

Abstract: The opening of Nietzsche's *On The Genealogy Of Morals*, Second Essay, contains a critique of lawfulness. Both classical and modern authors consider lawfulness a great good. It models and provides consistency, creates a basis for equality, and even serves as a way of knowing. Nietzsche takes aim at each of these attributes. He implicitly argues the law is neither consistent nor rational. Moreover, he questions equality itself. Previous scholars have focused on these same sections as a response to Kantian and Enlightenment ideals. However, in what follows, Nietzsche has been placed in a fruitful dialogue with Socrates, who exemplifies a more traditional approach to philosophy and law. What one discovers through the dialogue challenges our ideas about freedom, a challenge which can serve to expand the scope of rights.

Nietzsche and Lawfulness: On the Opening of Genealogy's Second Essay

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INTRODUCTION

...[L]et it be brought forth placed on the Divine Law, the Word of God; let a crown be placed thereon, by which the world may know, that so far as we approve of monarchy, that in America the law is king.

-- Thomas Paine, "Common Sense"

The law, the way we do things, is majestic. It makes a people free, even allowing for what we think individual freedom. Those who defend it are often called heroes, and violators must be ready to transform society if they do not want to be considered villains. Socratic rhetoric, while in tension with lawfulness, strives to vividly depict the benefits of law for a political community. To obey the law is to demonstrate a consistency emblematic of rationality. To respect the law is to appreciate how it makes us equal, united in purpose. And to consider the law is to understand its service as a foundation for greater truths. Only with lawfulness can humankind be truly free.

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Professing a love for the law is attractive to us today. Citizens of the United States adore the ideal of lawfulness, though not entirely for classical reasons. Media lauding policework dominate.² The good guys follow the rules, only bending them when necessary and breaking them when absolutely necessary. Without the good guys, society would collapse into chaos. After all, lots of people want to hurt others just because they can. We know this because media about crime dominate, too. We are constantly told of looting after disasters, the necessity of carrying a gun, tales of unsolved crimes, and criminals who will say and do anything to commit their next crime.³ Lawfulness is trust of the good guys and perpetual distrust of the bad guys. It is a marker of identity. Never mind that crime rates correlate strongly with poverty.⁴ Never mind that perceptions of increased crime correlate with increased attention to crime, not actual incidents.⁵

Nietzsche's cynicism about the classical ideal of lawfulness serves us directly. It does not prevent watching procedurals or listening to true crime podcasts. However, it does pause identification of law's greatness with our freedom. Is true freedom working within the boundaries of the law? The trouble with saying so is that the law can be wildly inconsistent,

² Kenya Evelyn, "How TV crime shows erase racism and normalize police misconduct," *The Guardian*, January 2020. Retrieved from <https://www.theguardian.com/media/2020/jan/25/law-and-disorder-how-shows-cloud-the-public-view-of-criminal-justice> | The article's focus is racism, but it lists a large number of highly rated crime shows, and the author is clear about their societal impact.

³ Emma Berquist, "True Crime Is Rotting Our Brains," *Gawker*, October 12, 2021. Retrieved from <https://www.gawker.com/culture/true-crime-is-rotting-our-brains>

⁴ Erika Harrell, Lynn Langton, Marcus Berzofsky, Lance Couzens, and Hope Smiley-McDonald. "Household Poverty and Nonfatal Violent Victimization, 2008–2012," *US Department of Justice*, November 2014. Retrieved from <https://bjs.ojp.gov/content/pub/pdf/hpnnv0812.pdf> | The article is a little old but there are many more studies with the same conclusion. However, this shows strikingly the jump in crime rate as households become poorer.

⁵ Justin McCarthy, "Perceptions of Increased U.S. Crime at Highest Since 1993," *Gallup*, November 13, 2020. Retrieved from <https://news.gallup.com/poll/323996/perceptions-increased-crime-highest-1993.aspx> | McCarthy: "In most recent years, Americans' persistent belief that crime worsened in the past year has been [out of sync with federal crime statistics](#) showing that crime rates have fallen."

devoted to a debased notion of equality, and utterly unknowing about our individual lives. However, by placing Nietzsche in dialogue with Socrates, higher possibilities also become visible. True freedom, as we will see, entails an appreciative intelligence, a commitment to higher ideals, and an acknowledgment of the pain and sacrifice involved in knowing one's own truth.

