
What Is Positive Law?

Author(s): Philippe Nonet

Source: *The Yale Law Journal*, Dec., 1990, Vol. 100, No. 3 (Dec., 1990), pp. 667-699

Published by: The Yale Law Journal Company, Inc.

Stable URL: <https://www.jstor.org/stable/796665>

JSTOR is a not-for-profit service that helps scholars, researchers, and students discover, use, and build upon a wide range of content in a trusted digital archive. We use information technology and tools to increase productivity and facilitate new forms of scholarship. For more information about JSTOR, please contact support@jstor.org.

Your use of the JSTOR archive indicates your acceptance of the Terms & Conditions of Use, available at <https://about.jstor.org/terms>



is collaborating with JSTOR to digitize, preserve and extend access to *The Yale Law Journal*

JSTOR

What Is Positive Law?

Philippe Nonet†

The following notes attempt a brief introduction to the mature works of Nietzsche that speak most pointedly and most explicitly to the fundamental questions of jurisprudence. The main texts upon which it relies are contained in *Jenseits von Gut und Böse*, first published in 1886, immediately after *Also Sprach Zarathustra*; and *Zur Genealogie der Moral*, first published in 1887.¹ By Nietzsche's own instructions, these last two books are to be read as a single work, since the latter was written as an "addition intended to complete and clarify" the former.

Oddly perhaps the title of this Essay does not even allude to the work of Nietzsche. It only asks the question: what is positive law? Wrongheaded as it may seem, the omission is deliberate. The task before us indeed calls upon us to think through the question of the essence of positive law. To study Nietzsche is not to ascertain the historical record of "what Nietzsche said," nor to seek mastery of that mass of materials in the construction of tidy "nietzschean" doctrines. Great thinkers demand that we let their words draw our attention to the matter at issue in their thought. At issue in Nietzsche's thought is the question of the essence of positive law.

I. POSITIVE LAW AS WILL TO POWER

What is positive law? We may begin with the familiar account that the word "positive" suggests immediately: positive law (Nietzsche calls it *Gesetz*) is law that exists by virtue of being posited (*gesetzt*), laid down and set firmly, by a will empowered so to will. Such law "exists" in the sense that it has validity

† Professor of Law, University of California, Berkeley, School of Law (Boalt Hall). Docteur en droit 1961, University de Liege, Belgium; Ph.D. 1966, University of California, Berkeley. This Essay is dedicated to Linda Helyar.

1. Several translations of these works are available. The most commonly used are F. NIETZSCHE, *JENSEITS VON GUT UND BÖSE*, *BEYOND GOOD AND EVIL* (W. Kaufmann trans. 1966) [hereinafter JGB]; F. NIETZSCHE, *ALSO SPRACH ZARATHUSTRA*, *THUS SPOKE ZARATHUSTRA* (R.J. Hollingdale ed. 1961) [hereinafter ASZ]; and F. NIETZSCHE, *ZUR GENEALOGIE DER MORAL*, *ON THE GENEALOGY OF MORALS* (W. Kaufmann & R.J. Hollingdale trans. 1967) [hereinafter GM]. No study of Nietzsche, or indeed of any great thinker, German or Greek, can rely upon translations, except as a first and dubious introduction to the original text. All quotations in this essay have been translated by the author. All references are to standard editions of the original texts. Translations of Nietzsche are based mostly on the German text in F. NIETZSCHE, *SÄMTLICHE WERKE, KRITISCHE STUDIENAUSGABE*, (G. Colli & M. Montinari eds. 1988) [hereinafter KSA]. Unless indicated otherwise, all references to these works are to section numbers which are the same in English translations as in the originals.

(*Geltung*). It has validity if the will (*Wille*) from which it issues has the power (*Macht*) to impose it, to demand and secure obedience to its command. Issuing from such power, the law *valet*: it is itself powerful, strong, effective. It has causal efficacy. Now the question arises: of what kind is this power of positive law? Does it prevail in the way reason demands obedience to a justified claim, or rather in the way force exacts compliance as an empirical effect? In kantian terms, does its causal efficacy belong to the causality of freedom or the causality of nature? Is positive law an intellectual or physical entity? These questions will require preparation before they can be answered, if indeed they can. Perhaps the distinctions upon which they rely—between reason and force, freedom and nature, and so on—are not applicable to the matter at hand.

Nevertheless, a hint has already been given, and should not be let pass unnoticed. For positive law, to exist is to be valid, i.e. powerful and effective. In this identity of existence and validity, there sounds a not so distant echo of a general thesis of medieval ontology, according to which the existence, *existentia*, of a being is understood as the actuality, *actualitas*, in that being of the creative power of God the Creator, *actus purus*. If this intimation is not altogether misleading, positive law stands in the same relation to the will from which it issues as do beings to the ground of being, *prima causa*, in Christian theology. As the command of a will, positive law is the actuality (*Wirklichkeit*) and effectiveness (*Wirksamkeit*) of the commanding power of the will. The will indeed rules, *is*, as effective command, i.e. as the unity of command and obedience.² Such a creative power cannot be reduced either to the authority of a thought or to the efficacy of a natural cause. The unity of command and obedience cancels the difference between idea and reality. Like the hegelian *Geist*, the commanding will actualizes thought in nature.

Judged by the lights of current jurisprudence, these suggestions may seem preposterous. Even the most “positivist” accounts of positive law fall far short of allowing it the unconditional power of command that the theological analogy above would require. The power to posit law is always conceived as derivative, grounded in and made possible by a prior and higher Law (*Recht*), which does not itself issue from command but grants or constitutes the power to command, and determines the conditions under which that power is legally exercised. This condition of legality defines the “validity” of positive law, which is then conceived as the formal authority of command, and sharply distinguished from empirical efficacy. The roots of positive law may thus be traced to a hypothetical *Grundnorm*, or to an already given and “accepted” rule of “recognition,” or to a “natural law” the uncertainties of which it is designed to settle. However mysterious the source of the grounding Law may remain, some such foundation is thought necessary to secure the possibility of positive law. If the higher law that fixes the conditions of validity of positive law were itself to issue from

2. JGB, *supra* note 1, § 19.

command, it would depend upon yet a higher law to fix the conditions of its authority; and if this next higher law also were a command, its own validation would require the support of a still higher law, and so on *ad infinitum*. On such terms, positive law would never get grounded, or so the argument runs.

In holding positive law to a subordinate place, jurisprudence has been faithful to received legal and institutional experience. It is heir to a long tradition of lawyerly contempt for legislation. Through most human history so far, the power of command has indeed been confined to narrow domains, bounded by custom, held in delegation, premised upon and therefore conditioned by limited trust, kept within the scope of presumed expertise. But this past affords no clue to the significance of positive law in the strong sense of a law that asserts itself as binding on the sole ground that it has been so willed, subject to no other condition. If such a phenomenon has indeed made its appearance in the modern world, it requires to be thought afresh.

In its primary sense, the name "legal positivism" designates not a philosophical or legal doctrine, but the historic movement by which the power of command rises to the rank of supreme source of law, thus inaugurating the reign of positive law. Nietzsche is the thinker and prophet of legal positivism.

With Nietzsche, the relation between positive law (*Gesetz*) and higher law (*Recht*) is turned upside down. *Recht* is brought down from its eminent place as higher Law of the land, and reduced to the standing of a mere creature of *Gesetz*.

The most decisive act that the supreme power performs . . . is the institution of *Gesetz*, the imperative declaration of what in general counts as *Recht* in its eyes, and what counts as *Unrecht*. . . . "*Recht*" and "*Unrecht*" exist, accordingly, only after the institution of *Gesetz* To speak of *Recht* or *Unrecht* in itself is quite senseless.³

It follows that *Gesetz*, as the self-assertion of the commanding will, is the spring of justice (*Gerechtigkeit*): the "egoism" of the will "is justice itself."⁴ Thus justification (*Rechtfertigung*) is originally granted by positive law, not by *Recht*. The positing of law in *Gesetz* is the creative act from which derive all measures, standards or aims of thought and action, regarding art and truth as well as the good. Hence the philosopher, who for Nietzsche embodies the most powerfully creative spirit, is first and foremost one who posits law:

Genuine philosophers are commanders and legislators [Gesetzgeber]: they say, "thus it shall be!" They first determine the Whither and For What of man With a creative hand they reach for the future, and all that is and has been becomes a means for them, an instrument, a

3. GM, *supra* note 1, pt. II, § 11.

4. JGB, *supra* note 1, § 265.

hammer. Their “knowing” is *creating*, their creating is a legislation [*Gesetzgebung*], their will to truth is—*will to power*.⁵

Positive law reaches the height of its power in the creative work of philosophy. That this creative power occupies a position analogous to that of the Creator-God of Christian metaphysics, that the supremacy of positive law therefore signifies the rising of man to claim that position for man himself, that positivism thought in its most radical implications entails a kind of deification of human power, all this is quite apparent to Nietzsche. Philosophy “always creates the world in its own image; it cannot do otherwise. [It] is this tyrannical drive itself, the most spiritual will to power, to the ‘creation of the world,’ to the *causa prima*.”⁶ The rise of positive law signals the beginning of man’s “fight for the dominion of the earth.”⁷

With positive law, the power of command assumes the place of ground and source of all law. What is the foundation of that power? From what and where does the will derive such an extraordinary title to rule? Now of course if positive law is truly to be fundamental, it cannot itself rest upon yet another ground outside itself. Somehow it must be capable of grounding itself. Again following the theological analogy, the *causa prima* must be *causa sui*. What indeed empowers the will to command is the will itself. In every commanding, the will wills, above and before the object of its command, its own power to command what it wills. This is why the will is essentially will to power (*Wille zur Macht*).

Anyone who considers the basic drives of man . . . will find that each of them would like only too well to represent just *itself* as the ultimate purpose of existence and the legitimate *master* of all other drives. For every drive seeks to dominate—and it attempts to philosophize in that spirit.⁸

Even self-preservation yields priority to power in the economy of “life,” i.e. the will in Nietzsche’s language: “A living thing seeks above all to discharge its strength—life itself is *will to power*; self-preservation is only one of the indirect and most frequent *results*.”⁹ In that it wills first and foremost to empower itself to command, the will attains absolute freedom from all laws other than those it posits for itself: it may then lay claim to an unconditioned power to legislate—and thus give a radically new sense to the kantian principle of autonomy.¹⁰

5. *Id.* § 211.

6. *Id.* § 9.

7. *Id.* § 208.

8. *Id.* § 6.

9. *Id.* § 13.

10. *See id.* § 22.

