality conditioned man to be tame, delicate, weak, and agreeable. Therefore, the attempt to make humankind more “moral” and more “humane” resulted in a “general decay of vitality” (TI ‘The ‘Improvers’ of Mankind,’ 7). The “softening of customs” that characterizes modern morality is a byproduct of humanity’s diminished energy and vivacity, “a consequence of decline” (TI ‘The ‘Improvers’ of Mankind,’ 7).
Morality has also been a means of hindering and destroying higher human types. Nietzsche explains that in historical periods in which “improving” man through the taming and subjugation of the animal within was the main concern, nothing but intolerance was reserved for “the boldest and most spiritual natures” (WP 121). He insists, “in late ages that may be proud of their humanity, so much fear remains, so much superstitious fear of the ‘savage cruel beast’ whose conquest is the very pride of these more humane ages” (BGE 229). It is in such periods, when morality was strictly enforced, that culture degenerated and regressed. However, Nietzsche insists that when there was considerable immorality and corruption, and individual-types such as the criminal were more common and prevalent, culture was greatest and most enhanced. For this reason, Nietzsche claims, “morality is therefore an opposition movement against the efforts of nature to achieve a higher type” (WP 400).

In order for humankind to flourish, progress, and evolve to a greater, more complex state, man must begin by re-situating himself outside of morality. Hence, man must become in some sense a criminal. However, the way society is currently structured makes criminality not only difficult but shameful. Nietzsche envisions a future in which man can freely deviate from, or reject morality as such, without attracting the opprobrium of society and thus, without being labeled reprehensible, disgraceful, and/or evil. He discourages the oppressive and disrespectful treatment directed at the criminal-type because they are “so often the inventive and productive men” (D 164). In place of moral judgments that evaluate man in terms of good and evil, Nietzsche suggests judging man with regard to the role he plays in enhancing, strengthening, and furthering mankind and society. Instead of the way in which society treats and devalues the criminal, Nietzsche posits an alternative approach to criminality in which the criminal is understood as not only natural and healthy, but also great and noble.
4. Nietzsche's Privileged, Alternative Perspective

Nietzsche’s treatment of the criminal is aimed at reconceptualizing and reevaluating the criminal-type. As Sedgwick points out, Nietzsche believes that “wisdom demands that the criminal be decriminalized” (Sedgwick 2013, 110). In reflecting upon the criminal, Nietzsche seeks to restore a certain dignity and respect to the criminal-type and to thereby liberate the criminal from its lowly status. While he acknowledges that there are some criminals who are decadent and harmful to society, he insists that the criminal-type is valuable and must be reconsidered.

Contrary to the status of the criminal in contemporary society, Nietzsche claims that Renaissance society established a certain level of respect for the criminal. He explains that during the Renaissance the criminal “throve and acquired for himself his own kind of virtue...moraline-free virtue” (WP 740). Moreover, Nietzsche claims that if the criminal becomes “an ill-nourished and stunted plant, this is to the dishonor of our social relationships” (WP 740).277 This seems to be a reference to the philosopher in Plato’s Republic who absorbs all societal influence whereby in bad social settings the philosopher turns out bad and in good social settings the philosopher becomes good. For Nietzsche, we have an obligation to treat the criminal with respect, rather than disdain, since “one can enhance only those men whom one does not treat with contempt” (WP 740).

Notably, Nietzsche claims that the criminal-type is a valuable and necessary feature of society. The criminal’s very existence creates necessary tension, discord, and conflict. Whereas “all ordered society puts the passions to sleep,” the criminal stimulates opposition and

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277 Recall that Nietzsche refers to punishment as a “noxious weed” and here, he refers to the criminal as a “plant.” The significance of this imagery should not be overlooked since it reflects Nietzsche’s critique of punishment and how, like weeds, punishment is harmful and poisonous. In these garden analogies Nietzsche illustrates that punishment (i.e., the weed) and society (the environment that stunts the plant) are both harmful to the criminal.
contradiction and in turn, awakens and enlivens the passions (GS 4). In doing so, the criminal jolts us out of our complacency and mental paralysis. Thus, part of the criminal’s value consists in being the enemy of society; the criminal is the quintessential enemy. As previously mentioned, Nietzsche stresses the importance of having enemies, and “the ‘common criminal’ serves the valuable function of being a good enemy” (Parejko 1974, 19). Hence, Zarathustra claims „‘Feind’ sollt ihr sagen, aber nicht ‘Bösewicht’“ (KSA 4[1]7.18, p. 45).278

The criminal’s actions also function as oppositional powers that bring about the destruction of ideals and institutions that no longer possess the strength and power to maintain themselves. According to Nietzsche, weaker powers always succumb to those that are stronger and therefore, the criminal can only overthrow that which is weak and/or no longer useful. By challenging hegemonic values and norms, the criminal challenges “the viability of society” (Parejko 1974, 19). Parejko explains further,

he [the criminal] awakens the species from its dangerous slumbers, forcing an alertness and strength which would otherwise be lacking. He cancels the detrimental effects of too much order. He cautions men not to take convention any too seriously. He causes enough friction for the wheel of evolution to make another half-turn, thus breaking the paralysis which attends all institutions. (Parejko 1974, 16)

Criminality serves as a means of assessing the strength and usefulness of society’s ideals and values and the institutions that represent them. In addition, the criminal disrupts our complacent existence and liberates us from the dogmatic repose in which we have grown accustomed. For these reasons, Nietzsche insists that society should no longer aim at annihilating the criminal. Instead, it must acknowledge that the criminal is valuable and necessary for society’s evolution and progress.

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278 This translates as “You can say ‘enemy’ but not ‘evil.’”
4.1. Criminality: A Return to Our Nature:

In addition to being an essential feature of a healthy society, Nietzsche alleges that the criminal’s value also consists in the fact that they serve as a constant reminder of the nature of man. Society typically considers the criminal to be inhumane, base, and deplorable. Contrary to this, Nietzsche believes that the criminal represents “a return to nature” and thereby possesses various characteristics that are human and natural. Hence, Nietzsche states “in almost all crimes some qualities also find expression which ought not to be lacking in a man” (WP 740). Despite the conditioning and domestication to which man has been subjected throughout history, the criminal is representative of the man who has retained his animal nature; he represents the man who could not be completely tamed and made compliant. Nietzsche alleges that returning to nature is a “cure” for the domestication of man, and thus a way for man to recover from culture. Hence, Nietzsche states, “everything that eludes the hand and discipline of man almost returns at once to its natural state” (WP 684). Therefore, the criminal does not threaten our humanity but brings us closer to it. Although the actions of the criminal may not always be agreeable or valuable, the criminal’s very existence proves that the beast in man has not been entirely domesticated or extinguished. The criminal not only shows us what we all were, but also what we all could be.

However, Nietzsche insists that man’s nature is a conquest, something that comes about only “after a long struggle” (WLN 10.53). The criminal assists man in becoming more natural

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279 However, Nietzsche also insists that humanity cannot go “back to nature” because “a natural humanity” has never existed (WLN 10.53). On my reading, the criminal represents “the production of a ‘new,’ second nature rather than the restoration of an authentic, original nature” (Conway 1997, 69). Although Conway is describing the philosopher and self-overcoming, his description seems equally applicable to what Nietzsche means regarding the criminal. See, for instance, WP 684. While Nietzsche does not name the criminal per se, he oftentimes generalizes the notion of criminality and thus his descriptions of “the savage” or, what is known morally as “the evil man,” are a form of criminality. It is important to note that I am using “all” figuratively as Nietzsche sometimes does. Nietzsche is clear that not everyone can become a criminal.
and takes part in this struggle by “daring to be immoral as nature is” (WLN 10.53). Nietzsche believes that “mankind has become mendacious and false down to its most fundamental instincts – to the point of worshiping the opposite values of those which alone would guarantee its health, its future, the lofty right to its future” (EH P, 2). For Nietzsche, man’s decline and degeneration occur when “the exceptional conditions of his existence cease” (WP 204). The criminal counters man’s decline by ignoring the prohibition upon man’s natural drives and by allowing the free play of all his drives and desires. Thus, Nietzsche contends that the criminal does not cause humanity to retrogress but to progress; “man becomes more profound, mistrustful, ‘immoral,’ stronger, more confident of himself – and to this extent ‘more natural’: this is ‘progress’” (WP 123). However, Nietzsche is not claiming that man’s progress consists in man’s “immorality.” Rather, man’s immorality accompanies all progress because “with every growth of man, his other side must grow too” (WP 881).

Nietzsche believes that most will refuse this truth because they believe their nature is evil. It takes great courage and strength to allow oneself “the whole compass and wealth of naturalness” (TI ‘Expeditons of an Untimely Man,’ 49). Not everyone is capable of becoming a criminal because “not everyone is capable of committing a few crimes” (WLN 10.50). For Nietzsche, criminality is a test of man’s strength. He states, „Ich betrachte Verbrecher, gestrafte und nicht gestrafte, als Menschen, an denen man Versuche machen kann“ (NF 1888, 26[26]). Hence, he suggests that man ought to “take upon oneself a number of degrading crimes, e.g., stealing money, so as to test one’s sense of balance” (WLN 15.117). While most would only engage in crime if they could evade punishment with certainty, the criminal engages in crime, despite the risk. For this reason, Nietzsche describes the criminal as “a man of courage” who

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282 “I consider criminals, punished and not punished, as human beings to which one can make attempts” (NF 1884, 26[26]).
“risks his life, his honor, his freedom” (WP 740). Nietzsche asks, “which of us, favored by circumstances, wouldn’t have already run the entire gamut of crimes?” (WLN 10.108).\textsuperscript{283} In asking this question he points out that most individuals would engage in crime if there were no consequences for their behavior. In other words, fear of punishment suffices as a powerful deterrent for most.