Two papers which have been invaluable to this study are Matt Dinan's "Nietzsche Against the Sovereign Individual in the Second Essay of the Genealogy"⁶ and Thomas Miles' "On Nietzsche's Ideal of the Sovereign Individual."⁷ Professor Dinan shows that Nietzsche is certainly arguing against a Kantian ideal for humankind. A scientifically oriented, unegoistic, duty-bound human is not a goal for Nietzsche. However, I found myself swayed by Professor Miles' contention that Nietzsche uses different expressions for what he finds ideal, and the "sovereign individual" is one of them. The essay that follows can be considered an elaboration of the "sovereign individual," a human who is a "master of a *free* will."⁸

Nietzsche's demonstration of what freedom should look like has consequences for those who are concerned with how rights work. A typical reading of Nietzsche would emphasize his disdain for democracy, equality, and anything remotely aligned with socialism. What I propose, after accounting for his critique of classical ideals, is a reconsideration of our notions regarding rights. That we have rights is less a legal matter, but rather a matter of recognizing those who fought for them, how they conceived the situation, and what ideals they espoused. What is at

⁶ Matt Dinan, "Nietzsche Against the Sovereign Individual in the Second Essay of the Genealogy," in *Polis, Nation, Global Community: The Philosophic Foundations of Citizenship*, ed. Ann Ward (London: Routledge, 2021).

⁷ Thomas Miles, "On Nietzsche's Ideal of the Sovereign Individual," *International Studies in Philosophy* 39.3 (2007): 5-25

⁸ Friedrich Nietzsche, "On the Genealogy of Morals," in *On The Genealogy of Morals and Ecce Homo*, ed. Walter Kaufmann (New York: Vintage, 1989), 59. | Hereafter, all references to Genealogy will be GM, [page number] in footnotes.

stake is the difference between “rights” as “parchment barriers” and a will to rights, a will to identity, a more Nietzschean-informed posture.

FROM FORGETTING TO CONSISTENCY: FIRST SECTION OF THE SECOND ESSAY

The first section of the Second Essay of *On The Genealogy Of Morals* begins with “an animal *with the right to make promises,*” then outlines a brief, contrarian view of the operation of memory. “Forgetting... is rather an active and in the strictest sense positive faculty of repression.” Nietzsche introduces forgetting in such a way that it cannot be called a failure to remember. Rather, it constitutes a strength, a power. He continues: because of “forgetting,” “what we experience and absorb enters our consciousness as little while we are digesting it.”⁹ This opens an incredible line of thought. To forget means to continually reencounter what we live through and try to grasp. That reencountering becomes part of the depth of what we dearly remember. We make ourselves conceive an object again and again, starting from a new premise, a new standpoint, each time. We add fragments of these conceptions together, building the images which stay with us.

So on the one hand, “forgetting” beautifully illustrates our will to knowledge. On the other, Nietzsche’s account of forgetting and memory leads to another topic entirely. His rhetoric ultimately targets the consistency of law. Laws and rules are respected largely because of the stability they provide. Perhaps their consistency mirrors a greater sense of rationality, as in the concept of a natural law. Or it is generated through connecting law with proper procedures in its creation and execution. Either way, law receives respect because of this attribute.

⁹ GM, 57.

Nietzsche's description of forgetting treats it as no less than a ruler, a potential source of law. Forgetting, as said above, is a "faculty of repression," which could be imagined sitting upon a royal throne, demanding mass protests in the capital to be silenced. It "close[s] the doors and windows of consciousness for a time," like a "doorkeeper, a preserver of psychic order." "[O]ur organism is an oligarchy," Nietzsche proclaims, noting that forgetting serves "the nobler functions and functionaries." "[T]here could be no happiness, no cheerfulness, no hope, no pride, no *present*, without forgetfulness."¹⁰

A number of questions can be asked about the meaning of forgetting as a ruler. One of them may focus less on how exactly forgetting rules, instead probing what else could rule through a kind of forgetfulness. What else works with inexact knowledge, with explicit gaps in reasoning, in order to pronounce judgment? We can surmise law itself works this way, but if we do, then we must wonder how law is possibly consistent.