This idea of an unconditioned power to posit law may well seem so far-fetched, so utterly removed from the ordinary understanding of legislation and positive law, that it need not concern any serious student of these matters. Who would allow any legislature such unlimited authority? Do we not hold the positive law liable to criticism, indeed open to disobedience, on “moral” or other grounds extraneous to the law? Perhaps. But Nietzsche’s concept of *Gesetz* does not refer to anything like positive laws or legislatures. Positive law here means neither posited laws, i.e. instances of positive legal enactment, nor the totality of posited laws that constitutes a positive legal system, nor positive legal systems in general, nor even the process by which such laws are posited. *Gesetz*, in Nietzsche’s sense, is rather that fundamental understanding of law which first opens the possibility of positing laws and instituting arrangements for such positing. Positive law so conceived is prior to any instance of posited law, or of means of positing law. In the language of *Sein und Zeit*,¹¹ the concept must be thought not ontic—pertaining to beings (*das Seiende*)—but ontological—pertaining to *das Sein*, an element of the prior understanding of being within which beings come to be known. Elsewhere, and more commonly, Nietzsche speaks of the positing of values (*Wert setzen*) instead of *Gesetz*. Positive law springs from the self-affirmation in and by which man assumes “the right [*Recht*] of masters [*Herren*] to set values,”¹² that is, from the moment when man understands himself in accordance with the essence of “life” as power to will, and this will as will to power. “There would be no life at all”—and to Nietzsche all being is life, and will to power—“if not on the basis of perspective estimation [*Schätzung*] and fiction [*Scheinbarkeit*].”¹³

Setting prices, determining values, contriving equivalences, exchanging—these preoccupied the earliest thinking of man to so great an extent that in a certain sense they constitute thinking *as such*; . . . here likewise, we may suppose, did human pride . . . have its first beginnings. Perhaps our word “man” [*Mensch*] (*manas*) still expresses something of precisely *this* feeling of himself: man designated himself as the essence [*Wesen*] that measures values, evaluates and measures as the “estimating [*abschätzende*] animal as such.”¹⁴

“Early” and “beginning” are meant here not in the historical, but in the philosophical sense of ἀρχή, principle, the primordial. When we criticize our laws, our legal system, or our lawmakers, we do so by way of evaluating them, by

11. M. HEIDEGGER, *SEIN UND ZEIT* §§ 2, 3, 4 (1927) [hereinafter *SEIN UND ZEIT*]. There is an English translation of this work: M. HEIDEGGER, *BEING AND TIME* (J. Macquarrie & E. Robinson trans. 1962). All references to this work are to paragraph numbers which are the same in the English translation as in the original. Several translations of Heidegger’s works capitalize the *b* of “being” when the word translates the German *das Sein*. This practice misleads some readers to think that Heidegger somehow deifies being. It should be avoided.

12. JGB, *supra* note 1, § 261.

13. *Id.* § 34.

14. GM, *supra* note 1, pt. II, § 8.

measuring them up to the values we have set for ourselves, and thus in the light of an assumed power to legislate. Such “moral criticism” of posited laws lies entirely within the perspective of positive law, if indeed the essence of positive law rests in a certain understanding by man of his own essence and relation to the world: man as maker of his world, the man who knows “the future of man as his will.”¹⁵

II. POSITIVE LAW AS NIHILISM

Positive law in that sense is nihilism. Nietzsche conceives its rise to supremacy as the fulfillment or completion (*Vollendung*) of nihilism. In this fulfillment, Nietzsche seems to think, nihilism succeeds in overcoming (*Überwindung*) itself. What is nihilism? In what sense and how is it fulfilled and overcome? These questions define the overarching concerns from which *Jenseits von Gut und Böse* draws its unity and principle of organization.

The nihilist is “a fanatic of conscience who would rather rest and die on a certain nothing than on an uncertain something, . . . a soul in despair, mortally tired.”¹⁶ In law, his principle says: *ubi jus incertum, ibi jus nullum*. The rise of such “a will to the nothing”¹⁷ is the driving force that has determined the movement of Western history since the founding of Christendom (*Christentum*, as distinguished from Christianity, *Christlichkeit*). As Nietzsche understands it, “Christendom is platonism for ‘the people.’”¹⁸ It erects another world above and beyond the natural or sensible world, and counterposes the illusoriness of what appears to the senses in this “valley of tears” (τὰ ὄρατά), to the promise of an absolute truth attainable by the soul of the just in the beyond (τὰ νοητά). Thus Christendom, as platonism, is also called metaphysics. With it, the highest “values”—truth, and hence also the truly good and the truly beautiful, i.e. the possible forms of greatness for man that give human life an aim and make it worth living—are placed out of the reach of man in this life. This is the meaning of the ascetic ideal of Christian morality:

[T]his hatred of the human, even more of the animal, and more still of the material, this horror of the senses, of reason [*Vernunft*] itself, this fear of happiness and beauty, this longing to get away from all appearance, change, becoming, death, wishing, from longing itself—all this means if we dare to grasp it, a *will to the nothing*, a will to counter [*Widerwillen*] life, a rebellion against the most fundamental presuppositions of life; but it is and remains a will! . . . Man would rather will *the nothing* than *not* will.¹⁹

15. JGB, *supra* note 1, § 203.

16. *Id.* § 10.

17. GM, *supra* note 1, pt. III, § 28.

18. JGB, *supra* note 1, *Vorrede* (Preface).

19. GM, *supra* note 1, pt. III, § 28.

In this transposing and postponing of the ends of life to the afterlife begins the movement by which “the highest values devalue themselves,”²⁰ namely the destructive phase of nihilism. The transposing itself already betrays a destructive impulse, which Nietzsche conceives as the slave’s instinct of revenge against the master: metaphysics denies the power of mankind, of both the strong and the weak, to attain worthy ends in this world. With its scorn for the worldly feats and glories of the noble man, Christendom marks the advent of the “slave rebellion in morals.”²¹ As the revolt proceeds, the Christian promise of truth itself is questioned, in the very name of truth. Can the “existence” of God, i.e. the supernatural world, be proved? Although unprovable, belief may still be required as a duty of faith, provided philosophy can show the priority of duty over truth and thus “make room for faith.”²² In the end, the unprovability of the existence of God proves fatal to belief, and there occurs the great event of modern times: the death of God. The loss of faith “does not stand in antithesis to” the metaphysical ideal, but “is rather one of its concluding forms and inner consequences; it is the awe inspiring *catastrophe* of two thousand years of breeding to truth, which in the end forbids itself the *lie of belief in God*.”²³ Instead of denying the metaphysical world, modern atheism succeeds only in debasing, desecrating it. In place of the promise of salvation and the beatific vision, there moves now the promise of “progress” toward “happiness” on this earth through the advance of science and democracy.

Free-thinkers belong among the *levelers* What they would strive for with all their powers is the common green pasture happiness of the herd, with security, lack of danger, comfort, and an easier life for everyone; the two tunes and doctrines they sing most profusely are “equality of rights” and “sympathy for all suffering”—and suffering itself they take for something that one must abolish.²⁴

Thus there arises the great danger of modern times, “the danger of dangers”:²⁵ the danger of “a common war against all that is rare, strange, privileged, against the higher man, the higher soul, the higher duty, the higher responsibility,”²⁶ a war that would result in “the *complete degeneration of man* . . . into the

20. F. NIETZSCHE, WILLE ZUR MACHT § 2 [hereinafter WM]. This “work” first appeared in 1901 in the *Grossoktavausgabe* of Nietzsche’s WERKE, vol. XV. It is not a work of Nietzsche, but a collection of selections from his unpublished notes, gathered under the direction of his sister. There is an English translation: F. NIETZSCHE, WILL TO POWER (W. Kaufmann & R. J. Hollingdale trans. 1968). All references to this work are to section numbers, which are the same in the English translation as in the original.

21. JGB, *supra* note 1, §§ 195, 260; GM, *supra* note 1, pt. I, *passim*.

22. I. KANT, KRITIK DER REINEN VERNUNFT *B xxx. The most commonly used translation of this work is I. KANT, CRITIQUE OF PURE REASON (N. Smith trans. 1965).

23. GM, *supra* note 1, pt. III, § 27.

24. JGB, *supra* note 1, § 44.

25. GM, *supra* note 1, Preface, § 6.

26. JGB, *supra* note 1, § 212.

perfect herd animal, . . . the animalization of man into the dwarf animal of equal rights."²⁷

However, insofar as this destructive nihilism proceeds from a quest for truth, a "will to truth";²⁸ insofar as its devaluation of values therefore leaves unquestioned the very highest of the higher values, namely truth itself; insofar as it thus stays within the horizon of metaphysics, it remains radically incomplete (*unvollendet*), in the sense that it falls way short of the possibilities of a full devaluation of values. Nihilism, or the devaluation of values, is not completed or fulfilled until truth "in the end draws its *most severe conclusion*, its conclusion *against* itself; this occurs (*geschieht*) when it poses the question 'what does the will to truth signify (*bedeutet*)?'"²⁹ This questioning and denial of the value of truth Nietzsche regarded as his own task:

[W]hat sense would our whole being have, if it were not this, that in us the will to truth had come to consciousness of itself as a *problem*? As the will to truth becomes conscious of itself, from now on—of this there is no doubt—morality collapses: this is the great spectacle in a hundred acts reserved for the next two centuries in Europe, the most frightful, most questionable, and perhaps also most hopeful of all spectacles³⁰

The *Genealogie der Moral* concludes with the question of the value of truth. *Jenseits von Gut und Böse* opens with it, as though this work turned to the future—its subtitle is *Vorspiel einer Philosophie der Zukunft*³¹—out of a past the history of which is later laid out in *Genealogie*.

The first chapter of the prelude, "On the Prejudices of Philosophers," accomplishes the completion of nihilism: it denies the supremacy of the value of truth.

The falseness of a judgment is for us no objection to a judgment; . . . The question is how far it is life-promoting, life-preserving, . . . and we are fundamentally inclined to maintain that the falsest judgments . . . are the most indispensable for us . . . that renouncing false judgments would mean renouncing life, a denial of life. To recognize untruth as a condition of life: that certainly means standing against habitual value feelings in a dangerous way; and a philosophy that dares this places itself by this alone beyond good and evil.³²

The distinction between good and evil (*Gut und Böse*) stands here as in the title for the moral order as a whole, and more generally for metaphysics, i.e. the

27. *Id.* § 203.