4.2. An Alternative Approach to Dealing with the Criminal: Treatment, Not Punishment:

As discussed in Chapter Four, Nietzsche is greatly concerned with overcoming the desire to punish and doing away with the institution of punishment. This is made evident once again in Nietzsche’s discussion of the way with which the criminal ought to be dealt.\textsuperscript{284} In \textit{Daybreak} Nietzsche posits an alternative way in which to respond to the criminal that is ultimately focused upon improving his health.\textsuperscript{285} He suggests that society should respond to the criminal with treatment, rather than with judgment and punishment.\textsuperscript{286} Nietzsche states,

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283 See, also, WP 235. It is the same aphorism, although the translations slightly vary.

284 While the following section represents my reading of Nietzsche’s claims in \textit{Daybreak} 202, I am still uncertain as to his exact perspective. I interpreted Nietzsche as positing a medical perspective of the criminal in which the criminal is treated, rather than punished. However, it is possible that Nietzsche was describing what he perceived to be society’s view at the time. This is Friedrich Balke’s perspective, who argues that the juridical and medical experts of the 1800s perceive the criminal as similar to the mentally ill. As a result, the criminal’s sentence is aimed toward the therapeutic, rather than the punitive. See, Friedrich Balke, “From a Biopolitical Point of View: Nietzsche’s Philosophy of Crime,” \textit{Cardozo Law Review} 24, no. 2 (2003): 705-722.

285 Nietzsche explains his perspective in aphorism 202 of \textit{Daybreak}, titled “For the promotion of health,” which is one of the longest sustained comments on the criminal in all of Nietzsche’s work. See also, TI ‘Expeditions of an Untimely Man,’ 45.

286 While Nietzsche describes the criminal in terms of sickness, one could interpret his remarks in this aphorism as conflicting with some of his other claims concerning the criminal. For instance, it seems that recharacterizing the criminal as an invalid would merely be considered a further extension of slave morality. Society considers the criminal to be a grave threat, and a great danger, and treating and curing the criminal seems to only align with society’s aim to eradicate fear and danger, which Nietzsche criticizes. Moreover, treating the criminal as a mental patient is aimed at the normalization and conformity of the criminal. As discussed in Chapter Three, Nietzsche rejects all forms of normalizing power such as the will to equality and the demand for conformity because it prevents the flourishing of high types. He insists that “the greatest danger” is the leveling of man, which makes man average, common, and mediocre. (GM 1.12). In addition, if the criminal were to be considered an invalid, this would in a sense eradicate (e.g., either through curing him or recharacterizing him) the criminal-type. If the criminal were annihilated, this would not be beneficial to society since Nietzsche argues that the criminal is both necessary and advantageous for society and mankind. Furthermore, treating the criminal as a mental patient who is able to regain his health is problematic since it ignores difference by presupposing that there is a standard of health equally applicable to all, which Nietzsche opposes. He explains, “the more we allow the unique and incomparable...the more we abjure the dogma of the ‘equality of men,’ the more must the concept of a normal health, along with a
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one has hardly begun to reflect on the physiology of the criminal, and yet already stands before the irrefutable insight that there exists no essential difference between criminals and the insane: presupposing one believes that the usual mode of moral thinking is the mode of thinking of spiritual health. But no belief is still so firmly believed as this is and so one should not hesitate to accept the consequence and treat the criminal as a mental patient. (D 202)

Treating the criminal similarly to those who suffer from mental illness is an extension of Nietzsche’s opposition to punishment. Nussbaum observes that in approaching punishment therapeutically, as a means to reform and cure, Nietzsche is following the Stoic philosopher, Seneca. Moreover, Nussbaum explains, “here we see a further extension of mercy: the offender is not simply let go, he becomes an object of the strong person’s devotion and care” (Nussbaum 1994, 156).

Nietzsche explains that treatment should focus upon the restoration of the criminal’s health where the criminal should be accorded understanding and “the greatest consideration” (D 202). The criminal should be presented with “a change of air, a change of company, a temporary absence” (D 202). In addition, he should be allowed solitude if he so desires, as well as employment. In order to reconcile some of the disparagement and vilification the criminal would otherwise endure, he should be permitted “anonymity, or a new name and frequent changes of residence” (D 202). However, possibly it is more beneficial for the criminal to remain imprisoned to protect himself and others from his “burdensome tyrannical drive” (D 202).

Note that “criminality is thus conceived of here as a kind of indiscipline” (Sedgwick 2013, 119). While treatment should be tailored toward the specific aim of extinguishing or sublimating the criminal’s powerful and overwhelming drive, Nietzsche acknowledges that achieving a cure is normal diet, and the normal cause of an illness, be abandoned by medical men” (GS 120). While Nietzsche praises health and the healthy type, which he understands in terms of strength and the overcoming of weakness and sickness, he maintains that “there is no health as such, and all attempts to define a thing that way have been wretched failures” (GS 120).

287 In Discipline & Punish, Foucault describes the various security measures that aim to supervise, rather than punish, the criminal. He explains that treatment becomes necessary to “neutralize his [the criminal’s] dangerous state of mind, to alter his criminal tendencies” (Foucault, 1995, 18). Foucault’s description of the new character of punishment that arises in the 18th century sounds similar to Nietzsche’s description of treatment for criminality.
not always possible. In such instances the criminal should be informed that a restoration of health is unachievable and be provided with the means to commit suicide.

Prior to resorting to suicide, which should only be offered when all other means of treatment have failed, “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 he has done” (D 202). The criminal should also be allowed to make amends regarding the harm and suffering he caused by taking part in acts of community service and charity.\(^{288}\) Unfortunately, even if he makes good to the man he originally harmed, the victim “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” (D 202).\(^{289}\) In opposition to this Nietzsche asks, “can we not get beyond this?” (D 202). In response, he urges us to do away with “the belief in guilt...the old instinct for revenge” as well as “the concept *sin*” and “quickly send after it the concept *punishment*” (D 202).

Like the invalid, the criminal is parasitic upon society; he requires much from society but is unable to compensate equally in return. However, although the invalid drains society of time and valuable resources while contributing nothing in return “we should nowadays describe as inhuman anyone who for this reason desired to take *revenge* on the invalid” (D 202). However, Nietzsche points out that this was previously the norm. That is to say, the mentally ill were once treated as the criminal is today where the rule was “every sick person is a guilty person” (D 202). Nietzsche questions whether we are willing to acknowledge today that “every ‘guilty person’ is a sick person?” (D 202). If so,

\[^{288}\] Here we learn that Nietzsche supports restorative justice, at least to some degree.
\[^{289}\] As has been mentioned, the desire for revenge and retaliation is a feature of slave morality that Nietzsche loathes.
value into punishing criminals acts by transforming them into the catalyst for greatness to come. (Skinner 2006, 51-52)

Hence, Nietzsche urges us to accept a new form of punishment in which its value consists in rehabilitation and not revenge. Yet, he wonders when society will be strong enough to accept that the criminal is a man who is sick and in need of treatment and mercy, not condemnation and punishment.

4.3. The Future Criminal: The Criminal as Lawgiver:

In *Daybreak* Nietzsche envisions a “possible future” in which the criminal governs himself in relation to the laws and values that he himself has created. He will not be bound to the laws established by the state, the principles prescribed by morality, the commandments dictated by religion, or the customs recognized by society.290 “Such would be a criminal of a possible future” in which he adheres to the personal decree, “I submit only to the law which I myself have given, in great things and in small” (D 187). In considering this idea of “future lawgiving,” Nietzsche provides a caveat and claims that in acting as lawgiver, man must become a lawgiver in *all* respects. Nietzsche explains, “even when he commands himself: then also must he make amends for his commanding” (Z ‘Of Self-Overcoming’).

In becoming a lawgiver, the criminal “must become judge and avenger and victim of his own law” (Z ‘Of Self-Overcoming’). According to Nietzsche, this scenario requires that “the malefactor calls himself to account and publicly dictates his own punishment” (D 187). Therefore, the criminal himself will determine and execute the punishment he deems appropriate instead of allowing society to impose a punishment that it deems deserving and “just.” Thus, the future criminal will only accept punishment if he has violated his *own* laws that he himself has prescribed and dictated. It is with this in mind that Nietzsche states, “if the punishment be not

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290 This idea was discussed in Chapter Two.
also a right and an honour for the transgressor, then I do not like your punishment” (Z ‘Of the Adder’s Bite’). Through the act of punishing himself, the criminal illustrates that his law applies even to himself. That is to say, even the criminal, the creator of the law, cannot violate the law. By accepting punishment of his own volition, the criminal takes part in “honouring” his own law that he created for himself (D 187). Nietzsche maintains that the malefactor elevates himself above his crime and in turn expunges his “offense through freeheartedness, greatness and imperturbability” (D 187). By willingly accepting his punishment, the criminal illustrates his own power, “the power of the lawgiver,” and thereby denies others the right to have power over him (D 187).