Nietzsche, I believe, has constructed a riddle. He completes the riddle in how he talks about "memory," which pauses forgetfulness. Memory, too, is "no mere passive inability." When "promises are made," memory emerges, stemming from "an active *desire*... for the continuance of something desired once, a real *memory of the will*". However, between the moment one says "I will" to themselves and the moment an action is taken, an infinite number of things occur, complicating whether an actor's resolution actually leads to a given deed. Nietzsche ponders aloud how humans can even say they cause anything: "...between the original 'I will', 'I shall do this' and the actual discharge of the will, its *act*, a world of strange new things, circumstances, even acts of will may be interposed without breaking this long chain of will."¹¹

¹⁰ Ibid, 57-58.

¹¹ Ibid, 58.

The reader, at this point, must make an interpretative choice. How committed is Nietzsche to his skepticism about linking thought and deed? To put it another way, is Nietzsche being hyperbolic to such a degree that his point is unusable? As a practical matter, it is difficult to deny that people make choices and see consequences for those choices. However, I hold Nietzsche is fully serious, but addresses more than a free will/determinism debate. How is a “long chain of will,” a necessary consequence of proclaiming “I will” meaningful, possible? Nietzsche posits a particular set of human developments:

...how many things this presupposes! To ordain the future in advance in this way, man must first have learned to distinguish necessary events from chance ones, to think causally, to see and anticipate distant eventualities as if they belonged to the present, to decide with certainty what is the goal and the means to it, and in general must be able to calculate and compute.¹²

This passage may be read as a description of humankind under Enlightenment. Humans can “calculate and compute.” They do science and “distinguish necessary events from chance ones.” There is “causal,” goal-oriented, and futural thinking. The consistency of a modern conception of law, upon this reading, is an obvious target. But I see Nietzsche, in these lines and what follows, arguing with Plato over the nature of law. What comes to mind specifically is Plato’s short dialogue *Minos*, a work which does not appear to have anything to do with forgetting, memory, or humans made calculable.

However, the *Minos*’ opening, spoken by Socrates, may be translated “What is law, for us?”¹³ This brings Nietzsche’s discussion of a promise-making animal into contact with Socrates. Just as Nietzsche wants to know how such an animal takes its promises seriously, Socrates wants to know how any law is recognized as law: “...neither does law, presumably, differ at all from law, but they are all the same thing. For each of them [the laws] is law to the same degree—not

¹² Ibid, 58.

¹³ Plato, “Minos,” in *The Roots of Political Philosophy*, ed. Pangle (Ithaca: Cornell, 1987), 53.

one more so and another less.”¹⁴ In a parallel vein, Nietzsche seems to treat will as irreducible, though it creates opposed thoughts and behaviors. The *Minos*, to be sure, goes an entirely different direction than the Second Essay, as it examines whether the law is based on opinion or knowledge, as well as explores its ties to the sacred, craftsmanship, or tradition.

One particular line in the *Minos* stands out for purposes of this essay. Socrates there says law “wishes to be the discovery of what is.”¹⁵ Law wants to be no less than natural philosophy or the entirety of the sciences. This certainly compares with Nietzsche speaking of humankind’s making itself “calculable, regular, necessary.” Nietzsche, thus, strongly implies that the definition of human being is one which humans are trying to build and attain. It has not been achieved yet and may not be achieved. Still, one of the tools by which one can see one’s fellow human beings as like them is the law. If we all obey the same laws, we may calculate much the same way, understand events in similar ways, and envision (or lack vision) for a common future.

Socrates’ ironic definition of law in the *Minos* is not an isolated statement. He means to illustrate the aspirations of law’s consistency. Law aims to not only be the truth of how we live, but even how that truth is discovered. While Socrates’ own life diverges sharply from defending a given law and its creators, he does submit to the consistency of law in general. There is a reconciliation between the higher type of human, one who changes the course of history by being as good as his word, and the law. He highlights the value (as well as the problem) of law being consistent.