28. GM, *supra* note 1, pt. III, § 27.

29. *Id.*

30. *Id.*

31. The English translation of the subtitle is *Prelude to a Philosophy of the Future*.

32. JGB, *supra* note 1, § 4.

opposition of the supernatural to the natural world. With the negation of the value of truth, “we move right over and away from morals [*die Moral*], we smother, we crush perhaps the remnants of our own morality [*Moralität*].”³³ Freed from the domination of faith, philosophy, which as “the morphology and doctrine of the development of the will to power” is now called “psychology,” becomes again “the queen of the sciences.”³⁴

Complete nihilism would seem under its first aspect to reach the utmost level of destructiveness. Having denied truth, the spirit (the will) is liberated from every bond of subordination or dependence, even from the constraint of “reality.”³⁵ The freedom of this “free spirit” which, as announced in the title, is the object of the second chapter of *Jenseits von Gut und Böse*, reminds of Hegel’s account of the nihilism of “negative freedom.”³⁶ It rejects every dogma, every shared understanding, every attachment—“every person is a prison”³⁷—every common good, indeed everything common and even communication itself.³⁸ It destroys everything that might stand as a possible limitation of its independence: free spirits are “born, sworn, jealous friends of solitude.”³⁹

But

whoever has endeavored . . . to think pessimism through to its depths . . . ; whoever has actually looked down into the most world-denying of all possible ways of thinking . . . may just thereby, without having properly willed it, have opened his eyes to the opposite ideal: the ideal of the most high-spirited, most alive, and most world-affirming man⁴⁰

As a few texts of the first and second chapters have already intimated, and the third chapter, on “The Essence of Religion,” proceeds to show, it appears that complete nihilism entails the overcoming of nihilism.⁴¹ Since the devaluation of the higher values relied upon truth as a ground, and the value of truth has now been denied, the negation of values has itself been negated. Falseness is no longer an objection, and man is free to affirm himself in the creation of values. Thus the free spirit differs from the free-thinker: his independence or negative freedom is only the other side of a will that has “risen to uncondi-

33. *Id.* § 23.

34. *Id.*

35. *Id.* § 36.

36. G.W.F. HEGEL, GRUNDLINIEN DER PHILOSOPHIE DES RECHTS § 5 (1st ed. 1821) [hereinafter GPR]. The English translation of this work is G.W.F. HEGEL, PHILOSOPHY OF RIGHT (T. Knox trans. 1952). All references to this work are to paragraph numbers which are the same in the English translation as in the original.

37. JGB, *supra* note 1, § 41.

38. *See id.* §§ 27, 40, 43.

39. *Id.* § 44.

40. *Id.* § 56.

41. *Id.* § 32.

tioned power-will."⁴² The skepticism of the free-thinker proceeds from weakness, tiredness, despair, from the destructive rage of the slave, whereas the radical skepticism of the free spirit exudes the strength of a will "eager for life": these "stronger and livelier thinkers . . . will at bottom to win back something of the ancient domain of the faith of earlier times, perhaps 'the immortal soul,' perhaps 'the ancient God,' ideas in short that allow to live better, namely more strongly and more cheerfully, than 'modern ideas.'"⁴³ The God that died in modern times was the God of Christendom, God "'the Father,' 'the Judge,' 'the Remunerator,'" but religion itself has not died: on the contrary, "the religious instinct is growing powerfully."⁴⁴ In complete nihilism, God is "sacrificed for the nothing,"⁴⁵ but in that very sacrifice a new god is created, Dionysus, the god of the love of life and of eternal return, "*circulus vitiosus deus*,"⁴⁶ who will however remain unnamed until the very end of the work.⁴⁷

However poorly it will do, a brief explanation of the doctrine of eternal return is perhaps necessary. For present purposes, the matter may be put as follows. As long as the death of God is experienced as a loss, an absence, a lack, nihilism remains at once incomplete and destructive: incomplete, insofar as in the thought of a lack persists a belief in the necessity of a supernatural world to cure the defects of this world; destructive, because the lack makes life in this world seem senseless and worthless. What is, the present, loses significance; nothing matters in any decision; the will despairs and weakens to the point of extinction. "The aim is lacking: 'why?' finds no answer."⁴⁸ Under the spell of this nihilism,

the *will* for man and earth was lacking; behind every great human destiny there sounded as a refrain a yet greater "in vain!" . . . [M]an was surrounded by an enormous void—he did not know how to justify, explain, affirm himself, he *suffered* from the problem of his sense. He also suffered otherwise, . . . but his problem was *not* suffering itself, but that there lacked an answer to the crying question "*to what end do I suffer?*"⁴⁹

Nihilism fulfills itself by denying the lack, i.e. by denying that this world needs a ground outside it to give it support, that this life needs an end outside and above it to give it sense and value. As unconditioned will, life itself is the valueless positing of values, the endless giving of sense, the groundless creating of all that is. It is the lawless law-giver of positive law. Having reached this

42. *Id.* § 44.

43. *Id.* § 10.

44. *Id.* § 53.

45. *Id.* § 55.

46. *Id.* § 56.

47. *Id.* § 295.

48. WM, *supra* note 20, § 2.

49. GM, *supra* note 1, pt. III, § 28.

power of self-affirmation, the will emerges as the “religious instinct” itself: it deifies, sanctifies, justifies (in the theological as well as the legal sense of the word) what it wills, i.e. the will or life itself. The self-affirming will affirms the infinite value of what it wills, what is, the present. Projected over time, this infinite value requires the eternal return of the like.

The world-affirming man has not only settled for and learned to endure what was and is, but wills to have it, *just as it was and is*, repeated in all eternity, calling insatiably *da capo*, not only to himself, but to the whole play and spectacle, and not only to a spectacle, but at bottom to him who has need of this spectacle—and makes it necessary: because again and again he has need of himself—and makes himself necessary⁵⁰

Thus the triumph of positive law signifies at once the fulfillment of nihilism—the end of the longing for God—and the overcoming of nihilism—the deifying affirmation of life on earth. The rest of *Jenseits von Gut und Böse*, read in this light, appears to follow a straightforward plan, which may now be quite briefly explained. Part Four is an “interlude,” consisting of some 120 epigrams,⁵¹ many models of Nietzsche’s art and thought; it separates the first three chapters, the coherence of which has just been discussed, from the last five, which form the second and last main division of the work. Here Nietzsche spells out the main features of the self-affirming will that rises in the overcoming of nihilism; he does so mainly by way of a “critique of modernity,”⁵² of the incomplete and destructive nihilism of our times. Chapters Five, “Toward a Natural History of Morals,” Six, “We Scholars,” and Seven, “Our Virtues,” form a triad on the theme of the will as a unity of command and obedience.⁵³ Nietzsche begins with obedience (Chapter Five), which he calls “the imperative of nature,” i.e. of “instinct” or will to power: “that there be obedience for a long time in *one* direction: thus comes and has always come in the long run something for the sake of which it is worth living on earth; . . . something illuminating, refined, mad, divine.”⁵⁴ The “history of morals” is the history of a slave rebellion against this imperative of life, the outcome of which is the degeneration of obedience into the “herd instinct,”⁵⁵ with the risk of a degeneration of man into a herd animal.⁵⁶ The other side of obedience is command

50. JGB, *supra* note 1, § 56.

51. *See id.* §§ 63-185.

52. F. NIETZSCHE, ECCE HOMO, *Jenseits von Gut und Böse* (Beyond Good and Evil) § 2 (1st ed. 1886) (G. Colli & M. Montinari ed. 1988) [hereinafter EH]. There is an English translation of this work: F. NIETZSCHE, ECCE HOMO (W. Kaufmann & R.J. Hollingdale trans. 1967). All references to this work are to chapter and section number which are the same in the English translation as in the original.

53. JGB, *supra* note 1, § 19.

54. *Id.* § 188.

55. *Id.* § 199.

56. *See id.* §§ 202, 203.

(Chapter Six), the creative law-giving of the philosopher-legislator,⁵⁷ whose rise and rule may well become impossible as the triumph of the slave brings philosophy under the dominion of science and scholarship. Finally virtue (Chapter Seven) achieves the unity of command and obedience. The identity of inclination and duty is attained here by the subordination of duty (morality, obedience) to instinct (nature, will): the task is to “translate man back into nature”⁵⁸ so that morality and its hostility to life may be overcome. “In man creature and creator are united: in man there is matter, debris, clay dirt, nonsense, chaos; but in man there is also creator, form-giver, hammer hardness, spectator-divinity, and seventh day.”⁵⁹ The same unity manifests itself in the relation of doing to suffering, in the tragic fusion of joy with pain, indeed in the natural pleasure man takes in pain, i.e. the pleasure of cruelty: “Almost everything we call ‘higher culture’ rests upon the spiritualization and deepening of cruelty—this is my thesis; the ‘savage animal’ has not been mortified, it lives, it flourishes, it has only—deified itself.”⁶⁰

Finally, Chapters Eight, “People and Fatherlands,” and Nine, “What is Noble?” announce the essential ways in which the values affirmed by a self-affirming will differ from the values of a morality that denies life. First, the platonic relation between art and truth is inverted: art takes the place of truth as the highest value (Chapter Eight). Art is here understood in the most general sense of a creative power: the power to give form to chaotic matter, to impose being upon becoming,⁶¹ to make things appear in shining light, and thus to illuminate (*verklären*) and glorify them, to confer beauty, to deify.⁶² Second, more generally and fundamentally (Chapter Nine), the slave understanding of the relation between good and evil is inverted: the ethos of the noble man is restored to rule; honor, tradition, pride, power, distance, discipline, all that the slave resents and judges evil, take the place of utility, progress, humility, selflessness, equality, freedom, the basic slave standards of the good.⁶³ Only such an aristocratic ethos can sustain “the elevation (*Erhöhung*) of the species ‘man,’ the continued ‘self-overcoming of man,’ to use a moral formula in a supra-moral sense.”⁶⁴

57. *See id.* § 211.

58. *Id.* § 230.

59. *Id.* § 225.

60. *Id.* § 229.

61. *See id.* §§ 244, 245.

62. *See id.* §§ 254, 255.

63. *See id.* § 260.

64. *Id.* § 257.