Self-legislation (enacting the role of lawgiver) requires both strength and (self-)discipline and thus “it will be the strong and domineering natures that enjoy their finest gaiety in such constraint and perfection under a law of their own” (GS 290). Although Nietzsche values those who are not restricted by past and present norms and values, he does not affirm lawlessness as such. He praises the man who is bold and unrestrained but not to the degree of frivolousness since he reserves little to no respect for the man who is completely spontaneous and uninhibited. In becoming a lawgiver, man must discipline and control his drives and instincts. Hence, Nietzsche explains,

the highest man would have the greatest multiplicity of drives, in the relatively greatest strength that can be endured. Indeed, where the ‘plant’ man shows himself strongest one finds instincts that conflict powerfully…but are controlled. (WP 966)

Rather than employ will to power as a means of dominating and disciplining others, it is employed in the service of oneself, as a means of dominating and mastering one’s own drives and instincts. Nietzsche’s illustration of the criminal as lawgiver is representative of the man
who strives toward freedom, sovereignty, individuality, self-mastery and self-creation.\textsuperscript{291} In this regard, the criminal also acts as a role-model, illustrating to others a healthy form of egoism. In acting as an exemplar, they commit a “public service” (D 187).

4.4. Distinguishing Between Criminal-Types:

Although Nietzsche oftentimes defends, and even extols the criminal, he should not be read as advocating criminality as such. While he considers criminality to be of value, this does not entail that he sanctions any and all actions that are traditionally deemed criminal, or immoral. Nietzsche claims that “there are actions that are unworthy of us: actions that, if we took them as typical, would push us down into a lower species” (WLN 10.108). Furthermore, he maintains that it is the individual, not the action itself, that is of the most value. He states “an action in itself is perfectly devoid of value: it all depends on who performs it. One and the same ‘crime’ can be in one case the greatest privilege, in another a stigma” (WP 292).

Part of Nietzsche’s concern with the way in which the modern, bourgeois society responds to criminality consists in the fact that it fails to recognize the nuanced differences that exist among criminals. Halsted notes that society’s failure to distinguish among different criminal is a direct result of modernity’s emphasis on science and democracy, since “neither of them have authentic standards by which to differentiate individuals” (Halsted 1991, 39). From the perspective of society, all criminals are one and the same. However, Nietzsche urges us to differentiate between types of criminals since some are deserving of praise and respect, though

\textsuperscript{291} Sedgwick similarly observes, “in the same way that Nietzsche in \textit{Daybreak} envisages the criminal arriving at a state where they are judge and executive with regard to their own punishment, so the richest form of selfhood is possible only if one meets the requirement of cultivation of a rigorous self-discipline” (Sedgwick 2013, 170).
Moreover, he insists that the future of society depends in part upon distinguishing between criminal types.

According to Nietzsche, “the modern bourgeois concept of ‘crime’ must be differentiated from the concept of revolting against the social order” (Halsted 1991, 42). Therefore, a distinction must be made between the great criminal, or the criminal as revolutionary, and the criminal as deviant. While both the great criminal and the deviant oppose the status quo and are treated as exceptions worthy of slander and disrespect, they are only alike in form. Nietzsche explains that the actions (crimes) of the rebel are best understood as a “revolt against the social order” (WP 740). One such example is Jesus Christ, whom Nietzsche refers to as a “holy anarchist” and a “political criminal” (A 27). Christ revolted against the status quo and the social hierarchy of the Jewish Church. His actions were not mere instances of nonconformity but political anarchy since he attacked “the national instinct” and opposed “the ruling order” (A 27). Yet Nietzsche tells us that we should not hold the criminal’s poor manners and inferior

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292 Throughout Nietzsche’s work, the theme of the criminal is various and fragmented, making it difficult to ascertain a clear and coherent picture of the criminal and the way in which Nietzsche accounts for different criminal-types. In order to ascertain the types of criminals Nietzsche criticizes, such as the pal criminal, and those that he praises, such as the great criminal, it is necessary to survey and analyze his many remarks regarding the criminal. However, it ought to be noted that most of the time Nietzsche does not use distinct labels to distinguish between criminal-types; the main distinguishing factor is oftentimes Nietzsche’s descriptions alone. James E. Parejko makes a similar claim, yet he categorizes Nietzsche’s various descriptions of the criminal in two distinct types, namely the “common criminal” and the “political criminal.” Parejko’s argument, although short, is comprehensive and compelling but it seems an over-simplification to reduce Nietzsche’s discussion of the criminal to two distinct types. However, his account is unique since it is the only essay that I found which attempted to understand the whole of Nietzsche’s treatment of criminality. See, James E. Parejko, “Nietzsche: In Defense of the Criminal,” Midwestern Journal of Philosophy (1974): 9-23. Another scholar who attempts to divide Nietzsche’s criminal into distinct types is Jakob Skinner who identifies the following six types: “(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” (Skinner, 45). It is my contention that Skinner’s classifications are overly complex and difficult to understand. Moreover, I believe Skinner not only disregards Nietzsche’s own terms but describes Nietzsche’s criminal types in moral terms, which Nietzsche himself avoids doing, and also, rejects. See, Jakob Skinner. “Power and Punishment in Nietzsche.” Master’s thesis., University of New Hampshire, 2006.

293 However, Nietzsche criticizes anarchism several times throughout his writings. Moreover, while “the desire for destruction, change, and becoming” can be due to an overfullness of energy, the anarchist’s actions oftentimes arise from “the hatred of the ill-constituted, disinnherited, and underprivileged, who destroy, must destroy, because what exists, indeed all existence, all being, outrages and provokes them” (GS 370).
intelligence against him; “often times criminal behavior corresponds with intellectual immaturity and in these individuals unsublimated impulses find temporary expression” (Skinner 2006, 49).

While these criminals may at times be “miserable and contemptible,” Nietzsche stresses that the very act of revolting and rebelling is never “miserable and contemptible” (WP, 740). In the instance of revolting, the deed itself is valuable and worthy of respect. However, in those instances in which a rebel successfully isolates a degenerate aspect of society that ought to be resisted and “against which war ought to be waged,” they are deserving of respect and honor (WP 740). Moreover, Nietzsche maintains that those who rebel against society should not be subjected to punishment since “one does not ‘punish’ a rebel; one suppresses him” (WP 740). Penal law should be established in accordance with those who harm society and therefore, punishment should be reserved for deviants only. This “is so that it [society] will cease to punish the exceptional activities of its ‘great criminals’ (cultural rebels)” (Halsted 1991, 42). This explains Nietzsche’s praise for aristocratic values, such as those of ancient Greece, since they distinguish between different criminal-types as evidenced by their laws, which apply strictly to deviants.

Aside from the rebel and the deviant, Nietzsche also refers to those who belong to the “race of criminals” (WP 740). While he generally describes criminality as a social construct, he diverges from this thinking in acknowledging a biologically-predisposed criminality.

Considering Nietzsche’s numerous remarks concerning the criminal, he directs his most scathing and disparaging remarks at those who belong to the “race of criminals.” For instance, he states,

294 Halsted seems to be the only scholar I came across who also acknowledges Nietzsche’s “great criminal.” However, in describing the great criminal, Halsted equates the lengthy passage on criminality in Twilight (i.e., T ‘Expeditions of an Untimely Man,’ 45) with the great criminal. It is my contention that this passage only partly applies to the great criminal. Yet quite possibly Halsted is correct, which would point to a flaw in my argument. 295 Nietzsche insists that “every aristocratic morality is intolerant – in the education of their youth… in their marriage customs…in their penal laws (which take into account deviants only) – they consider intolerance itself a virtue, calling it ‘justice’” (BGE 202).
However, he fails to provide any further description besides two austere remarks advising how to deal with this criminal-type. Nietzsche maintains that this type of criminal should not be permitted to atone or make amends with society. In addition, he suggests that “one should make war on him even before he has committed any hostile act” (WP 740). It is under these circumstances that Nietzsche rejects this criminal-type in its entirety. As Friedrich Balke claims in his interpretation of Nietzsche’s remarks,

we are faced with the seeming paradox that Nietzsche on the one hand justifies the ‘exceptional’ and ‘rare criminal’ as a rebel who declares war on society, claiming he should not be punished or even held in contempt for his action, but on the other hands joins the despised society and its institutions in the fight against the ‘race of criminals,’ who like the ‘exceptional criminals’ are not judged by the acts they commit but by their disposition to commit acts in the future. (Balke 2003, 716)

However, while this does indeed point to a paradox in Nietzsche’s thought it is important to note that Nietzsche lived during a time that was dominated by an aristocratic theory that interpreted society in terms of degenerate races. Moreover, Nietzsche himself fervently advocated the principles of degeneration and aristocracy and the influence of dominant theories such as Eugenics and Social Darwinism can be seen in numerous places throughout his work. In relation to his overall perspective of criminality, his comments regarding the criminal race seem particularly cold and uncompromising since he recommends exterminating the “race of criminals,” however he adopts a radically different position regarding the “great criminal” for whom he expresses the most esteem.

4.5. Greatness, Criminality, and the Overcoming of Conscience:

The criminal becomes an object of reflection for Nietzsche because he considers criminality to be an aspect of greatness and nobility. Hence his praise for Ancient Greece where

296 “The hereditary criminal decadent, even idiot — no doubt!” (BVN 1176).
297 For instance, see, GS 73; BGE 61; BGE 251; BGE 262; WP 734; WP 740.
there existed an “idealization of the great transgressor (the sense of his greatness)” (WLN 2.114). Nietzsche claims that modern society acknowledges but one type of criminal, namely “the wretched criminal” (WP 736). Since this is the dominant image of the criminal, society is only familiar with “a miscarryed type of criminal” (WP 736). Nietzsche alleges that society fails to recognize that, generally speaking, many who have been honored and revered throughout history were originally criminals. Hence, he states, “all great human beings have been criminals” (WP 736). However, that is not to say that all criminals have been great since it is apparent that Nietzsche does not affirm and praise all forms of criminality.298 Even though Nietzsche perceived “something basically human and healthy” in what might be referred to as the “common criminal,” he did not consider the common criminal to be great (Parejko 1974, 19).