Nietzsche, on the other hand, paints humanity as forgetting and remembering in the shadow of law. Law pushes us to be “calculable” and “regular” in order to say “I will.” But whose will is being expressed? An individual’s or the law’s? The initial discussion about forgetting

¹⁴ Ibid, 53.

¹⁵ Ibid, 56.

brings forth a rich picture of a will to knowledge—a will to knowledge not unlike experiencing one’s favorite artworks over and over—because, ironically enough, our will to memory shows signs of impoverishment.

“THE RIGHT TO MAKE PROMISES:” ON THE “SOVEREIGN INDIVIDUAL”

The second section of the Second Essay dares readers. Nietzsche, after all, is relating a genealogy of morals. He speaks of how promise-making means humankind must assume itself reasonable in specific ways. “Responsibility” originates from this, the “preparatory task that one first makes men to a certain degree necessary, uniform, like among like, regular, and... calculable.” Though Nietzsche’s narration means to be in dialogue with a host of other ideas—arguing with, say, Kant, Plato, social contract theory, utilitarianism, Marxism—that it is told as a story takes a certain precedence. So when Nietzsche places the reader “at the end of this tremendous process, where the tree at last brings forth fruit,” and introduces the “sovereign individual,” that figure appears less an ideal and more of a stage to something greater. Something a reader should dare to critique, as Nietzsche’s story is not yet finished.¹⁶

But there are good reasons to treat the “sovereign individual” as an ideal as well as the historical origin of “conscience.” The “sovereign individual” is at the end of a process involving “the morality of mores,” “the social straitjacket,” and “the morality of custom.” They are the “ripest fruit” from this tree devoted to making humans calculable. Nietzsche does not explain in precise detail why someone so subject to moralization would have an “independent, protracted will,” a “right to make promises,” “a proud consciousness” of their achievement, and “a sensation of mankind come to completion.” Why is the “sovereign individual” not buckling

¹⁶ GM, 58-59.

under the guilt of a moral system? Why are they not torn down by those who use religion and law to enforce a debased equality?¹⁷

I believe they are “liberated... from [the] morality of custom” because they can see how the moral beliefs they have grown from work, have worked, and do not work. The “sovereign individual” is “autonomous and supramoral” in a way parallel to Kant’s formulation. For Kant, law and freedom are two sides of the same coin. Without law, freedom is not conceivable, and without freedom, the law is useless. The “sovereign individual” is free in the sense that they are always conscious of the use and limits of the law in the highest sense. I hold that Nietzsche’s talk about “this tremendous process” bringing forth such an individual is not mere rhetoric. Rather, the “sovereign individual,” with “a proud consciousness” of moral phenomena being “achieved and become flesh in him,” understands how some laws worked to build other eras which inspired awe, yet is aware remnants of those laws would not work the same today.¹⁸

To be fair, Nietzsche does not make it sound like the “sovereign individual” views morality from the perspective of history. They sound more like a product of historical development itself, one which separates them from products not so developed:

This emancipated individual, with the actual *right* to make promises, this master of a *free* will, this sovereign man—how should he not be aware of his superiority over all those who lack the right to make promises and stand as their own guarantors, of how much trust, how much fear, how much reverence he arouses—he “*deserves*” all three—and of how this mastery over himself also necessarily gives him mastery over circumstances, over nature, and over all more short-willed and unreliable creatures?¹⁹

¹⁷ Ibid, 59.

¹⁸ Ibid, 59.

¹⁹ Ibid, 59-60.

The “sovereign,” “emancipated individual” deserves “trust,” “fear,” and “reverence” as they have “mastery” over themselves, “circumstances,” “nature,” and other “short-willed and unreliable creatures.” It sounds like the “sovereign individual” automatically has energy, courage, and a right to rule. But that tone comes primarily from Nietzsche declaring them superior to the entire world. What exactly the “sovereign individual” has can be two things, not necessarily opposed: the moral law in their bones, as if they were justice incarnate, or knowledge of how morality actually works, how it has created the world we see and do not see. I lean toward believing that knowledge guides the “sovereign individual.” They know when they can promise, they know the limits of their freedom.