III. POSITIVE LAW AS ABSENCE OF LAW

If this were all there were to *Jenseits von Gut und Böse*, and generally to Nietzsche's account of the overcoming of nihilism in positive law, then Heidegger should never have qualified this indictment:

Nietzsche's metaphysics is nihilism proper. This entails not only that Nietzsche's nihilism does not overcome nihilism, but also that it can never overcome it. Precisely in that in which and through which Nietzsche means to overcome nihilism, in the positing of new values by the will to power, nihilism proper announces itself: That there is nothing to being [*das Sein*] itself, as it has now become a value. . . . Value thinking is now elevated to the rank of principle. Being [*das Sein*] itself, as a matter of principle, is not let in as being [*das Sein*]. . . . Accordingly Nietzsche's metaphysics is no overcoming of nihilism. It is the last entanglement in nihilism. . . . Through this entanglement of nihilism in itself, nihilism first becomes thoroughly complete in what it is. This thoroughly complete, perfect nihilism is the fulfillment of nihilism proper. . . . Fulfilled nihilism finally shuts itself off from the possibility of ever being able to think and to know the essence [*Wesen*] of nihilism. Is this not to say that the essence of nihilism remains closed to Nietzsche's thought? How dare we say so?⁶⁵

That formally Nietzsche's understanding of nihilism is nihilistic itself, Nietzsche himself admits, and rightly he smiles at the objection: "[W]ould you like to make this objection? Well, so much the better."⁶⁶ By his own account, the overcoming of nihilism occurs in the fulfillment of nihilism, and this fulfillment in turn proceeds from within the destructive movement of nihilism: the overcoming of morality, *alias* nihilism, is a self-overcoming by morality of morality itself.⁶⁷

All great things bring about their own destruction through an act of self-overcoming: thus the law of life will have it, the law of the necessity of "self-overcoming" in the essence of life—the legislator himself always eventually receives the call: "*patere legem, quam ipse tulisti.*" In this way Christendom *as dogma* collapsed struck by its own morality; in this way Christendom *as morality* must now collapse too: we stand on the threshold of *this* event.⁶⁸

65. 2 M. HEIDEGGER, NIETZSCHE 340-41 (1961) [hereinafter NIETZSCHE]. The part of this work here quoted and cited has been translated in English: 4 M. HEIDEGGER, NIETZSCHE 202-03 (F. Capuzzi trans. 1982). References to this work are to the original page numbers. The corresponding pages of the English translation are indicated in parenthesis immediately thereafter.

66. JGB, *supra* note 1, § 22.

67. *See id.* § 32.

68. GM, *supra* note 1, pt. III, § 27.

Does it follow that the attempt to overcome nihilism remains so “entangled in nihilism” that it cannot succeed? Perhaps, but the matter cannot be decided by a purely formal argument, which may not add up to more than a play on words.

From the beginning, Nietzsche conceives nihilism as an essentially destructive movement, the unfolding of a will to the nothing by way of a devaluation of values. In the completion or fulfillment of this destruction, however, Nietzsche envisions the possibility of a creative transformation: that the will may free itself to posit new values. Is positive law so conceived truly free of destructiveness, so that it may indeed be regarded as an overcoming of nihilism? By no means. What positive law accomplishes rather has the appearance of a complete debasement of all law, new or old. The debasement proceeds in two steps, both consequences of the negation of the supersensible world. First, law, which had been the imperative of reason, is reduced to the rank of an “imperative of nature.”⁶⁹ No longer does the will (*Wille*) reign as practical reason, the source of man’s transcendence, and the ground of his freedom. Deposed, it now drives as the power of instinct, “will to power,” “life,” “sexuality.”⁷⁰ The *animal rationale* has been brought “back in nature” as *homo natura*.⁷¹ By itself however this downgrading of spirituality, which had in most essential respects already been accomplished by Hegel,⁷² remains ambiguous. There are two sides to the identity of will and instinct: the obverse of the naturalization of spirit is the spiritualization of instinct.⁷³ Nature loses the character of a causality alien to the will. If freedom is denied, so is determination: “In the ‘in itself’ there is nothing of ‘causal connections,’ ‘necessity,’ ‘psychological unfreedom,’ there is *no* sequence of ‘cause and effect,’ there governs no ‘law.’”⁷⁴ And as the will wills the eternal return of its will, it brings about the return of its future from the past as a fate it has chosen. In this embrace of *amor fati*, necessity and freedom are one.

A second and decisive move assures that the debasement of law is complete and unequivocal: the relation of life to the law is inverted so that law loses its authority as the end of life, and is instead made to serve life as a means. To deny metaphysics is to assert that life has no end outside and above it, no sense, no value measurable by any standard, no ground upon which to rest. Life is endless, senseless, valueless, groundless—an abyss (*Abgrund*). Here, however, Nietzsche retains the dichotomy of the natural and the supernatural: instead of denying their difference, he turns it upside down, so that nature occupies the

69. JGB, *supra* note 1, § 188.

70. *Id.* § 75.

71. *Id.* § 230.

72. GPR, *supra* note 36, §§ 7, 19, 154, 155, 183.

73. JGB, *supra* note 1, §§ 219, 229; GM, *supra* note 1, pt. I, § 7; F. NIETZSCHE, *GÖTZEN-DÄMMERUNG, Moral als Wildernatur* §§ 1-3 (1st ed. 1869) (G. Colli & M. Montinari eds. 1988) [hereinafter GD]. There is a translation of this work: F. NIETZSCHE, *Morality as Anti-Nature*, in *TWILIGHT OF THE IDOLS* (R.J. Hollingdale trans. 1968). All references to this work are to chapter titles and section numbers which are the same in the English translation as in the original.

74. JGB, *supra* note 1, § 21.

position of spirit, which is henceforth to be governed by the exigencies of instinct, or will to power. Life itself becomes the ground, the end that determines the sense and the value of all standards, all ideals, indeed all ideas. Hence the philosopher-legislator “will put religions in the service of his work, just as he will employ the political and economic orders.”⁷⁵ Even religions are “means in the philosopher’s hand,” and must not be allowed “to reign as sovereign,” “to be ultimate ends and not means among other means,” because “sovereign religions hold the type ‘man’ down on a lower rung.”⁷⁶ Accordingly there are no principles at law, but only values, i.e. products of the will’s evaluation of the possibilities it opens for itself, instruments of calculable worth—in current jargon: policies. Laws, and even gods are created, and therefore also killed, as the will to power commands for the heightening of its power to will. But what reverence could man have for such “gods” of his making? What sanctity could there be about such laws? They have been desecrated, brought down to a world in which nothing is inviolable, and hence nothing truly binding, everything usable and disposable at will. Such gods, such laws can demand nothing of man. They occupy the “lower rung,” utterly ungodly. Positive “law” is lawless.

If positive law, the reduction of *Recht* to *Gesetz*, accomplishes the debasement, and thus the destruction or annihilation of law, then it is nihilistic indeed, but in a sense that escapes Nietzsche’s understanding of nihilism as a “devaluation of values,” and in such a way that its nihilism continues to prevail in the envisioned ending of this devaluation and freeing of a “creation of values.” When nihilism is conceived as the devaluation of values, it has already been determined that gods and laws count as values, and that this sacrilegious deed itself will not only stay out of the reach of the overcoming of nihilism, but will constitute this overcoming. Positive law, the self-affirming power of the will to set values, already rules supreme in the understanding by which the collapse of the realm of spirit takes on the character of a devaluation of values. From within this understanding, the debasement of spirit accomplished by positive law cannot itself be recognized as nihilism. Thus positive law blinds itself to its own destructiveness, and falls under the illusion that it will overcome all nihilism.

Now the destructiveness of positive law is not confined to the realm of spirit. If gods and laws are means, so is everything else too, except for that to which it stands as means. Outside the will all that is “is” by way of value to the will. To philosophers “all that is and has been becomes a means, an instrument, a hammer. Their ‘knowing’ is *creating*, their creating is legislation.”⁷⁷ And this entails: all knowing, that is, the relation of thinking man to whatever is, has at bottom the character of a command. It follows that things, beings (*das*

75. *Id.* § 61.

76. *Id.* § 62.

77. *Id.* § 211.

Seiende), are never allowed by thinking simply to be what they are of their own. There is no inner order of things to which understanding must yield. There is no integrity of things before which man must bow in respect. Nothing escapes degradation at the philosopher's hand.

Nietzsche's point, however, is not that with the advent of positive law man exercises an *option* to think in the manner of command, as though the alternative were open for thought to refrain from doing violence to beings. Nor does Nietzsche mean to assert like Hegel an "absolute right of appropriation over all things of nature,"⁷⁸ that would justify man in using to his ends other beings that have no end of their own. Rather Nietzsche conceives the essence of thinking as command. Genuine thought is creative, a work of art. Positive law itself is man's creative affirmation of the full creative power of human thought. If thought is creation, beings—what thinking thinks—are creatures of thought. Beings (*das Seiende*) come to be (*sein*) as the thought-will of the artist imposes form upon formless chaos, secures duration of the transient, eternalizes the passing moment, in sum "stamps upon becoming the character of being (*das Sein*)." ⁷⁹ Since beings (*das Seiende*) are—stand and last—as effects of a power to will, their being (*das Sein des Seienden*) appears as the effectiveness (*Wirksamkeit*) or actuality (*Wirklichkeit*) of that creative power. Like the "existence" of posited laws, the existence of beings lies in their "validity," the actuality of the power from which they issue. Strictly speaking indeed, because thought is command, all beings are laws: effects of the positing of a will. But: "'Will,' of course, can affect only 'will'—and not 'matter.'" ⁸⁰ The will cannot will anything other than itself: what the commanding will commands is the command, what thinking thinks is nothing but thought. Therefore "the world viewed from within, the world determined and designated according to its 'intelligible character'—the world is 'will to power' and nothing outside."⁸¹ There is nothing at all to beings and their being, nothing at all to which thought might relate outside itself.

Accordingly, outside the self-positing will there is nothing at all that this will might degrade, violate, or destroy in any way. Thus positive law here again seals itself from the possibility of recognizing its destructiveness. The same denial—that there is nothing outside the will—even enables positive law to proclaim itself the savior of being: since the being of beings is nothing but the actuality of the creative will, the self-affirmation of that will suffices to secure being from the destruction that a "will to the nothing" threatened to bring. However the denial itself exhibits another aspect of the nihilism of positive law. The claim that there is nothing outside the self-positing will, hence that the being of beings is *nothing* (*nihil*), does not by itself amount to a destructive

78. GPR, *supra* note 36, §§ 39, 44.

79. WM, *supra* note 20, § 617.

80. JGB, *supra* note 1, § 36.

81. *Id.* § 36.

force of the kind manifest in the debasement of spirit, or in the degradation of all beings to the rank of mere instruments. Nevertheless the denial of being may well be the deeper source from which such a destructive historical movement emerges.

In Heidegger's words, the triumph of positive law begins "the epoch of the unconditioned and complete objectification of all that is."⁸² This objectification arises out of "the complete domination of subjectivity."⁸³ To every object, there belongs a subject as its ground, in this case man. The essence of all subjectivity in turn lies in the subject's assumption of the power to ground the constitution of objects. Man

erects himself out of and above other beings [*das Seiende*] as the being [*der Seiende*] who proposes and produces [*vorstellend-herstellend*], and thus takes power over all beings [*das Seiende*] as objects. Of himself man puts his essence to rest upon security [*Sicherheit*]. He seeks to effect his securing by a complete ordering of all beings in the sense of a methodical securing of their stability [*Bestand*] The objectification of all beings, which arises out of man's uprising in the exclusive self-willing of his will, is the essence of the movement in the history of being [*das Sein*] by which man invests his essence in subjectivity. All transcendence, be it ontological or theological, is represented [*vorgestellt*] relative to the subject-object relation.⁸⁴

Even God becomes an object of man's making.