Indeed, Nietzsche argues that the common criminal benefits society, yet this is not the criminal-type for which he reserves the most praise. Rather, he extols a specific form of criminality, of which the “great criminal” is representative.299 Nietzsche is concerned with “a form of criminality for which the revolutionary and the philosopher are archetypes” (Love and Metzger 2016, vii).300 This type of criminal is representative of those who successfully break free

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298 It is my contention that Nietzsche would not characterize individuals such Hitler or Stalin as “great criminals” or noble individuals. While some thinkers, such as Alexander Nehamas, have argued that Hitler meets “Nietzsche’s (vague) criteria for nobility,” I do not agree (Alexander Nehamas, “Nietzsche and ‘Hitler,’” in Nietzsche, Godfather of Fascism? On the Uses and Abuses of a Philosophy, ed. Jacob Golomb and Robert S. Wistrich (Princeton: Princeton University Press, 2002): 105.). I believe that my argument illustrates that for Nietzsche those who are great and noble have sublimated and overcome the will to violence, cruelty, and domination. Moreover, Nietzsche is clear that great natures are those who enact mercy. Since maximum power resides not in over-powering others but in disciplining and controlling oneself, man cannot become great on Nietzsche’s account if he directs his power externally in the form of revenge or punishment.

299 To my knowledge, the term “great criminal” is only used by Nietzsche in four places. He uses the phrase in Will to Power 135 and 779 as well as in Writings from the Late Notebooks 14.124, but this aphorism is almost an exact translation of WP 135. He also uses the term twice in NF 1882 3[1].114 and NF 1887 11[283]. However, Nietzsche relates crime with greatness in a number of places. I have tried to analyze Nietzsche’s many remarks on the great criminal, greatness, and criminality, and what constitutes a great man and/or a great nature in order to provide an account of what might constitute a great criminal for Nietzsche. While at times I use references from Nietzsche that were not made in relation to criminality, I argue that the references are appropriate since Nietzsche speaks of criminality in various ways (e.g., unbound spirits, free spirits, the breaker, the creator, etc.).

from the herd and, in the process, create their own values, as well as themselves. They perform creative actions that open the space for new norms, knowledge, and possibilities and in this way, they participate in the spiritual progress of mankind. It is for these reasons that Nietzsche insists upon a connection between criminality and greatness. Therefore, while Nietzsche insists that “crime belongs to greatness,” this should not be read as an unqualified assertion (WP 736). He is speaking of criminality “only in the grand and not in a miserable style” (WP 736). Therefore, criminality as such is not indicative of greatness. Moreover, Parejko notes that “it can be argued that Nietzsche was using the term to refer only to gifted individuals who as creative geniuses are temporarily ahead of their times, and that he didn’t have in mind criminals like the cutthroat and the pickpocket” (Parejko 1974, 16). It seems appropriate to exclude the petty criminal from Nietzsche’s concept of greatness and assume that greatness, for Nietzsche, involves a certain level of wisdom and genius.

It is important to note that Nietzsche does not define greatness in terms of seeking pleasure and avoiding pain. He has a strong critique of the utilitarian view throughout his work and he considers it to be nothing more than a bourgeois, English view. Nietzsche maintains that human activity has little to nothing to do with pleasure and the avoidance of pain and further, that pleasure and pain are not mutually exclusive. Instead, overcoming obstacles and committing to the path that one has chosen, despite difficulty and suffering, are prerequisites to living a fulfilling, affirming existence. Thus, Nietzsche urges us to affirm existence despite the pain and suffering extant. Moreover, those who are great do not only welcome pain and suffering but desire it. Neither happiness nor contentment is the focus, but greatness, which is oftentimes described in terms of strength and the ability to take on the most suffering and responsibility. However, greatness cannot be achieved if man only strives to be happy and content.

301 Moreover, Nietzsche believes that man must be permitted to suffer and, that he must learn how to suffer.
Throughout his work Nietzsche stresses the value and importance of suffering, and for him, “profound suffering makes noble; it separates” (BGE 270). A previously discussed, the criminal is made to endure various instances of suffering through the ill-will and slander to which he is subjected from society. Moreover, he is thought to be deplorable and to possess little to no societal benefit. The great criminal is treated as a worthless outsider and thus, he lives in a “semi-gravelike atmosphere” (TI ‘Expeditions of an Untimely Man,’ 45). Despite such suffering, he is unburdened by the worst sickness known to man, namely the bad conscience. Nietzsche considers the bad conscience “a hindrance to recovery” and he advises man to “try to counterbalance it all by new activities” of which, it would seem, engaging in crime is one such activity that Nietzsche had in mind. However, only those who are great are able to overcome the sickness that is the bad conscience. Ultimately, through Nietzsche’s defense of the criminal he aims “to restore a good conscience to the evil man… in so far as he is the strong man” (WP 788).

According to Nietzsche, greatness arises through the existence of opposites and the feelings that ensue. Therefore, the great man will possess not only “great virtues” but also “great vices” since “terribleness is part of greatness” (WP 967; WP 1028). In acting in accordance with those drives that have traditionally been deemed ‘evil’ and ‘immoral,’ the great criminal allows himself the wealth of his naturalness. In addition, he demonstrates his greatness, since for Nietzsche, greatness entails that man act in accordance with the totality of his own nature, and thus, without limit or condition. Nietzsche wants man to embrace his infinite potential and the fullness of his nature. Thus, he praises the great criminal for being whole and affirming the entirety of man’s nature through his actions.302 The great criminal does not deny his (animal) nature or repress his underlying drives and instincts but embraces the natural and animal instincts

302 See, for instance, BGE 257; TI ‘Expeditions of an Untimely Man,’ 49.
that drive him. In doing so, he signals that he is guided by his drives and instincts, rather than reason and conscience.

For Nietzsche, the relationship a man has to his conscience is indicative of his overall health. Nietzsche loathes cowardice in relation to one’s actions; he disparages those who lament their actions and maintains that “remorse of conscience is indecent” (TI ‘Maxims and Arrows,’ 10).\(^{303}\) He explains that “one is healthy when...one feels that the ‘bite’ of conscience is like a dog biting on a stone – when one is ashamed of one’s remorse – ” (WP 233).\(^{304}\) Nietzsche values the man who can assert himself and bear the weight of his actions. Hence Nietzsche’s criticisms of the pale criminal, and those who slander and regret their actions. The great criminal does not waver when acting, nor does he conceive of his actions as wrong or worthy of regret. Rather, he accepts and affirms his fate. He is a man who “is less ashamed of his instincts” and who “has taken substantial steps toward admitting to himself his unconditional naturalness, i.e., his immorality, without being embittered: on the contrary, strong enough to endure this sight alone” (WLN 10.53).\(^{305}\) For this reason, Nietzsche insists that he “has more health of soul” (WP 233).

In affirming the entirety of his nature, without regret or disdain, the great criminal demonstrates the possibility of becoming unburdened by the bad conscience, which is a necessary step in overcoming it.\(^{306}\) In addition, since engaging in crime is an instance of rejecting

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\(^{303}\) The entire aphorism is as follows: “Let us not be cowardly in face of our actions! Let us not afterwards leave them in the lurch! – Remorse of conscience is indecent.” I did not quote this in full since I quoted a similar quotation from WP above.

\(^{304}\) There are many similarities between Fyodor Dostoevsky and Nietzsche regarding crime and punishment. This is in part because Dostoevsky influenced Nietzsche’s thinking on such topics. However, on the point of conscience and regret for one’s actions, Nietzsche departs from Dostoevsky. Nietzsche “absolutely rejected Dostoevskian redemption of any sort, regret for having committed any sort of crime” (Slovin and Waite 2016, 11).

\(^{305}\) In this particular aphorism Nietzsche is not discussing the great criminal. He is discussing “how man has become more natural in the nineteenth century,” but it is my contention that this section is also applicable to the great criminal (WLN 10.53).

\(^{306}\) It could be argued that Nietzsche suggests that the great criminal also plays a role in reversing the associations of the bad conscience. While Nietzsche’s ultimate goal is to eradicate the bad conscience, it must first be overcome. In overcoming the bad conscience, Nietzsche suggests that we link it with all that “runs counter to sense, instinct, nature, animal, in short all ideals hitherto, which are one and all hostile to life and ideals that slander the world.”
all forms of authority other than oneself, through his disobedience, the great criminal illustrates his desire to not be commanded by others and thus, his desire for freedom and autonomy. This is no easy feat because discipline has been emphasized to such a great extent throughout human history that obedience has become instinct and this instinct, which has been cultivated in lieu of commanding, has dominated the consciousness of humanity. Commanding oneself takes great effort and discipline; it is fraught with hardship and difficulty, which accounts for why it is easier to be obedient and subservient. Yet, Nietzsche alleges that criminality teaches individuals how to no longer obey. It is a form of training in how to “free oneself from the old emotional impulses of traditional values” (WLN 15.117). Thus, through engaging in crime man unlearns how to obey, which is a necessary step in learning how to command.