The figure of the “sovereign individual” does not easily reconcile with the concept of political equality. Nietzsche is forthright that many cannot be trusted to “promise like sovereigns.” Rather, many are “feeble windbags who promise without the right to do so,” or are like a “liar who breaks his word even at the moment he utters it.” Nietzsche’s rhetoric is cruel, damning of those who do not or cannot understand the various traditions comprising morality and their contradictory weights. The “sovereign individual” wears their power over the tree which nurtured them as a “dominating instinct.” It is their “conscience.”²⁰

Notably, the tradition has been much kinder to those who do not contemplate the significance of every aspect of the law, whether they do so in an instinct-like manner or not. When Socrates asks Crito at the opening of the eponymous dialogue why he is there, Socrates does not mean to be harsh. Crito had bribed a guard and entered the jail in which Socrates is held illegally. If he is caught, he risks making Socrates’ speech at the *Apology* look like mere

²⁰ Ibid, 60.

grandstanding, and Socrates cannot do anything to help his friend evade consequences for trying to help him.²¹

Crito wants Socrates to escape, but Socrates wants to make a point. Part of that point is made by imagining the laws speaking to Socrates directly. The laws, personified and narrated by Socrates, ask him if he wants to destroy them and the city by promoting wanton violation of a court's judgment. They go further: not only is he a product of laws concerning marriage, growth, education in music and gymnastics, but he has no right to assume he is on equal footing with them. He must either submit to their commands or persuade the entire city he is correct.²² Importantly, Crito assents to this argument. Crito holds that the laws are speaking the truth, despite Socrates only outlining how the laws resulted in his physical presence. To this end, the *Crito* leads into the *Phaedo*, as Socrates needs to demonstrate the true independence of his soul to his own followers. A powerful hint that the argument to which Crito assented is not the final word occurs when the laws say that Socrates personally agreed to do what the laws command, perhaps more than other Athenians, as he never thought to leave and proclaimed death preferable to exile.²³ Crito understands that Socrates' reputation and integrity are at stake in how he relates to the laws. The philosopher, so to speak, cannot be seen as an arbitrary lawbreaker. But Socrates repeatedly emphasizes, to make a point made by a number of other scholars, that he and the city have an agreement. In other words, Socrates' thought stands equal or greater to the city, its proclamations, and its laws.

The difference between Socrates and Crito mirrors the difference between the "sovereign individual" and everyone else. But Nietzsche, who repeatedly professes to be no fan

²¹ Plato, *Crito* 43a.

²² *Ibid*, 50a-51c.

²³ *Ibid*, 51c-52d.

of Socrates, creates a situation where someone like Crito is even more blameworthy. Socrates, we might say, is some sort of “sovereign individual,” one who relates deeply to the laws and can explain why they must be transcended. It does not make sense, in Nietzsche’s terms, to think of Socrates as equal to Crito in any way. But the drama of the *Crito* itself depends on physical and moral equality between Socrates and Crito! Crito does not want his friend to gamble with his life for a legacy to which only one other person might bear witness. The law is an equalizer, the tradition begins with equality, but Nietzsche has a different starting point in mind. Since any one of us being here is a result of any number of cruel accidents, why not start with visible results of a will to power? The “sovereign individual,” or more importantly, our thinking through a philosophy of the future, requires a different approach to equality.

CRUELTY, KNOWLEDGE, AND THE LAW

Nietzsche relishes describing the horrors which create the memory of moral men. He opens the third section of the Second Essay innocently enough. “Conscience” is a late development, a fruit not present for generations. To act with conscience, with knowledge, is to demonstrate “the *right to affirm oneself.*” The ideal of the “sovereign individual,” who possesses a wise confidence, is certainly visible.²⁴

Again, this fruit is rare, if it has ever truly grown. Accordingly, Nietzsche asks, in quotes he provides, “How can one create a memory for the human animal?” With its “partly obtuse, partly flighty mind,” how can something be imprinted “in such a way that it will stay there?” These questions are set apart with quotes as if Nietzsche is addressing an interlocutor. They open the door to the uses and abuses of terror. “If something is to stay in the memory it must be burned in: only that which never ceases to *hurt* stays in the memory”--the quotation marks