Thus positive law is the metaphysics of modern technology, of man's rise to "dominion over the earth."⁸⁵ It is metaphysics, despite Nietzsche's effort to overcome metaphysics, in that it seeks a ground of beings "beyond" them in a superior being. The subject-will "underlies" its objects-values in the same way that the Creator-God grounded his creation and ruled as the end to which all finite beings were directed. Like older metaphysics, positive law results in denying the being of finite beings. To Pascal, with whom Nietzsche acknowledged a profound affinity,⁸⁶ "the finite is annihilated in the presence of the infinite and becomes pure nothingness. So it is with our mind before God, with our justice before divine justice."⁸⁷ To Nietzsche, there is nothing outside the unconditioned will to power. In both the old and the new metaphysics, the denial of being occurs as man falls (*verfällt*) captive of beings,⁸⁸ absorbed in his worldly concerns, ruled by common everyday wisdom (ἡ σοφία τοῦ κόσμου), the end of which may be to secure eternal salvation, or happiness in

82. NIETZSCHE, *supra* note 65, at 387 (English trans. at 241).

83. *Id.*

84. NIETZSCHE, *supra* note 65, at 378-79 (English trans. at 234).

85. JGB, *supra* note 1, at § 208.

86. *See id.* § 45.

87. B. PASCAL, PENSÉES *418. There is an English translation of this work: B. PASCAL, PENSÉES (A. Krailsheimer trans. 1967).

88. NIETZSCHE, *supra* note 65, at 378 (English trans. at 233).

this life. In positive law, the fall is complete, so that there prevails a “full concealment of being in the midst of a complete securing of beings,”⁸⁹ and “the purely actual, what counts as reality to the many,” becomes “the measure for deciding that only the effective [*das Wirksame*]⁹⁰—the traceable and impression, the experienced [*das Erlebte*] and expression, the useful and success—shall be valid [*gelten*] as beings.”⁹⁰

Thought from within positive law, however, the conclusion that “the world is will to power, and nothing outside” cannot itself issue from any involvement of thought with something “outside” thought. The denial of being is an act of will, and indeed the will’s highest self-affirmation: that by which the will empowers itself as unconditioned will to power. The assertion that there is nothing outside will to power, i.e., that there is no transcendence of thought beyond itself, repeats in different form the denial of the “value” of truth, in and by which the “will to nothing” wills itself to nothing, thus at once fulfilling and overcoming its destructiveness. But this devaluation already supposes that *truth*, alias being, is a value, i.e. the willing of a self-positing will. To deny being, the will must already presume that being lies within the reach of its power to will, a power that cannot effect anything outside itself. Accordingly, there cannot be anything outside the will corresponding to the assertion that “there is nothing outside the will to power.” Nor is there anything outside the will corresponding either to “the nothing,” the annihilation willed in the “will to nothing,” or to the overcoming of that power of destruction. Nihilism itself has no being outside will. In this sense too positive law remains nihilistic in its understanding of nihilism. The very conception of nihilism as a destructive force, and of an overpowering of that force to bring by force an end to destruction, betrays precisely that fascination with the effective, with which fallen man approaches all beings, and finds the being of beings in the actuality of power.

Is it possible that nihilism would after all, in its essence, not be destructive? That the ravage wreaked by the “will to the nothing” would manifest not the absolute power of the will, but rather the precedence of a “nothing” that must first unleash the power of man to destroy? That this “nothing” would therefore escape and defeat any “will to overcome” it? In sum, that nihilism would neither issue from man’s making, nor let itself be undone by man? If such were the case, then positive law, and Nietzsche as the thinker of positive law, would have failed entirely to grasp the essence of nihilism, and their claim to have overcome it would ring hollow.

Such is indeed the possibility that Heidegger envisions and explores. To entertain this possibility is to think the “nothing” not as *nihil negativum*, the nothing of negation, but as *nihil originarium*, a nothing that, prior to any negation or affirmation by thought, would of itself give man to think. Thought

89. *Id.* at 387 (English trans. at 242).

90. *Id.* at 376 (English trans. at 231-32).

in this way, the nothing “is” the being of beings. Being and nothing are one and the same, not in the sense of some ordinary assertion that “being is nothing,” nor in the sense of Hegel’s “speculative proposition” asserting the dialectical identity of being and nothing,⁹¹ but in the sense indicated by what Heidegger calls the “ontological difference,” that “[t]he being of beings ‘is’ not itself a being (*Das Sein des Seienden ‘ist’ nicht selbst ein Seiendes*).”⁹² Being (*das Sein*) must not here be understood as beingness (*die Seiendheit*), what all beings have in common as beings. The German text employs the infinitive rather than the participle form to signify “being” as verb (*sein*) rather than substantive (*das Seiende*). The being of beings is the advent of their being (*sein*), not the concept of “beings as such” (*das Seiende als solchen*). In other words, being is not some substrate or substance (ὄνστω) all beings have in common as beings, but the event of the coming of beings in the presence of thought. As this advent, being (*das Sein*) itself is no being (*kein Seiendes*) and never exhibits the beingness of a being. This absence of being (*das Sein*) from among beings (*das Seiende*), this staying-out (*Ausbleiben*) or withdrawal (*Entzug*) that being achieves of its own, is the nothing in which lies the essence of nihilism.

Nihilism, i.e. metaphysics, is the thinking of fallen man. Being itself stays unthought in metaphysics, because metaphysics thinks beings as such. What does this say, that beings as such are thought? It says that beings themselves come shining to the fore. They stand in the light. Beings are lighted. Beings themselves are brought out of concealment. Beings stand in this unconcealment. This unconcealment is the essence of truth, which shows itself originally only then already to wither away.⁹³

Because the being of beings “is” itself no being, man comes to think as though, in common parlance, there were “nothing to it.” The unveiling veils itself, so that the unveiled alone stand in the open and shine. The unconcealment of beings fulfills itself by withdrawing back in concealment and letting the unconcealed beings shine in the light by themselves. Light, the open, truth, unveiling, unconcealment (ἀληθεια) are different names for the being of beings, understood as the coming of beings into the presence of thought. Now if being itself withdraws into concealment, then the fall of man to beings is at bottom not of man’s doing. Nihilism leaves being unthought, not because of any failure of thought man can simply will to correct, but because being stays out of the open. The essence of nihilism is not that man neglects being, but that being abandons beings, so that man ceases to wonder at the wonder of being.

91. G.W.F. HEGEL, ENZYKLOPÄDIE § 87 (3d ed. 1830). The part of this work here cited is translated in English: G.W.F. HEGEL, LOGIC (W. Wallace trans. 1975).

92. SEIN UND ZEIT, *supra* note 11, at § 2.

93. NIETZSCHE, *supra* note 65, at 350-51 (English trans. at 212).

If so, in its will to overcome nihilism, positive law attempts an assault against being. But since being cannot be brought under its power, the will revolts and turns away from being. In this turning away from being, the will-thought turns against itself, and reaches the peak of its destructiveness. For thinking is the relation to being that defines the essence of man, the being who thinks, to whom comes the gift of being. By its denial of being, positive law “gives up man’s essential possibility.”⁹⁴ The turn away from being is now complete, in that positive law can even deny it denies being, and claim instead that it exalts the “value” of being. With positive law, being falls from absence into complete oblivion. Yet even this forgottenness of being must not be thought a product of man’s forgetfulness. In it the withdrawal of being attains its fulfillment. Positive law is no creation of human will, nor can it itself be overcome by the power of will. Man did not kill God, but the gods abandoned man.

The staying-out of the unconcealment of being releases the withering away of all that is wholesome among beings. The withering away of the wholesome takes with it and closes the openness of the holy. The closure of the holy obscures every radiance of the divine. This darkening fastens and conceals the want of God. The obscure want lets all beings stand in that eerie strangeness in which beings, made objects of a boundless objectification, seem to be secure possessions in every way familiar. The strangeness of beings as beings [*des Seienden als Solchen*] brings to light the homelessness of man within the totality of beings [*des Seienden im Ganzen*].⁹⁵

Perhaps this desolation of the earth is also the way being demands to be remembered and recalls man to his essence.

Positive law requires to be thought, not to be overcome. To think it is to remember the absence of law.

IV. POSITIVE LAW AS RAGE AGAINST TIME

Heidegger was moved on several other occasions to qualify his apparent indictment of Nietzsche’s “value-thinking.” In the essay “*Nietzsches Wort ‘Gott ist tot,’*”⁹⁶ an argument that moves along the same lines as the essay quoted above, concludes with the intimation that Nietzsche portrayed himself in the figure of “the mad man who lit a lantern in the clear light of morning, ran to

94. *Id.* at 366 (English trans. at 224).

95. *Id.* at 394-95 (English trans. at 248).

96. M. HEIDEGGER, *HOLZWEGE* 193-247 (1st ed. 1950) [hereinafter *HOLZWEGE*]. There is an English translation of this essay in M. HEIDEGGER, *THE QUESTION CONCERNING TECHNOLOGY AND OTHER ESSAYS* 53-112 (W. Lovitt trans. 1977). References to this work are to page numbers of the original; the corresponding pages of the English translation are indicated in parentheses immediately thereafter.

the market, and cried incessantly: 'I seek God! I seek God!'"⁹⁷ Heidegger asks: "Has a thinker here perhaps actually cried *de profundis*?"⁹⁸ In a later essay, "*Wer ist Nietzsches Zarathustra?*" ("Who is Nietzsche's Zarathustra?")⁹⁹ which echoes the main themes of the first part of the lecture course *Was heisst Denken?* (*What is Thinking?*) Heidegger interprets Zarathustra's two great teachings, the overman and the eternal return of the same (*das Gleiche*), as Nietzsche's effort to think "the belonging together of being and the essence of man":¹⁰⁰ in willing the eternal return of the present, man frees (*erlöst*) himself from the "spirit of revenge" that had until then dominated his relation to beings, and ascends as overman (*Übergang, Übermensch*) to a mode of thinking-willing that accords with the being of beings. Nietzsche's thought, particularly his understanding of time, remains trapped within metaphysics, but in such a way that it shows what is unthought in metaphysics, what still demands to be thought, i.e. being.