In order to command oneself, one must free oneself from the chains of society. In doing so, one must overcome the demands of the conscience and the morality of the herd. Nietzsche considers the conscience a significant obstacle to true sovereignty, “for he views the conscience as the internalized, mnemonic distillation of socially enforced punitive and carceral practices” (Conway 1997, 19). One way in which to overcome the conscience is to resolve the internal war between the demands of the conscience and man’s natural instincts, which according to Nietzsche, resulted from the instillation of the conscience in man.307 While the moral subject possesses an internal world characterized by division and conflict, the criminal illustrates the possibility of a homogeneous nature. Great and noble natures are those who unify and master

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307 In BGE 260, Nietzsche also discusses the internal division of modern humanity in terms of master-morality and slave-morality which are described as both existing within a single individual. Moreover, in the preface he discusses the internal conflict of the spirit as resulting from “Plato’s invention of the pure spirit and the good as such” (BGE P, 2).
their chaotic and diverse drives and instincts. They discipline and organize their strong and powerful instincts into a coordinated unity. Nietzsche explains, “the ‘great man’ is great through the free play he gives his desires and the even greater power that is capable of taking these magnificent monsters into its service” (WLN 9.139). While society acts to mitigate and extinguish exceptional drives, such as those possessed by the criminal, Nietzsche reasons that “the right way to treat the drives that produce immorality is not to try to eliminate or repress them but to sublimate and spiritualize them, to use them for producing admirable goals” (Nehamas 2002, 98). Nietzsche praises those who are able to master and discipline their drives into an organized hierarchy, yet he has contempt for those “whose passions are too weak or those who are incapable of harnessing strong passions” (Thiele 1990, 63). Ultimately, he claims that in learning how to command, man must learn how to discipline himself; for if man is unable to master himself, another will do so. Moreover, “small spirits must obey – hence cannot possess greatness” and thus it is only when man learns to command that he becomes great (WP 984).

Nietzsche cautions that if man does not act as his own master, another will do so and therefore man must determine whether he will obey himself or another. For Nietzsche, commanding oneself is also a prerequisite for freedom and individuality. However, in becoming free and sovereign, man must first overcome the dictates of the conscience. As discussed in chapter two, the conscience is representative of the herd and it negates the ego. Nietzsche argues that “it is the task of society to suppress egoism” (WP 373). Hence, the pale criminal says, “my Ego is something that should be overcome: my Ego is to me the great contempt of man” (Z ‘Of the Pale Criminal’). The great criminal, on the contrary, acts in accordance with his own conscience rather than the moral imperatives of the conscience instilled within him by society. In

308 Note that this is also part of becoming an individual, or a genuine self, on Nietzsche’s account.
309 While Nietzsche states that “small spirits must obey,” possibly it is more appropriate to say, “small spirits are forced to obey.”
addition, he demonstrates how engaging in crime can be a means of obtaining freedom and becoming an individual. However, those who adhere to the demands of the conscience and the morality of the herd can never become individuals in Nietzsche’s sense of the term. It could even be argued that, for Nietzsche, criminality is a prerequisite for individuality. Hence, Nietzsche states, „daß in Verbrechen sehr viel Muth und Originalität des Geistes, Unabhängigkeit bewiesen werden könne, wird verkehrt“ (NF-1880,4[108]).

4.6. Greatness, Criminality, and Creation:

According to Nietzsche, “spirits of a high type” such as the great criminal, “are from the start at a disadvantage when it comes to the rule” (BGE 253). For Nietzsche, the criminal is the exemplar of those who stand apart in society, maintaining their distinction over and apart from the herd and society as such; they are representative of the “Catiline – the antecedent form of every Caesar” (T ‘Expeditions of an Untimely Man,’ 45). Such individuals are exceptions, who depart from the status quo and forge their own paths. For Nietzsche, those who are great deviate from, and reject, the dominant norms and customs that structure society. He states, “we count passion as a prerogative, we find nothing great that doesn’t include a great crime; we conceive of all greatness as a placing oneself outside morality” (WLN 10.53). By deviating from the dominant moral paradigm, the great criminal also demonstrates his instinct for rank

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310 “The fact that a lot of courage and originality of the spirit, independence can be proven in crimes is hidden” (NF-1880,4[108]).
311 In order to better understand Nietzsche’s remark, it is helpful to have a basic understanding of Catiline. Lucius Sergius Catilina was a Roman senator who attempted to upend the Roman Republic. He committed numerous crimes and was perceived as representing the countless ills that plagued the Roman Republic. Moreover, “up until the modern era Catiline was equated, as Sallust described, to everything depraved and contrary to both the laws of the gods and men….Well after Catiline’s death and the end of the threat of the conspiracy, even Cicero reluctantly admitted that Catiline was an enigmatic man who possessed both the greatest of virtues and the most terrible of vices” (“Catiline,” Wikipedia, accessed March 12, 2019, https://en.wikipedia.org/wiki/Catiline.).
312 In Will to Power he makes a similar remark. He writes, “we conceive all being-great as a placing oneself outside as far as morality is concerned” (WP 120). Note how this description is similar to Nietzsche’s “great criminal.”
whereas those who fail to do so lack “the instinct for privilege, the a parte, the feeling of freedom of creative natures” (WP 879).

For Nietzsche, nobility entails “that one constantly contradicts the great majority not through words but through deeds” (WP 944). Like all great natures, the great criminal counters and opposes the status quo in a performative way; he actively defies the prevailing values and, by extension, the social order. Although the actions of the great criminal are initially destructive, we are told by Zarathustra that he “who smashes their tables of values, the breaker, the law-breaker – but he is the creator” (Z P, 9). While the criminal’s resistance and defiance are interpreted by the herd as a form of destruction, Nietzsche explains that all progress is initiated by “a partial weakening” (HH 224). Moreover, he contends that “the world revolves about the inventor of new values,” yet it is only after destruction that such creation can take place (Z ‘Of the Flies of the Market-Place’). Ansell-Pearson notes that the actions of the creator go beyond “the judgment of morality since it establishes new rules and new norms” (Ansell-Pearson 1994, 106). However, a creative action “is not to be judged by its consequences or by the standards of conventional morality, but by the excellence contained in its performance” (Ansell-Pearson 1994, 44). The excellence and greatness of the great criminal’s actions are contained within his defiance, which disrupts the cultural confines, opening up a space where something new and original takes form. In other words, through his resistance, the great criminal wounds an aspect of the social realm, and within this weakened and vulnerable place new values, legislations, perspectives, and knowledge come into being.

Creating new values is a primary concern for Nietzsche because he insists that the decadence that characterizes the contemporary world is in part derived from the fact that it fails

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313 As Sedgwick notes, “creativity, when understood from the standpoint represented by the norms that ensure the smooth operation of social order, is a form of criminality” (Sedgwick 2013, 156).
to generate new values and ideals and merely reproduces and repeats the values of the past. One reason for this failure concerns the traditional and dominant values that are understood as universal, permanent, and absolute, which hinder the creation of new values. Moreover, Nietzsche contends that the modern era fails to create a counter-ideal that affirms both the individual and life. Instead, it emulates life-negating and life-denying values that when embodied, lead to self-deprecation, self-hatred, and self-doubt. It is for reasons such as these that Nietzsche insists upon “a revaluation of values” and in doing so “justifies the politics of evil as the urgent response to cultural decadence” (Wolin 2016, 462).

However, being creative is fraught with difficulty since it requires that man remain determined and aligned with his goal, no matter the expense. Despite this, great natures consider challenging tasks an honor and a privilege. Ansell-Pearson explains, “to be creative is to expend one’s energies in the moment and not to be deterred by any anticipation of the consequences of one’s actions” (Ansell-Pearson 1994, 106). Where most are unable to remain resolute, great natures “remain objective, hard, firm, severe in carrying through an idea” (WP 975). Nietzsche considers Caesar and Napoleon to be ideal examples of those who were hard and thus able to carry through their task, aside from what it cost mankind and society; ultimately, they were able to remain “disinterested.” However, devotion to a great cause oftentimes requires that man sacrifice himself and his own interests. This is true of the great criminal, who possesses an explosive nature in which “the overwhelming pressure of the energies which emanate from him

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314 Nietzsche uses the phrase “revaluation of values” several times. See, for instance, BGE 203 and WP 1008. Moreover, Nietzsche states, “a revaluation of values is achieved only where there is a tension of new needs, of men with new needs, who suffer from old values without attaining this consciousness” (WP 1008). As discussed, the needs and values of the criminal conflict with that of society. In addition, the great criminal is representative of one who does not succumb to the bad conscience but demonstrates the possibility of overcoming it.

315 Nietzsche insists that artists are most successful in this regard.
forbids him any such care and prudence” (TI ‘Expeditions of an Untimely Man,’ 44). Yet, according to Nietzsche, progress and the future of humanity depends upon creative actions and the ability to bear this great responsibility.

However, in order for mankind to progress, great natures are needed to propel mankind forward into new and dangerous territories. On this point Parejko notes, “consequently, he [Nietzsche] looked to the criminal element as the indispensable ingredient of man’s salvation” (Parejko, 20). According to Nietzsche, “man is still unexhausted” and thus, man is still progressing and evolving, and the great criminal plays a significant role in this process (BGE 118). For Nietzsche, “progress and growth are products of the struggle between opposing forces” and the great criminal facilitates the evolution of society and the enhancement of man through his struggle against society’s norms, values, and institutions. (Thiele 1990, 81). In opposing society and the status quo, the great criminal dares to “live dangerously” (GS 283). He is an iconoclast, yet also an innovator who experiments with the forbidden, the dangerous, the undiscovered, and the unexplored. Contrary to the “lowest” who are “purely passive,” those who are strong and powerful are those who “live out their lives without keeping back any residue of inner experience” (AOM 228). Nietzsche describes “men of the highest strength” as those who incorporate all that they have experienced into themselves (AOM 228). The great criminal is one such nature and he interprets himself and his actions as a means of achieving knowledge through experimentation. However, such natures “have more to do than merely to gain knowledge” (BGE 253).