²⁴ GM, 60.

are Nietzsche's. He briefly acknowledges this may be an unhappy psychological insight before providing a considerable bit of illustration:

Man could never do without blood, torture, and sacrifices when he felt the need to create a memory for himself; the most dreadful sacrifices and pledges (sacrifices of the first-born among them), the most repulsive mutilations (castration, for example), the cruelest rites of all the religious cults (and all religions are at the deepest level systems of cruelties)--all this has its origin in the instinct that realized that pain is the most powerful aid to mnemonics.²⁵

Nietzsche's linking "blood, torture, and sacrifices" to the creation of "memory" serves as a comment on law and morality. Before, we noted that the law was inconsistent because of its pretense to rationality. This did not mean that the law was wholly divorced from rationality or knowledge. In this section, however, law, cruelty, and religion are mixed together, and memory depends on pain more than anything else. The law looks to be wholly irrational, not worthy of treatment as a domain of knowledge.

There is more. Nietzsche moves away from the "sovereign individual" in his rhetoric and now considers the formation of a people. The Germans create collective memory through "fearful means," allowing them mastery of their "basic mob-instinct and its brutal coarseness."

The "old German punishments" included:

...stoning (the sagas already have millstones drop on the head of the guilty), breaking on the wheel (the most characteristic invention and speciality of the German genius in the realm of punishment!), piercing with stakes, tearing apart or trampling by horses ("quartering"), boiling of the criminal in oil or wine (still employed in the fourteenth and fifteenth centuries), the popular flaying alive ("cutting straps"), cutting flesh from the chest, and also the practice of smearing the wrongdoer with honey and leaving him in the blazing sun for the flies.²⁶

²⁵ Ibid, 60-61.

²⁶ Ibid, 61-62.

Why does Nietzsche indulge all this elaborate, grotesque detail? I believe he alludes to a section in the First Essay where it is said heaven allows one to watch those in hell being tortured.²⁷ We readers are the saintly, the ascended, watching the Germans form into a people. They are creating the memories they want, the memories which instill in them a law. And there is a twist to understanding what they are doing: are they actually creating reason? “[I]t was indeed with the aid of this kind of memory that one at last came ‘to reason’!” “...[R]eason, seriousness, mastery of the affects, the whole somber thing called reflection... how dearly they have been bought!”²⁸

It is possible to say there is nothing reasonable about memory and law forged through pain alone. Nietzsche’s “sovereign individual” rhetorically stands apart from the Germans and their tortures. The “reason” of blinding pain does not typically lend itself to reflection. However, I do not believe Nietzsche will let one say knowledge is free from cruelty. Law is unreasonable, established upon and limited by pain, but true rationality involves using that pain to fully evolve. The famous “Man is a rope stretched between the animal and the overman--a rope over an abyss” seems to be apt for these considerations, as does the infamous “What does not kill me makes me stronger.”

Explicitly tying knowledge to the pain of cruelty is a stretch for classical thought, even when the theme under consideration is law. Xenophon says Socrates was willing to die before committing any violation of the law, then recounts a debate between him and the sophist Hippias.²⁹ The debate is about whether the art of justice changes. Socrates had been saying that people have teachers for shoemaking, carpentry, blacksmithing, and horseback riding, but

²⁷ Ibid, 49.

²⁸ Ibid, 62.

²⁹ Xenophon, *Memorabilia* 4.4.

strangely lacked teachers to learn justice. Hippias heard this and accused him of saying the same things over and over, instead of finding new knowledge. When Socrates asks Hippias what he had learned that was new about justice, Hippias declines, asserting that Socrates should make his own position clear.

So Socrates says this: "I say that what is lawful is just."³⁰ Hippias, in turn, tries to argue that lawmakers themselves break the law. How could the law be just if its creator does not consider it binding? Unfortunately for Hippias, Socrates uses that opening to ask questions. Those who obey bad laws in the hope they will be changed or peace will be made are just, no? Or do we want to say those who fight in defense of their country in a bad war are unjust?