Nietzsche understood the desolation of positive law. He succumbed to madness unable to escape: "The waste grows: woe to him who harbors waste."¹⁰¹ That, and how he understood this devastation becomes apparent towards the end of *Jenseits von Gut und Böse*. Here even more than elsewhere it is necessary to resist a temptation by which Nietzsche himself lures the reader away from the depth of his thoughts: the temptation to read the work as just a loosely assembled collection of discrete aphorisms, which is indeed what the text seems to be here even more than elsewhere. Close attention reveals a tightly woven whole. The unity of this whole must however not be thought in the formal articulation of a doctrine. The aphorism itself and its fragmentation of the text are precisely to break every striving of the reader for access to some readily disposable pack of "ideas." The wholeness of the text must emerge from the unfolding and enduring of the thinker's deepest, most painful experience, namely the sight of the ruin of soul and world, to which man is destined under the rule of positive law.

The work concludes with a thought that implicitly refers back to the famous lines with which Hegel ended the preface to his philosophy of law. Here is Hegel's text:

97. F. NIETZSCHE, *DIE FRÖHLICHE WISSENSCHAFT* § 125 (1st ed. 1882) (G. Colli & M. Montinari eds. 1988) [hereinafter FW]. There is an English translation of this work, F. NIETZSCHE, *THE GAY SCIENCE* (W. Kaufmann trans. 1974). References to this work are to section numbers which are the same in the English translation as in the original.

98. HOLZWEGE, *supra* note 96, at 246 (English trans. at 112).

99. M. HEIDEGGER, *VORTRÄGE UND AUFSÄTZE* (1st ed. 1954) 97-122 [hereinafter VUA]. There is an English translation of this essay in 2 HEIDEGGER, NIETZSCHE 209-33 (D. Krell trans. 1984). References to this work are to page numbers of the original; the corresponding pages of the English translation are indicated in parenthesis immediately thereafter.

100. *Id.* at 120 (English trans. at 231).

101. ASZ, *supra* note 1, pt. IV, *Unter Töchtern der Wüste* (Among Daughters of the Wasteland) § 2.

One word more about giving instruction as to what the world ought to be. Philosophy always comes on the scene too late to give it When philosophy paints its grey in grey, then has a shape of life grown old, and with grey in grey it cannot be rejuvenated but only understood. The owl of Minerva begins its flight only with the falling of dusk.¹⁰²

Appearing at the end of what was to prepare a “philosophy of the future,” namely the philosophy of positive law, which “teaches man the future of man as his will,”¹⁰³ the reference and Nietzsche’s own words strike an eerie note:

Alas, what are you after all, you my written and painted thoughts! . . . You have already lost your novelty, and some of you are ready, I fear, to become truths: they already look so immortal, so heartbreakingly upright, so tiresome! And has it ever been different? What things do we write and paint, . . . we eternalizers of things that *let* themselves be written, what are the only things we can paint? Alas always only what is about to decay . . . ! We eternalize what cannot live and fly much longer, only tired and broken things! And it is only your *afternoon*, you my written and painted thoughts, for which alone I have colors, many colors perhaps . . . : —but no one will guess from that how you looked in your morning, you sudden sparks and wonders of my solitude, you my old beloved—*bad* thoughts.¹⁰⁴

In a few words, Nietzsche has brought together all the ominous themes introduced in the latter half of the last chapter: the mask; community, solitude, and nobility; fate, and revenge against “the eternal, grievous ‘too late’”;¹⁰⁵ now all under the overarching theme of the sun, illumination, light and darkness.

Here Nietzsche foresees that his writing has articulated thoughts that are about to become the unthought orthodoxy of generations to come: Positive law is destined to be the rule of a godless humanity. Nietzsche’s own art, which celebrated the supreme value of creative art, has itself only yielded a truth, that is, a dead thought, a thought held without question, uncreatively, thoughtlessly. Truth is the way thoughts rule the world. The greatest thought and deed ever was man’s killing of God,¹⁰⁶ but “the greatest events and thoughts—and the greatest thoughts are the greatest events—are grasped last: the generations that are contemporaneous with them do not *live* such events—they live right past them.”¹⁰⁷ Godless man will not think the death of God. At least since Plato, the sun has signified the light of thought. Thus as Nietzsche’s thoughts become truths, the sun that had illuminated his morning and noon begins to set. Darkness envelops all being.

102. GPR, *supra* note 36, *Vorrede* (Preface).

103. JGB, *supra* note 1, § 203.

104. *Id.* § 296.

105. *Id.* § 277; *see also id.* §§ 269, 274, 279, 295.

106. FW, *supra* note 97, at § 125.

107. JGB, *supra* note 1, at § 285.

Why are these thoughts fated to die as truths? Nietzsche answers: because they have been “written and painted,” i.e. given the form of art. The point is not that writing and painting themselves kill their object, but rather that they are essentially unable to capture anything other than already dying thoughts. And why should their power be so limited? Because the essence of art, even the art of the philosopher, lies in illusion—transfiguration (*Verklärung*), beautification, simplification, falsification, fiction, appearances, deception—that is, the effective communication of falsehood, the possibility of which is always already determined and limited in advance by the “truths” the world holds in common. Only the common is communicable: “To understand one another, it is not enough that one use the same words; one also has to use the same words for the same kinds of life-experiences (*Erlebnis*), one must in the end have one’s experience (*Erfahrung*) in common.”¹⁰⁸

But if only the common can be communicated, then all communication is grounded in a prior debasement of its object.

Easy communicability—which at bottom means the living of only average and *common* life-experiences [*Erlebnis*—must have been the most violent of all forces that have ever had man at their command. The more similar, more ordinary men have had and always have the advantage One must invoke monstrous counterforces in order to cross this natural, all too natural *progressus in simile*, the steady transformation of man into the similar, ordinary, average, herdlike—into the common!¹⁰⁹

“All community makes somehow, somewhere, sometime—‘common.’”¹¹⁰ The word “common” (*gemein*) here signifies also: mean, vulgar, plebeian, ignoble, shameful, base, low,¹¹¹ petty, small.¹¹² Conversely, whatever separates, isolates, makes distant and different, causes misunderstanding, also brings a measure of elevation, distinction, nobility of spirit.¹¹³ Hence the greatest virtue is solitude, the virtue of hermits, sought above all by saints¹¹⁴ and philosophers.¹¹⁵ Solitude rests upon “a sublime bent and urge for cleanliness, which guesses how all contact between man and man—‘in society’—must inevitably bring about uncleanness.”¹¹⁶ Communication soils. “One no longer loves one’s knowledge enough as soon as one communicates it.”¹¹⁷

108. *Id.* § 268.

109. *Id.*

110. *Id.* § 284.

111. *Id.* § 275.

112. *Id.* § 267.

113. *See id.* §§ 270, 271, 272, 273, 283, 284, 289, 290.

114. *See id.* § 271.

115. *See id.* § 289.

116. *Id.* §§ 284, 271.

117. *Id.* § 160.

To be communicable, thoughts must be not only common, but also shallow. To communicate something is to make it appear to others. But only the showable, only what lets itself be seen, i.e., the outer surface of things, can ever be shown. Thus by its essence art can only make surfaces shine. Everything profound—profound suffering,¹¹⁸ profound thought¹¹⁹—escapes communication.

Now the idea of a surface behind or under which lies an inaccessible depth opens the possibility that in communicating a thought, i.e., showing a surface, the work of art conceals, i.e. makes the depth of its thinking impenetrable to others. Communication masks. “Does one not write books precisely to conceal what one harbors? . . . Every philosophy also *conceals* a philosophy; every opinion is also a hiding place, every word also a mask.”¹²⁰ Even as it makes common, communication removes from the common what its appearance to the common masks. Just as *Also Sprach Zarathustra* claimed of itself in its subtitle, every work of art is at once “for everyone and no one.” Insofar as it masks, art separates, closes a domain of protected solitude where thought may live and elevate itself. This is the theme upon which the last section of *Jenseits von Gut und Böse* ends: from his written words, Nietzsche writes, nobody will guess how his thoughts looked when their lights, wonders of his solitude, rose in the morning.

The theme of the mask is fraught with paradox. If the word masks, then the word that “the word masks” is itself a mask. But the revelation that the word masks unmasks the mask that the word had been, deprives it of the power to mask, so that the word that “the word masks” falsifies itself. When the wanderer—Nietzsche himself, the one who called himself Zarathustra’s shadow, and who sang: “[T]he waste grows: woe to him who harbors waste”—is unmasked and found “on his way without scorn, without love, with unfathomable eyes; wet and sad like a sounding lead that has come back to light out of every depth unsated—what did it seek under there?”; when the wanderer unmasked is asked who he is and what he wants, he becomes impatient at these nosy questions, and asks for “one more mask! a second mask!”¹²¹

What does Nietzsche’s work mask, in such a way that its own unmasking of that mask is at once itself a mask, and a destruction of the mask’s power to mask? Nietzsche answers: the work of great artists almost always hides an inner “corruption” or “collapse,” “a soul that ‘cannot be saved’ [*gesamte innere ‘Heillosigkeit’*],” “an eternal ‘too late’ in every sense”; these “higher men” are often

118. *See id.* § 270.

119. *See id.* §§ 289, 290.

120. *Id.* § 289.

121. *Id.* § 278.

taking revenge with their work for some inner soiling, seeking with their high flights to escape into oblivion in the face of an all-too-faithful memory, often lost in the slime and nearly in love with it, until they become like jack-o'-lanterns around swamps and *pose* as stars, . . . often fighting against a long disgust, against a recurring specter of unbelief that chills and compels them to yearn for *gloria* and to gobble their "belief in themselves" from the hands of enraptured flatterers. . . .¹²²

A profound suffering also hides itself behind the mask "to protect itself against contact with obtrusive and pitying hands"; it employs cheerfulness to conceal a "broken, proud, unredeemable [*unheilbar*] heart" ¹²³ Elsewhere the wanderer, one of the "higher men" in the fourth part of *Also Sprach Zarathustra*, had sung: "[W]oe to him who harbors waste [*weh Dem, der Wüsten birgt!*]" Now Nietzsche explains: it is the philosopher-hermit who in his writing seeks "to conceal what he harbors [*um zu verbergen, was man bei sich birgt*]," namely "an abyss [*Abgrund*]," "a wasteland [*Öde*]," "something incommunicable," of which the writing nevertheless lets hear "an echo."¹²⁴

What then is this inner devastation of which Nietzsche will now let the reader have an intimation? The most explicit statement is this:

[T]he need *for* nobility is from the ground up different from the needs of the noble soul itself, and downright the telling and dangerous mark of the lack of a noble soul. It is not the works, it is the *faith* that decides here, that fixes here the order of rank . . . : a fundamental certainty that the noble soul has about itself, something that cannot be sought, nor found, nor perhaps lost. The noble soul has reverence for itself.¹²⁵

This text harks back to two earlier sections: the noble soul "does not gladly look 'up'—but either ahead of itself, horizontally and slowly, or down: *it knows itself to be a height*";¹²⁶ and by way of a quotation from Goethe: "'Truly high respect one can have only for him who does not *seek* himself.' Goethe to Rat Schlosser."¹²⁷ To seek nobility is to lack it. As Nietzsche employs it, the word "noble" (*vornehm*) must be understood as translating the Greek *κάλος*, which signifies more generally the admirable, and thus also the beautiful. Therefore the texts quoted above mean also: to seek beauty is to lack it. Thus the background against which the end of Chapter Nine is written becomes apparent: it is the dialogue between Socrates and Diotima in the *Symposium*.¹²⁸ There Plato explains how love, Eros, seeks beauty, and hence also

122. *Id.* § 269.