Note that with this particular remark Nietzsche is referring to the “genius.” However, he relates the genius to the criminal in the aphorism that follows. In addition, I think the proximity of these aphorisms (i.e., the fact that Nietzsche discusses the genius at length in TI ‘Expeditions of an Untimely Man,’ 44, and then the criminal at length in TI ‘Expeditions of an Untimely Man,’ 45) suggests that there is a similarity between the two. Nietzsche is careful with his words and the placement of his aphorisms and as such I think it is appropriate to use this remark in describing the great criminal.

However, Nietzsche remarks, “in the long run, it is not a question of man at all: he is to be overcome” (WP 676). See also, Z ‘Of War and Warriors.’

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The great criminal’s “aim is to save society, not destroy it, to revivify it by teaching the joys of the ‘new, daring, untried’” (Wolin 2016, 462). For this reason, Nietzsche sees those such as the great criminal as path makers, who symbolize “what is really great, new, and amazing in our culture” (GS 297). They are the paradigms for creation, progress, change, and revolution that disrupt the rigidity and stasis that Nietzsche considers so very poisonous to mankind. Yet their power and influence upon society does not concern gross force, which is directed externally at exploiting others. Nietzsche maintains that their strength consists not in “physical strength but in strength of the soul” (BGE 257). Great criminals are “innovators of the spirit” who further spiritual progress through their indifference to boundaries and their experimentation with the new, the rare, and the different (TI ‘Expeditions of an Untimely Man,’ 45). Such individuals assist and facilitate in “destructuring the traditional moral (ascetic) mode of evaluation” (Hicks & Rosenberg 2003, 16). They reformulate and transform our attitudes, perspectives, and sensibilities, encouraging open-mindedness, experimentation, multiplicity, and adventure. In this way “they evoke the promise of alternative human possibilities – different ways of thinking and acting that enhance life” (Hicks and Rosenberg 2003, 27). Thus, their aim is “to be something new, to signify something new, to represent new values” (BGE 253). For this reason, the great criminal is “an infectious force that makes a people stronger, more resilient, even as he destroys its foundations” (Thiele 1990, 17). Morals exemplars, such as the great criminal, mark the beginning of a process in which humanity transitions to a new stage of evolution, a higher state of humanity, in which great

318 This particular remark is describing philosophers of the future; however, I believe it is applicable to all ideal-types that help humanity progress and evolve to a higher, mature, life-affirming state.

319 In the latter quotation, Nietzsche is describing “spirits of a high type” (BGE 253). On my reading, such passages bear such great similarity to those of the criminal and for this reason I have included it in my discussion the great criminal. Moreover, the great criminal seems to be an exemplar of those who are noble natured.

320 Note that Thiele’s work focuses on Nietzsche’s heroes and he never makes mention of the criminal. However, it is my contention that the “great criminal” should be discussed as one of Nietzsche’s heroic types.
natures and noble individuals are not rare, but exist in abundance. The realization of this is marked by “the moment when the extraordinary marginalizes the normal, usurping its role in order to become the dominant practice” (Wolin 2016, 467). It is only then that “experimentation would be in order that would allow every kind of heroism to find satisfaction” at which point, Nietzsche claims, the crime that is heroic ceases to be a crime (GS 7).321 For this reason, “Nietzsche believes that society should cultivate its rebels in order to insure a high degree of culture,” yet, as discussed above, he also insists that society must “protect itself from those who harm it in order to insure a high degree of civilization” (Halsted 1991, 42). However, only those societies that are stable and strong can enhance its exceptions and allow them to flourish as well as integrate something new within themselves without engendering weakness and vulnerability.

321 See, for instance, NF-1880,8[48].
CHAPTER SIX
CONCLUSION

In scholarship, little has been written regarding Nietzsche’s reflections on penology and criminology. Possibly such topics have been overlooked merely because attention has been devoted to other themes in his work such as will to power, perspectivism, *amor fati*, and eternal return. Or, possibly such topics have been ignored because they intersect with Nietzsche’s thoughts on politics and political theory, which for much of the 20th century were greatly stigmatized. While it has not been my aim to adequately treat Nietzsche’s political thought, nor to de-stigmatize it, it is my belief that acknowledging “the richness of Nietzsche’s criminological thought” helps us in gaining a more comprehensive understanding of Nietzsche’s political perspective and also assists in further de-stigmatizing his politics (Halted 1991, 38). Nietzsche’s treatment of crime and punishment has rarely been given adequate attention in English-speaking scholarship and “such an omission denies us a multitude of profound insights begging criminological attention” (Halsted 1991, 38). For this reason, it has been my aim to illustrate the value of Nietzsche’s thought for legal theory, penology, criminology, and political theory.

There are some scholars, such as Mark Tunick, who maintain that Nietzsche’s primary aim is not constructive, but critical. Tunick alleges that “it is difficult to see how Nietzsche’s account is in any sense practical, or useful to the practitioner committed to the criminal justice system” (Tunick 1992, 27). While he acknowledges that Nietzsche sets forth a comprehensive critique of the underlying principles that justify the practice of punishment, Tunick argues that

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Nietzsche’s thoughts on punishment fail to “offer practical criticism” or to “better equip us to live with our practices… [or] to reform them” (Tunick 1992, 27). However, it is my belief that Tunick’s reading of Nietzsche is incomplete. Tunick rightly points out that despite Nietzsche’s radical criticisms of the way in which punishment is practiced and justified, Nietzsche never calls for its complete abolition. However, Nietzsche’s critique undermines the legitimacy of the practice of punishing by exposing the flawed way in which the practice is justified, therefore demonstrating that the practice, as is, cannot be maintained. Moreover, Tunick fails to account for the fact that Nietzsche not only critiques punishment and the underlying principles that claim to legitimize the practice but goes beyond critique in offering us an alternative to the practice of punishing. He invites us to elevate ourselves by refraining from punishing, reproaching, and “improving” others and offering an alternative course of action in its place, namely to “step aside”, to “look away.”

Alan White also holds the view that “no practical consequences emerge from Nietzsche’s brief reflections on punishment: he is no penologist” (White 1990, 45). Not only do I disagree with White’s claim concerning the practical use of Nietzsche’s thoughts on punishment, but further I aimed to show that Nietzsche’s reflections on the topic are far from “brief.” However, if Nietzsche’s thoughts on punishment are thought to be contained solely within The Genealogy of Morals, as many such as White wrongly believe, then it would seem that although penetrating, Nietzsche’s thoughts are limited in scope. According to White, Nietzsche’s most valuable contribution to penology concerns Nietzsche’s demonstration of how the term “punishment” obfuscates the complexity of the practice and the ways in which the various functions of punishment have been conflated with its origin throughout history. While this is indeed an important observation, Nietzsche’s contributions extend beyond this.
Nietzsche’s critique of punishment is valuable for several reasons, including that he challenges the two main theories of punishment and demonstrates that we punish for neither retributivist reasons such as justice nor for utilitarian reasons such as deterrence. Moreover, his critique exposes modernity’s reasons for punishing as incoherent and contradictory and thereby demonstrates that the practice of punishing is not based on well-founded principles. In addition, it undermines the narrative that characterizes punishment as both moral and rational. Nietzsche’s genealogy posits that punishment cannot be said to possess one distinct meaning and therefore, society is wrong to claim that there is a single reason as to why we punish. Through exposing the inconsistencies that lie at the foundation of our criminal justice theory, Nietzsche impels us to reconceive it. Moreover, I believe that Nietzsche’s reconception of justice and punishment serves as a valuable alternative to the liberal political theory that supports the modern institution of punishment.

Nietzsche’s reflections require that we rethink the relationship between crime and punishment. In particular, his thoughts on punishment illustrate that “‘punishment’ does not follow from ‘crime’ in the neat and logical sequence offered by discourses” that emphasize the justice of punishment (Davis 2003, 112). Establishing this truth is of particular importance today for prison abolitionists such as Angela Davis. While Nietzsche’s approach is quite different from Angela Davis’s, it is my contention that like Davis, Nietzsche demonstrates that the conceptual connection between crime and punishment is neither necessary nor inevitable. For instance, through his genealogy of punishment, Nietzsche ascertains that the practice of punishing occurred prior to establishing any notion of moral responsibility. By demonstrating that the act of punishing initially had nothing to do with moral violations, Nietzsche illustrates that the link between crime and punishment is dubious.
According to Davis, unlinking the connection between crime and punishment is a powerful tool for challenging the hegemony of the prison-industrial complex. She provides several ways of weakening the connection between crime and punishment such as decriminalizing drug use, preventing punishment from being a source of corporate profit, demilitarizing education, and providing access to health care for all that is free yet efficient. However, one can also look to the practices and policies of the United States, which has the world’s highest population of prisoners as well as the world’s highest incarceration rate. The United States evidences that punishment is not an inevitable consequence of crime but is connected to various determinants of punishment such as political agendas and corporate profit, as well issues of race, class, and gender.\textsuperscript{323} Although Nietzsche fails to express concern for the aforementioned issues and also fails to provide concrete ways in which to dissociate crime and punishment, I believe that his thoughts on the topic constitute a valuable philosophical and ideological foundation for disconnecting crime and punishment. Through the work of Nietzsche, we learn that there is nothing that requires us to respond to crime in the form of punishment.