At that point, Hippias loses the debate. Socrates goes on to say that obedience to laws creates harmony, a very great good for cities and citizens, as it enables happiness and trust. People trust others who obey laws, after all. There is even a law of the gods, as honoring parents, incest prohibitions, and demonstrating gratitude all have consequences beyond civic penalties if not observed.

Socrates' rhetoric is notable because of how many noble sentiments it indulges. If Hippias were to say that people prosecuting a bad war were unjust, he would lose the debate on account of the Athenian audience Socrates was addressing. Perhaps Socrates' biggest stretch involves the showing of gratitude. It is true that cities will fall apart if no gratitude is ever shown from one citizen to another. Justice depends on norms considered extralegal. Socrates, though, calls gratefulness a law of the gods. The irony is fatal: Socrates will be put on trial for his perceived ungratefulness. Why, the formal accusation implies, did he ever think it proper to bring in new gods?

³⁰ Ibid, 4.4.12.

Of course “the just” and “the legal” are not strictly equivalent. Otherwise there would be no debate about a given law or its application. But, for our purposes, note how Socrates’ rhetoric emphasizes the gentle—we do not slander heroes, the trustworthy, our parents—while treating law as a form of knowledge. The difference between Socrates and Nietzsche could not be more emphatic. Socrates could have talked at length about how the best laws are Spartan and ironically alluded to the resulting horrors of their education and society. That sort of talk Nietzsche is more than willing to indulge explicitly, given how he describes the old German tortures.

The classical approach entailed not pushing people to ask tough questions if they did not want to. If someone wants to believe that obeying the law is always beneficial, they should be allowed to believe that. Perhaps Nietzsche shocks with descriptions of cruelty because the classical approach was never harmless. Plenty of people willing to harm others pretend the law is knowledge in order to shield their eyes from the consequences of their actions.

CONCLUSION

Bringing Nietzsche into dialogue with Socrates proves fruitful on a number of fronts. The emphasis on forgetting as a power ironically pointed to a unique vision for intellectual life. The more traditional Socratic understanding, where law “wishes to be the discovery of what is,” showed law as desiring the means of the sciences and the awe they inspire. Nietzsche’s “sovereign individual” need not partake of law or science understood that way, though. What matters is their own continual presence, their bearing witness to their uniqueness.

In a similar vein, Nietzsche dismisses equality, even when it highlights the struggle of a dear friend like Crito. I do believe his sentiments do not need to be interpreted as a frontal assault on equality. Rather, those who aim at higher goals for humanity require a respect which

makes difficult demands. Sympathy for those who fail to understand those demands does not aid the cause. The “sovereign individual” can coexist with equals. But they must rule those who cannot embrace the burden of their freedom.

Finally, Nietzsche talks at length about cruelty because the pain of cruelty is especially remembered. I believe he is talking about embracing one’s experience more than relishing the punishments laws inflict. It is true, according to Nietzsche, people formed themselves by means of brutal punishments. Through pain, they remembered. They crafted their way upon the body politic. But if we are thinking what lesson this contains for a historically-minded individual, one who knows the potential and limits of a given morality, and most importantly, one who is true to their own experience, then cruelty is about the pain already inflicted upon someone who is sovereign. There is no greater pain, perhaps, than having one’s pain not remembered at all.

When I think about the sort of person who would be a candidate for a “sovereign individual,” I do not think of generals or political leaders who have named, recognizable successes. I think of activists who chained themselves to busses to get the ADA passed, or the righteous and tragic anger of ACT UP in the face of an epidemic and those ignoring it. Nietzsche himself would not approve of this interpretation, but that is of little account for the philosophy of the future. What matters is that those who can feel the law in their bones feel free because of it. That they know its power and its limits. There is a sculpture by an artist who lost his lover to AIDS which is nothing but a pile of candy in a corner. The candy was his lover’s favorite. Audiences are encouraged to take a piece of candy upon seeing the sculpture. Not one iota of classical lawfulness can prepare you for this life.