123. *Id.* § 270.

124. *Id.* § 289.

125. *Id.* § 287.

126. *Id.* § 265.

127. *Id.* § 266.

128. PLATO, SYMPOSIUM 201-13 [hereinafter SYMPOSIUM]. A commonly used translation of this work is B. JOWETT, THE DIALOGUES OF PLATO (1937). All references are to pages of the authoritative manuscript

the good, and the most beautiful of all things, σοφία (*sophia*, wisdom) itself: Eros is “a philosopher through all his life.”¹²⁹ But he seeks these great things precisely because he lacks them (δι’ ἔνδειον): “[H]e is first of all always a slave [πένης], one who must work, rough, dirty, barefoot, homeless, always in need.”¹³⁰ Love itself is neither noble nor good. For this reason, it cannot be true that love is a god, for gods cannot be thought wanting anything good. All gods are “in good spirits” (εὐδοκίμων), in full possession of beauty and goodness: “[N]o god would philosophize, or ever desire to become σοφός, for he is already.”¹³¹

Nietzsche concurs: his own longing for nobility betrays the soul of a slave. But he goes a step further and says: there can be no fulfillment of such longing. Nobility “cannot be sought.”¹³² The seeking itself proceeds from lack; it is and remains always nothing other than the experience of that lack. “The law is always in force that he who has these good things is different from him who earns them. Everything good is inheritance: what is not inherited is imperfect, is beginning”¹³³ Because the longing grows out of lack, its understanding of the good for which it longs is affected by the same lack, and its desiring of the good is fraught with an urge to destroy, i.e. the envy that springs from the feeling of want. Thus every end, every object of desire is necessarily degraded by the very want out of which it is desired. “Alas, whoever is knowledgeable in matters of the heart understands how poor, dumb, helpless, presumptuous, uncomprehending, more apt to destroy than to save is even the best and deepest love.”¹³⁴ Accordingly, the search for nobility by way of elevation, distance, separation, solitude—and this includes every striving to escape from the common, and the wearing of a mask as such an escape—aims at falsehood, and is itself a form of baseness.

But this wretched, unknowing, and destructive love, this impossible and therefore endless longing for greatness and perfection constitutes the very essence of life, the will to power, the will—Kant’s power to desire, Leibniz’s *appetitus*—that seeks forever to raise itself to new heights of the power to will, a will the vitality of which requires that fulfillment never come. This is the life in which Nietzsche has found a god, Dionysus, the divinity that opens for man the possibility of creating new gods, the god of creation itself, of generation, fertility, rapture, and desire. Like Jesus, and *contra* Plato, Nietzsche has found God in love, in the lack of godliness from which springs the longing for God: he “had to find a god who is all love, all capacity to love.”¹³⁵ Dionysus is

which are indicated in the margins of the English translation.

129. *Id.* at 203d7.

130. *Id.* at 203c6.

131. *Id.* at 204.

132. JGB, *supra* note 1, § 287.

133. GD, *supra* note 73, *Streifzüge eines Unzeitgemässen* (Raids of the Untimely) § 47.

134. JGB, *supra* note 1, § 269.

135. *Id.*

“the great ambiguous one,” the god who is the absence of God, godlessness, i.e., no God at all, “the god of seeking” (*der Versucher-Gott*, which means also the temptator-god), a god therefore defined by lack: “[T]his godhead lacks,” it is not at all the *ens perfectissimum*, as which God has been conceived in philosophy since Plato, and the seeking of which Dionysus himself is.¹³⁶ Being love itself, this god is a philosopher: “[T]hat Dionysus is a philosopher, and thus that gods also philosophize, seems to me a novelty that is not uninteresting, and perhaps might arouse mistrust especially among philosophers,”¹³⁷ i.e., followers of Plato, who knew the poverty of spirit and the folly from which the love of wisdom is born.

“Whoever feels this way, whoever knows this about love,” as did Jesus, “*seeks* death. But why dwell on such painful matters? Assuming one must not.”¹³⁸ As Plato understood, that for which all love longs is to possess the great things it lacks, indeed to possess them forever, and at bottom to secure immortality, in more than one sense. The complete and unending possession of beauty and the good, by which divinity is defined, entails the complete and everlasting absence of any need, want, desire, love, that is the absence of mortal life. In longing for its own extinction, love seeks death. Thus the god of life, Dionysus, understood as the god of love, turns out to be a god of the seeking of death, the hatred of life, the will to nothing. Nietzsche knew: “The same old story! When one has finished building one’s house, one notices that in building it one has unexpectedly learned something one needed to know in the worst way—before one began to build. The eternal grievous ‘too late!’ The melancholy of everything finished!”¹³⁹ This is how he explains what he should have known before he began: “Men of profound sadness . . . have a way of grasping happiness [*Glück*], that is as though they sought to crush and choke it, out of jealousy—alas, they know too well that it will flee.”¹⁴⁰ Nietzsche’s own embrace of life, the god Dionysus, would destroy life in a rage against its passing, that is, against its temporality, against time itself as essentially passing, against mortality. Thus Dionysus, who is also the god of the circle of eternal recurrence, the truth of which would “redeem the past” and free man from “the spirit of revenge,”¹⁴¹ turns out to have been thought in and by the spirit of revenge. How so? What is the spirit of revenge? Why this hatred of time, of the temporal as such?

What makes longing impossible to fulfill? The answer is: time. Every longing conceives and seeks its object, a desired future, out of a present lack; when this future comes to be, it is flawed by that lack, and the moment of lack

136. *Id.* § 295.

137. *Id.*; *see also id.* § 294.

138. *Id.* § 269 (emphasis in original).

139. *Id.* at § 277.

140. *Id.* at § 279.

141. ASZ, *supra* note 1, pt. II, *Von der Erlösung* (Of Redemption).

in which it was conceived has vanished in the past, escaping the reach of the will's power to correct the flaw. Thus now is always already "too late."¹⁴² Because of time also, whatever good may happen out of luck (*Glück*) will pass without letting itself be held.¹⁴³ "The will cannot will backwards; that it cannot break time and time's desire, that is the will's most lonely affliction. . . . This, yes this alone is *revenge* itself: the will's counter-will (*Widerwille*) against time and its 'It was.'"¹⁴⁴ The hatred of life which manifests itself in metaphysics has its source in the will's rage at its own impotence before the passing of time. To overcome nihilism, the will must be freed from this rage. The past must be redeemed. The past is redeemed and the will freed when the will learns to "will backwards," to grasp its past as the future lying ahead and within the reach of its creative power. It can, indeed it must do so, because past, present, and future form a circle, the circle of eternal return, in accordance with which at every moment of decision the will is to will the eternal recurrence of the like now. This "redemption" differs from the Christian promise of immortality and eternal bliss in a world beyond. It guarantees the eternal return of this mortal life of never-fulfilled longing. But is it any less "metaphysical"? Does it not also rest on the supposition that without it life would deserve to be hated, and would so deserve precisely by virtue of its temporality? Thus the will that wills its eternal return also springs from the spirit of revenge.

The redeemed will also crushes the life it embraces. It may now be possible to fathom yet a deeper level of thought in the concluding words of this work: artists "eternalize what cannot live much longer," dying thoughts behind which hide young and growing thoughts that "no-one will guess."¹⁴⁵ Of Nietzsche's godlessness, only what is already common, the atheism of the "educated," a truth, can be communicated. Art and philosophy—i.e., lawmaking—come always too late, "untimely" (*unzeitgemäss*, as in *Unzeitgemässe Betrachtungen*, and *Streifzüge eines Unzeitgemässen*¹⁴⁶), after their *καρπός*.¹⁴⁷ Art too suffers from time. Why then would the artist ever seek to paint or write his thoughts? Because art too, the redeemed and creative will, the will that glorifies life and wills its eternal return, takes revenge.¹⁴⁸ It eternalizes the dying thought. This means: it eternalizes itself, the will, life, in its dying, in its defeat at the hands of time. Then with this dying thought, it hides the living thought. The "truths" art creates are only the appearance of thought, not thought itself, which remains concealed, forever masked by the words and colors of the work. Dare one presume to guess what lies so concealed? Should one not rather "respect the mask, and not indulge in psychology and curiosity in the wrong

142. JGB, *supra* note 1, at §§ 269, 274, 277, 295.

143. *See id.* § 279.

144. ASZ, *supra* note 1, pt. II, *Von der Erlösung* (Of Redemption).

145. JGB, *supra* note 1, § 296.

146. *Untimely Meditations and Raids of the Untimely*; *see supra* note 133.

147. *See id.* § 295.

148. *See id.* § 269.

place"?¹⁴⁹ May one fail to probe at all? The hidden and living thought, one guesses, is Nietzsche's inner desolation, an impossible longing, the despair of godlessness as the seeking of death, and the distress at time that determines such a longing. But these are just the kind of thoughts to which points the idea, here painted in words, of an impenetrable mask. To say of something that it masks is to assert the existence of something else, namely Truth, or the thing-in-itself, hidden behind the surface of appearances, or the thing-for-us. By this Nietzsche allows the distinction between truth and appearance he had denied as he launched the assault against metaphysics in Part One. To say furthermore that the mask is impenetrable—"no-one will guess"—is to place Truth out of the reach of human sight. Sight is condemned to illusion, the search for truth to frustration, the soul to the absence of God. The impenetrable mask stands for nothing other than platonism, the doctrine that the "true world" resides in an unattainable beyond.¹⁵⁰ And Dionysus himself is shown wearing the mask: he is "the great concealed one . . . whose mastery includes the knowledge of how to seem."¹⁵¹ But then to point to a mask as a mask is already to have unmasked it. The unmasked mask here is the mask itself as signifying the impossible quest for a Truth beyond.