While the ideological separation of crime and punishment is often advocated by those that seek the end of punitive justice, Nietzsche does not go so far as to insist upon the complete abolition of punishment. Rather, he believes that “penal law is a valuable social force” (Halsted 1991, 43). Thus, Nietzsche permits the use of punishment yet in doing so he suggests that it must be directed toward different ends. He believes that punishment should be used for protecting society against those who would harm it. In doing so Nietzsche reduces the scope of criminality and the application of punishment to deviants only. Moreover, he also aligns himself with the

\textsuperscript{323} Such issues did not influence punishment during Nietzsche’s time to the extent that they do today. For instance, it was not until the 1980s that punishment and corporate interests became interconnected in a substantial way in the United States. Furthermore, if issues of race, class, and gender influenced the criminal justice system of 19\textsuperscript{th} century Europe, it was of a different nature since the aforementioned socio-economic groups have transformed over time to possess different meanings, functions, and statuses.
ancient, aristocratic form of punishment in which deviants were treated with intolerance and such intolerance was considered just. However, Nietzsche’s position is somewhat problematic because he fails to provide concrete examples of the deviant criminal. For instance, does stealing inflict some degree of harm upon society? Is the man who steals bread to feed his family a deviant? Would Nietzsche consider victimless crimes such as jaywalking, speeding, drug use, and prostitution to be harmful to society? Unfortunately, we are left wondering which forms of behavior constitute deviance as opposed to those that do not. For this reason, it would be difficult to implement Nietzsche’s theory in practice, yet that does not entail that his thoughts concerning the function of punishment are practically useless. Nietzsche guides us through his values and the fact that punishment should be directed only at those that harm society. While Nietzsche did not provide specifics, possibly we could derive some understanding of what he intended if we take into account his other values and that he sought to establish a society based upon strength, health, creativity, and greatness.

However, in addition to utilizing punishment for deviance, Nietzsche acknowledges a second use. That is to say, he affirms the use of punishment “when directed not only at the deviant criminal but at the great criminal as well” (Halsted 1991, 43). He claims that punishment can be used as a counterforce against higher-types to ensure that their natural drives do not manifest as barbarism or cruelty. Here, “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” (Skinner 2006, 46). Yet it is important to note that Nietzsche believes there must be a fundamental change in the form punishment takes, although it is not clear what that entails. Does Nietzsche affirm a post-corporeal approach to punishment even though he claims that ancient methods of punishment are preferable to modern
methods? Are we to suppose that punishment should take the form of treatment as described in Daybreak, and involve, for instance, fresh air, different company, a change of residence, anonymity, etc.? Or, since Nietzsche’s criticisms of punishment did not lead him to be critical of discipline, does Nietzsche actually mean discipline when he refers to punishing the deviant and the great criminal? If so, would punishment be enacted in the same way that a mother “punishes” her child, namely as a form of discipline? In that case, discipline would be distinct from punishment since a mother disciplines her child with the aim of teaching a lesson, and not with the aim of seeking revenge. I think it would be reasonable to suppose that Nietzsche had all three in mind to some extent.

Despite the fact, Nietzsche leaves his readers uncertain as to what he means exactly by punishment, it is reasonable to assume, given his criticisms of incarceration, that punishment would not take the form of jail or prison. Furthermore, considering that Nietzsche exposed the moral cruelty involved in this modern method of punishment, I believe Nietzsche provides a possible philosophical foundation for a post-carceral approach to punishment.

While Nietzsche limits punishment in its application and form, he also seeks to establish a new conception of punishment. In addition to severing the concept of crime from punishment, Nietzsche also dismisses the underlying concepts that structure our understanding of moral responsibility, and by extension, justice, and punishment. Ultimately, he concludes that responsibility entails illusory and incoherent notions such as the subject, causality, and free will. Hence, Sedgwick notes that Nietzsche’s thoughts on punishment can be described as a “post-metaphysical account of punishment” (Sedgwick 2013, 102). However, Nietzsche also breaks down the notion of punishment further by divorcing it from elements such as guilt and revenge.

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325 In The Genealogy of Morals Nietzsche refers to the ancient use of punishment, prior to the invention of moral guilt, and maintains that it took place “as parents still punish their children” (GM 2.4). It is my belief that Nietzsche has this model in mind when he affirms the use of discipline yet condemns the use of punishment.
which are traditionally thought to be essential to punishment. Moreover, in this way Nietzsche’s critique yields a new conception of punishment, a conception which provides the groundwork for a non-moral form of punishment. Halsted rightly notes that

Nietzsche’s reevaluation not only negates the modern ideal of punishment by dissociating it from revenge, guilt, and the concept of the criminal, it affirmatively creates a new understanding of the punishment which posits as its aim, the restoration of good conscience to the criminal. (Halsted 1991, 43)

One way in which Nietzsche assists the criminal in recovering a good conscience is by questioning the notion of responsibility foisted upon him. He argues that the criminal is undeserving of the false sense of guilt imposed upon him for several reasons. The conventional notion of accountability assumes that the criminal has the ability to choose one course of action over another, it posits a dubious connection between doer and deed, conceives of the criminal as a causa sui, and understands actions to be the result of intention and reason. In pointing out that the criminal is not at fault, or guilty in the traditional sense, Nietzsche opens a space for a new understanding of (non-intentional) fault.

It is important to note, as Nietzsche did through his historical critique of responsibility, that the idea of accountability underwent several evolutions of meaning throughout history, with the most recent being based upon intention. Yet, Nietzsche insists that “morality in the traditional sense, the morality of intention, was a prejudice, precipitate and perhaps provisional…but in any case something that must be overcome” (BGE 32). He demonstrates that responsibility need not entail intention since it could be understood in terms “of the way in which the accused has come to do wrong and the particular way in which he has done wrong” (Huigens 2003, 578). Hence, Nietzsche lays the foundation for a new understanding of accountability, devoid of the morality of intention, yet such that “nothing in principle stops us from writing legally adequate rules about

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326 This entails that Nietzsche’s aim, although somewhat shocking and disturbing, is that the criminal feel no remorse.
fault in non-intentional terms” (Huigens 2003, 579). Moreover, this account of responsibility is of particular value in overcoming the problems imposed by consequentialist and deontological theories of punishment “because it provides an objective or non-intentional construction of criminal fault” (Huigens 2003, 576).327

In an attempt to restore a good conscience to the criminal, Nietzsche lays the groundwork for a new conception of responsibility for legal theory. Yet how exactly will the criminal himself know that his good conscience has been restored? Nietzsche tells us that “all credibility, good conscience, and evidence of truth come only from the senses” (BGE 134). Thus, trusting one’s instincts is part of obtaining a good conscience. The criminal must not only believe in his instincts, but also in his virtues. On this point, Nietzsche writes,

and is there anything more beautiful than looking for one’s own virtues? Doesn’t this almost mean: believing in one’s own virtues? But this ‘believing in one’s virtue’ – isn’t this at bottom the same thing that was formerly called one’s ‘good conscience?’ (BGE 214)

Furthermore, the criminal obtains a good conscience when he no longer conceives of himself as guilty. When man possesses a good conscience, he is able to contradict all that “is accustomed, traditional, and hallowed” without regret and remorse (GS 297).

As Sedgwick claims in his interpretation, “what is needed, Nietzsche argues, is a new order of legislation grounded in the non-conformist and ‘criminal’ attitude characteristic of the freethinker” (Sedgwick 2013, 141). Yet, Nietzsche does not seek to implement a lawless society. Rather, law is useful to the extent that it acts as an oppositional force, perpetuating struggle and power relations. Nietzsche desires to bring about a future society in which “it shall not even be considered disgraceful to deviate from morality, either in deed or thought” (D 164). In addition to this, Nietzsche envisions a new order of legislation in which the criminal holds himself

327 Huigens interprets Nietzsche as positing an aretaic legal theory. While I think that Huigens has an accurate interpretation of Nietzsche, the major points of his argument differ from my focus and for this reason alone I chose not to incorporate it within mine. See, Kyron Huigens, “Nietzsche and Aretaic Legal Theory,” Cardozo Law Review 24, no. 2 (January 2003): 563-586.
accountable and executes his own punishment. This requires that “the sanctioning of law as the embodiment of the dominance of custom and authority over the individual must be abandoned” (Sedgwick 2013, 145).

Yet, if Nietzsche seeks to establish a society in which deviating from the norm is not only permitted but respected and affirmed, does that entail that there is no social stability? If not, how is it possible to maintain social stability if individuals are allowed, and even expected, to violate the status quo and social norms? While modern society typically looks to authority to ensure social stability as well as progress, Nietzsche claims that authority threatens such things. Instead, Nietzsche follows Machiavelli, who maintained that “the great goal of politics should be permanence, which outweighs anything else” (HH 224). Yet, it is important that society incorporate “new” types of man into the norm and remain stable in the process. If permanence is established and guaranteed, then society will still be able to successfully incorporate something new into itself despite there being aspects of society that are weak and broken down.

Nietzsche’s concern with the cultivation of man in reaching new heights, and new depths explains his critique of morality. He “considered morality dangerous because it attempts to impose the same code of behavior on everyone, making it difficult for his immoralist heroes to function” (Nehamas 2002, 103). Hence, he remarks, “all of us seek states in which bourgeois morality no longer has any say” (WP 119). However, it would be wrong to interpret Nietzsche as insisting upon the eradication of herd morality. While the herd posits its morality as universal, Nietzsche asserts that there is a hierarchy of rank among moralities and different types of people require different forms of valuation. That there is one, single, universal morality is challenged by individuals such as the criminal, who “constitutes a counter force,” demonstrating otherwise (D
Although Nietzsche does not seek the annihilation of herd morality, he does insist that this form of morality must remain with the herd.

