

An exercise in "higher" penology: Nietzsche's genealogy of punishment (II.)

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In the second part of the article, the author carries out a thorough analysis of his theses from the introductory part. He concludes that Nietzsche "cautiously and inexorably" undermines the basic assumptions of retributivism. Establishing common ground among the views of thinkers such as Kant, Hegel and Žižek, the author demonstrates that these retributivists – who consider punishment to be an inevitable tool for a moral, just, and free society – argue in favour of extreme penal repression (i.e., capital punishment). In obvious contradiction to this, the "subterranean", who does not seem to care about humanist values as much as his fellow philosophers, vigorously criticizes punishment and penal violence. In none of his writings can one find any fragment in which he advocates the death penalty. Using his "heavy gun", Nietzsche also shoots at the basic premises of utilitarianism. This for him shows itself to be a poor penal philosophy because it is instrumental and a historical. In Nietzsche's perspective, punishment is a complex phenomenon, involving the concentration of various "meanings", "targets" and "interpretations"; the specific purpose or aim of punishment at a given time and place only indicate that one will-to-power has prevailed over others and imbued something with a function. Even the "cobweb-spinner" would probably agree with Hegel's retributivist claim that legitimising punishment by the notion of general or individual deterrence is reminiscent of a man who raises a stick to a dog. His abolitionist tone notwithstanding,

Nietzsche is not saying that the human animal can live without punishment. He maintains, rather, that concepts of "guilt" and "punishment", residing in the morality of resentment (slave morality), constitute one of the cornerstones of nihilist modernity. The author further argues that Nietzsche introduces the notion and practice of genealogy as an alternative approach to the history of punishment. He thus tries to question the silenced past and self-evident present and destabilize immobile "truths" about punishment which have prevailed so far. In his genealogical perspective, the current "crisis of punishment" should be considered as a mirror image of the crisis of imagination in penology. In summary, the author argues that Nietzsche's exercise in "higher" penology is not extreme at its very core; rather it is an inaugural cognitive enterprise. Penology – such as postmodernist and post-structuralist – capable of breathing Nietzsche's vigorous air in its passion for knowledge will " ... take [its] daring and painful experiments farther than the soft and spoiled taste of a democratic century can sanction..." (BGE § 210).

Key words: Nietzsche, genealogy, penology, punishment, retributivism, utilitarianism, postmodernism, resentment.

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