"Always beyond"¹⁵² is the principle of the overman, the man who determines his essence in accordance with the essence of life as endless self-overcoming, and thus reaches for superhuman, godly greatness. What his god, Dionysus, lacks most is not the divine beauty and goodness for which he longs, but the humanity he finds wanting: "[W]hat this godhead lacks is not just modesty—there is in general good ground to suspect that in several respects the gods as a group could learn at the school of men. We humans are—more human"¹⁵³ Their seeking of the divine betrays a hatred of mortal life. Has Nietzsche repudiated the god of love? By no means: "Bad! Bad! What? Isn't he going back?"—Yes! But you understand him poorly when you complain of that. He goes back like one who will try a big jump."¹⁵⁴ Love is not wisdom, but it knows it is not. Ignorance, not love, is the true danger, in that "the [ignorant] man who is neither noble, nor good, nor prudent, is nevertheless satisfied with himself: he who does not know he is wanting does not desire."¹⁵⁵ In any event, a philosopher does not choose his thoughts. "A thought comes when 'it' wishes, not when 'I' wish."¹⁵⁶

149. *Id.* § 270.

150. GD, *supra* note 73, *Wie die "wahre Welt" endlich zur Fabel wurde* (How the True World Became a Fable) § 2.

151. JGB, *supra* note 1, § 295.

152. *Id.* § 284.

153. *Id.* § 295.

154. *Id.* § 280.

155. SYMPOSIUM, *supra* note 128, at 204a4.

156. JGB, *supra* note 1, § 17.

A philosopher . . . is struck by his own thoughts as from outside, from above and below, . . . a fateful man around whom there is always anger, grumbling, rift, and eerie [*unheimlich*] happenings. A philosopher: alas a being [*Wesen*] who often runs away from himself, often has fear of himself—but is always too curious not to “come back to himself” again.¹⁵⁷

Nietzsche’s thoughts too belong to the divine circle of time. But the circle of time is also the recurring cycle of birth, life, and death, and the circling of the sun around the earth, by which night follows upon day and day upon night. Ahead on that circle, in the future, there always looms death, and the darkness of night. Hence, “Dionysus is also the god of darkness.”¹⁵⁸ Darkness in turn is that in which the light of thought will in time shine again.

The terrifying prospects Nietzsche envisioned become distinctly apparent in *Zur Genealogie der Moral*, an “uncanny” and “gruesome” work,¹⁵⁹ the structure of which can now be briefly sketched out. As the preface indicates Nietzsche returns here to the themes at the end of *Jenseits von Gut und Böse*, particularly time, the eternal “too late,” and the impossible longing for truth. The socratic γῶθι σαυτόν¹⁶⁰ is unattainable:

We are unknown to ourselves, we who know—on good ground What concerns life, the so-called “life-experiences” [*Erlebnisse*]*—*who among us has enough earnestness for that? or enough time? As to such matters we were never quite “with it” [*bei der Sache*]: our heart is not there—not even our ears! Rather, as one divinely distracted and immersed in himself, into whose ears the bell has just boomed with all its power the twelve beats of noon, suddenly wakes up and asks himself: “what has just struck, properly?” so we sometimes rub our ears *afterward* and ask: “what have we just experienced, properly [*eigentlich*]?” and, afterward as aforesaid, count the twelve trembling bell strokes of our experience, our life, our being—and alas! miscount We remain necessarily strangers to ourselves, we do not understand ourselves, we must confuse ourselves, for us the law says in all eternity “Each is furthest from himself.”¹⁶¹

The three essays that follow are a sustained—fated to fail—attempt at self-understanding.

In the first essay, Nietzsche explains the “corruption” of his understanding and praise of nobility: they are themselves infected with slave *ressentiment*. His affirmation of noble values proceeds from a will to “invert” (*umwerten, umkehren*) Christian values, “to unite the *unnatural* inclinations, all aspirations

157. *Id.* § 292.

158. EH, *supra* note 52, *Genealogie der Moral*.

159. *See id.*

160. “Know thyself.”

161. GM, *supra* note 1, *Vorrede* (Preface) § 1. Compare JGB, *supra* note 1, § 281.

to the beyond, to what is counter to sense, instinct, nature, animality, in short all ideals hitherto, which are all hostile to life and all slander to this world, with the bad conscience."¹⁶² Such an "inversion of all values"—*Umwertung aller Werte*, the title of a major work Nietzsche planned—is just the way the "spirit of priestly revenge" defeats its noble enemies:

It was the Jews, the people with the most deeply withdrawn priestly vengefulness, who with fearsome consistency dared to invert the aristocratic value-equation (good = noble = powerful = beautiful = happy = beloved of God), and held on to that inversion with the teeth of the most abysmal hatred (the hatred of impotence), saying: "the wretched alone are the good; the poor, impotent, lowly alone are the good; the suffering, deprived, sick, ugly alone are pious, alone are blessed by God, for them alone is there blessedness—and you, the noble and powerful, are on the contrary to all eternity the evil [*Bösen*], cruel, lustful, insatiable, godless."¹⁶³

Nietzsche attempts to invert that original inversion, but his too is a revenge, the act of a slave, not an action but "from the ground up a reaction," a negation instead of an affirmation: "[W]hile every noble morality grows out of a triumphant affirmation of itself, slave morality from the outset says No to the 'outside,' the 'other,' the 'not-itself': and this No is its creative deed."¹⁶⁴ Elsewhere Nietzsche confesses: "I know the pleasure in annihilating to a degree that fits my power to annihilate—in both respects I obey my dionysian nature which cannot separate doing No from saying Yes. I am the first immoralist: thus I am the annihilator par excellence."¹⁶⁵

The pleasure of annihilating is at bottom "the satisfaction of being permitted without qualm to unleash one's power on a powerless victim, the sensual pleasure '*de faire le mal pour le plaisir de le faire*,' the enjoyment of violation,"¹⁶⁶ that is, the pleasure of cruelty. This pleasure is "so much more highly prized, the lower one stands in the social order": to a slave it appears as "a delicious morsel, a foretaste of higher rank, like taking part in a right of the masters, the exalted feeling of being permitted to despise and mistreat another being as 'beneath oneself.'"¹⁶⁷ This is the satisfaction that the impotent find in revenge. But as the second essay proceeds to show, revenge is the primordial source out of which all evaluations, all measuring and calculation of value, spring. In revenge occurs the first fixing of a price, of an equivalence between present pain and past injury, such that the pleasure taken in inflicting the former

162. GM, *supra* note 1, pt. II, § 24.

163. *Id.* at pt. I, § 7.

164. *Id.* at pt. I, § 10.

165. EH, *supra* note 52, *Warum ich ein Schicksal bin* (Why I am a Destiny) § 2.

166. GM, *supra* note 1, pt. II, § 5.

167. *Id.*

“pays” for the pain suffered in the latter.¹⁶⁸ Now the fundamental principle of justice upon which rests all positing of values asserts: “everything has its price; *all* can be paid off.”¹⁶⁹ Thus positive law which appeared at first as the self-affirming “right of masters to set values”¹⁷⁰ turns out to spring from the vindictiveness of an impotent will. There lies the explanation of its radical debasement of law, indeed of all beings it touches. Only objects can have prices.¹⁷¹ Since positing a value consists in setting a price, all valuing objectifies, robs its concern of every possible dignity. Positive law puts economics in God’s place.

The theme of cruelty unifies the three essays of the *Genealogie*, and ties them to the end of *Jenseits von Gut und Böse*. In cruelty, understood as the pleasure of unleashing power on the powerless, the will experiences the fulfillment of its most vital and urgent desire, the desire to command. Thus the feeling that delights lower orders and brings the satisfaction of revenge, is nothing other than the basic pleasure in which the will to power feels itself rising to new heights. In the last analysis, the pleasure at suffering is what makes it possible to “say Yes” in “doing No,” to break into dionysian laughter at the torture of life,¹⁷² to will the eternal return of unfulfilled longing, to substitute a “gai saber” for the “religion of pity”¹⁷³ and in that sense to overcome nihilism in its completion. The third essay traces the greatness of man, his will to overcome himself, to man’s cruelty toward himself, and thus to an “alteration in the direction of *ressentiment*”¹⁷⁴ away from the-external causes of his pain, toward himself. In this way, “the healing instinct of life sought . . . to use the bad instincts of all sufferers for the purpose of self-discipline, self-surveillance, and self-overcoming.”¹⁷⁵ Man became

the great experimenter with himself, restless, unsatisfied, who wrestles with animal, nature, and gods for the ultimate dominion—he, still unconquered, eternally aimed at the future, whose own driving force finds no peace any more, so that his future inexorably wounds him like a spear in the flesh of every present—how should such a courageous and rich animal not also be the most endangered, the most chronically and profoundly sick of all sick animals?¹⁷⁶

And yet “the No he says to life brings to life as if by magic an abundance of tender Yeses; yes, if he wounds himself, this master of destruction, of self-

168. *Id.* pt. II, §§ 4, 8.

169. *Id.* pt. II, § 8.

170. JGB, *supra* note 1, at § 261.

171. I. KANT, GRUNDLEGUNG ZUR METAPHYSIK DER SITTEN *434. An English translation of this text is I. KANT, GROUNDWORK OF THE METAPHYSICS OF MORALS (H. Paton trans. 1964).

172. JGB, *supra* note 1, § 294.

173. *Id.* § 293.

174. GM, *supra* note 1, pt. III, § 15.

175. *Id.* pt. III, § 16.

176. *Id.* pt. III, § 13.

destruction—afterward it is the wound itself that compels him *to live . . .*”¹⁷⁷
 There lies the source of the philosopher’s love of the wastelands (*die Wüste*),
 of solitude, self-denial, independence from all things or persons outside himself.
 In the waste,

he smiles at the sight of the optimum conditions for the highest and
 boldest spirituality—he does not thereby deny “existence,” he rather
 affirms *his* existence and *only* his existence, and this perhaps to such
 a degree that he is not far from harboring the sacrilegious wish: *pereat*
*mundus, fiat philosophia, fiat philosophus, fiam!*¹⁷⁸

Such a desire for unconditional freedom is of course above all a death wish.

Positive law parades as man’s proud affirmation of his creative powers. But
 under the masquerade there rages the violence of man’s revolt against time and
 his finitude, a sacrilegious assault against being and the humanity of man. “*Die*
Wüste wächst: weh Dem, der Wüsten birgt!”¹⁷⁹

177. *Id.*

178. *Id.* pt. III, § 7.

179. See *supra* text accompanying notes 101, 121, 124.