As noted, Nietzsche oftentimes discusses morality as a hindrance to achieving freedom and genuine individuality. Despite this, he considers the political in the form of the state as the dominant threat because the state “lures” and “devours” individuals, resulting in “the death of all peoples” (Z ‘Of the New Idol’). Hence, Zarathustra tells us “only there, where the states ceases, does the man who is not superfluous begin” (Z ‘Of the New Idol’). While Nietzsche’s contempt for the state might lead his readers to assume that he categorically rejects the state, I believe this to be a misreading. Nietzsche does not reject the state as such; rather, his rejection is directed at the modern liberal-democratic state.

According to Nietzsche, throughout human history societies have been structured in accordance with politics rather than culture. One reason this is problematic is because Nietzsche considers politics and culture to be antithetical to one another. He states, “all great cultural epochs are epochs of political decline” (TI ‘What the Germans Lack,’ 4). This is part of Nietzsche’s critique of the modern state, which is not a “great cultural epoch,” but the opposite. According to Zarathustra, the modern state, “the new idol,” posits itself in place of the morality of custom (Z ‘Of the New Idol’). Thus, “the modern state does not seek to overturn the kind of hegemony that the morality of custom epitomizes but to usurp it” (Sedgwick 2013, 162). This is evidenced by the fact that “the new idol” eliminates competing forms of custom, tradition, and law; it replaces heterogeneity with mass culture for mass consumption. Moreover, the modern state yields a trivialized world where all values are reduced to novelty and rendered meaningless.
For Nietzsche, the modern bourgeois state is lacking in creativity and greatness.\textsuperscript{328} He condemns the way in which “modern economic and political life destroys the possibility of individual greatness” (Franco 2014, 458).\textsuperscript{329} Despite the modern state’s claim to cosmopolitanism and pluralism “the independent person… is treated in a manner akin to the criminal: they are shunned and condemned as beings whose deeds exceed the domain of propriety” (Sedgwick 2013, 165). Moreover, Nietzsche alleges that the creative and spiritual energy of “society’s most gifted spirits” is wasted on “political and economic affairs” (D 179). He insists that there are more worthy pursuits and therefore, great natures must direct their energy and creativity away from political concerns and toward “the highest and rarest objectives” (D 179). In doing so, they re-enliven the cultural realm and for this reason “some people must be allowed…to keep out of politics and stand aside” (HH 438).

In order to prevent society’s decline, Nietzsche suggests that we reconceptualize and restructure the political “to promote ‘culture’ (that is, the cultivation of greatness and true human beings)” (Ansell-Pearson 1994, 3). Thus, if politics is to remain, it too must be reconceived in terms of the promotion of culture and thus, greatness. However, some may interpret “Nietzsche to be literally advocating an aristocratic political system in which the gifted few rule over, manipulate, oppress, enslave, and sometimes even exterminates the mediocre many” (Franco 2014, 460). While I acknowledge that there are some passages in Nietzsche that seem to support this reading, I believe this to be a misreading.\textsuperscript{330} Nietzsche believes that it is a “fundamental error to place the goal of society in the masses, and not in the individual” yet it is important to note that he does not advocate the extermination of the masses but insists upon their necessity.

\textsuperscript{328} See, Z ‘Of the New Idol’; Z ‘Of the Flies of the Market-place.’
\textsuperscript{330} See, for instance, BGE 258; WLN 2.57; WP 862; WP 957; WP 964.
(Denneson 1999, 5). He maintains that the purpose of the herd resides in “serving a higher sovereign species” (WP 898). Yet, the higher species will possess “its own sphere of life” and be “strong enough to have no need of the tyranny of the virtue-imperative” (WP 898). Strong natures do not seek to impose their values upon the herd, nor do they seek to rule over the herd. What is more accurate is that “they exist far apart from the herd, creating and self-legislating in their own space, working artistically on themselves as a means of enhancing the type ‘man’” (Franco 2014, 465). Although the task of the higher species consists not in leading or governing those of the lower, the lower exists as a foundation upon which the higher “performs its own tasks – upon which alone it can stand” (WP 901).

In addition, as I believe I have shown, Nietzsche advocates against external domination in favor of internal discipline. He tells us that our power is best used and maximized when it is directed internally, toward creation and self-mastery. However, if power is utilized to oppress and exploit others, then an individual can never attain the maximum degree of power. Greatness for Nietzsche is characterized not by brute force and/or physical oppression but by “spiritual discipline” (WP 901). Thus, while nobility and greatness entail discipline, it is a form of discipline directed at controlling and creating the self rather than the other. Moreover, some may point to the fact that Nietzsche embraces will to power in terms of agonistic strife. Thus, taking advantage of others by harming and exploiting them could be interpreted as a natural course of action. However, Nietzsche remarks that while those who are hard and great could easily capitalize on the vulnerable and impotent, they are not driven to exploit this opportunity. Rather, “an easy prey is something contemptible for proud natures. They feel good only at the sight of unbroken men who might become their enemies” (GS 13). Although Nietzsche desires a future society in which power and strength are not assaulted or restricted, this does not entail that he
desires a society in which power and strength are completely unrestricted. Moreover, while Nietzsche does embrace will to power in terms of agonistic strife, “such a structure undermines the idea that power could or should run unchecked, either in the sense of sheer domination or chaotic indeterminacy” (Hatab 2008, 14).

A further reason as to why it is incorrect to interpret Nietzsche as affirming the eradication of the masses is related to the necessity of a hierarchy of rank. For Nietzsche, the pathos of distance is essential for freedom. That is to say, the struggle between master and slave, ruler and ruled, and the powerful and the powerless ensures the possibility of freedom. If such inequality were to be eradicated so too would the possibility of obtaining freedom. Moreover, this informs Nietzsche’s critique and dismissal of egalitarian justice and equal rights since he believes the implementation of such things leads to the erasure of difference and the implementation of similarity.331 He rejects egalitarianism because it posits as its founding principle an equality based on abstract sameness, rather than an equal respect for individual difference or an equal respect for all individuals as unique. “While equality based on the recognition of universality (civilization) forecloses the possibility of struggle and, hence, of freedom as responsibility, equality based on the recognition of difference (culture) generates freedom as responsibility” (Lemm 2009, 43).332 This coincides with one of Nietzsche’s critiques, namely, that of the liberal tradition and its claim to honor and cultivate freedom.

However, Nietzsche challenges the idea of emancipation posited by liberalism and cautions against mistaking this illusory concept of freedom for genuine freedom. He maintains that “liberal institutions immediately cease to be liberal as soon as they are attained” (TI

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331 Thus, Nietzsche is critical of egalitarian justice and equal rights because they posit equality insofar as man is the same, rather than equality insofar as man is different.
‘Expeditions of an Untimely Man,’ 38). Once such institutions are established, they oppose and undermine freedom, and for this reason Nietzsche insists the liberal institutions are detrimental to freedom. However, since freedom for Nietzsche emerges from antagonism and struggle, the fight for liberal institutions in effect promotes freedom. In other words, freedom is inherently war and conflict “in the sense that it stands for a continuous resistance to the institutionalization of freedom” (Lemm 2009, 31). Thus, there is only freedom in so far as there is still struggle. Yet, as soon as liberalism, or any such institution becomes the norm, freedom ceases and oppression ensues. As Sedgwick claims in his interpretation of Nietzsche’s perspective,

> the power to create values, which Nietzsche holds to be the sign of authentic freedom, is thus initially and accidentally cultivated by liberal forces but is ultimately sacrificed to the administrative structures that a victorious liberal ethos evolves in order to maintain itself. (Sedgwick 2013, 222)

However, this is not to say that Nietzsche rejects political institutions, whether liberal or not. Strong institutions are expedient insofar as they are forces against which man can react in order to cultivate and demonstrate his freedom. “After all, it is essentially the struggle for and against rule that generates freedom and responsibility” (Lemm 2009, 40).

This informs Nietzsche’s concern with society’s aim to eliminate or neutralize the criminal, since in doing so society would deprive itself of a fruitful and valuable antagonist. The very existence of the common criminal as well as the herd’s hatred of him is both valuable and necessary for society’s progress and evolution. Aside from this beneficial antagonism, Nietzsche urges us to rethink the relationship between society and criminality. He teaches us that crime “is not the cause of decadence; it is the consequence of it” (Halsted 1991, 43). While modern society places responsibility for crime on the criminal, Nietzsche, on the contrary, places responsibility for crime on society. However, although society is to blame for sickening the criminal, Nietzsche acknowledges the value of society in acting as a force of resistance for the criminal. Nietzsche states, “culture absolutely cannot do without passions, vice, and acts of malice” (HH 477). Since
man develops and flourishes through opposition and resistance such conditions are necessary. Thus, the sovereign individual who obtains perfection, and thus freedom, never does so in “humane ages” (WP 770). Nietzsche urges us to accept that the drives and conditions that evoke fear and reflect strength, though often deemed immoral and evil, are necessary because they facilitate humanity’s growth and enhancement.

Central to Nietzsche’s moral and political thinking is the idea that exemplary individuals define and redefine the boundaries of human perfectibility, and in doing so, justify mankind’s existence. Hence, Nietzsche’s vision for the future is aimed at making a “culture strong enough to tolerate its heroes” (Thiele 1990, 17). At present modern society is dominated by life-denying values in the form of slave morality and nihilism and for this reason Nietzsche argues that the future of humanity requires the creation of new values. Nietzsche aims to replace such decadent values with life-affirming aristocratic ideals, which are naturally attuned to the self-overcoming of man. Since human flourishing is central to an aristocratic ethics, “it is as solid a basis as any for a new legal order” (Huigens 2003, 586).
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