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NIETZSCHE, BERGSON, AND THE PUNISHED: AN INQUIRY INTO THE MEANING
AND APPLICATION OF JUSTICE

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ABSTRACT

I will contend, first, that Nietzsche's "bad conscience" and the mercantile justice that comes with it develops in the morality of a society that reflects what Bergson calls the "morality of the closed society." Secondly, I will argue that both thinkers make room for a self-overcoming of justice through connecting Nietzsche's mercy to "creative emotions" that open "closed" justice. I will then contend that Nietzsche's mercy reflects a radicalization of creative emotions that, instead of translating itself back into the law, must remain beyond the law. From this starting point, I will relate Bergson and Nietzsche's analyses of justice to those put forth in the 20th century which have pushed towards at minimum a critique of economy and at its fullest, pushed towards prison abolition. The rationale for completing this project is to create a relation between Bergson and Nietzsche, the likes of which has not been done, while at the same time bringing both thinkers into conversation with contemporary social justice problems. In doing so, I hope to provide the grounds for a new narrative ethics.

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Introduction

In *On the Genealogy of Morals* (1887) Nietzsche gives genealogies of good and evil, the bad conscience, and the ascetic ideals. In the second essay, Nietzsche guides his argument about the development of guilt and the bad conscience through the “internalization of man.” Nietzsche writes, “I regard the bad conscience as the serious illness that man was bound to contract under the stress of the most fundamental change...when he found himself finally enclosed within the walls of society and peace.” (84). For Nietzsche, as this paper will go on to explore, the enclosure of society means the turning inward of instincts (the internalization of man), so that instead of external expression, instincts express themselves into the inner-life of the human being and compose the “soul,” and then the bad conscience. (85). According to Nietzsche, a part of the mechanism that turned us inward is the creditor/debtor relationship. This relationship takes this form: the debtor, borrowing something from the creditor, vows to return it. If the debtor fails to repay exactly what is borrowed, they could substitute something else that they possessed. (64). While this could be a material payoff, it could also take the form of agreeing to let the creditor “vent” their power on the debtor should the debtor fail to repay the original loan. When this relationship is extended to a society as a whole, Nietzsche argues, the idea of “justice” is developed. (71). Bergson, like Nietzsche, gives an analysis of the concepts of justice and punishment through the language of a mercantile relationship.

In *The Two Sources of Morality and Religion* (1932), Bergson traces obligation in two of its forms: pressure and aspiration. In the first chapter, Bergson shows pressure and aspiration as two kinds of force behind obligations matching the open and closed societies, respectively. The closed society consists in obligations which aim at preserving the society. This society, according to Bergson, resembles natural societies like those of ants. The closed society is the society we will focus on, as it is rooted in a pressure for social cohesion. (10). Bergson’s conception of justice, similarly to Nietzsche, is rooted in pressure for

social cohesion: it has its origins in barter and trade. (69). In contrast to the closed society, the open society is a society not based on the so-called closed obligations. It is based on the feeling of love for all humanity. This emotion transforms the mercantile idea of justice into the justice of charity. This new justice is not just a result of the pressure in a closed society, it also contains a form of the aspirational force of an open society. (71).

I will begin this essay by reading Nietzsche's second essay of the *Genealogy* to locate the origins of the "bad conscience" with help from Gilles Deleuze's *Nietzsche and Philosophy*. In doing so, I will bring to light the nature of "bad conscience" and its relation to justice and punishment. I will then turn to Bergson's first chapter of the *Two Sources* to further analyze in what kind of society "bad conscience" gets its rise. Following this, I will move to Bergson's analysis of justice, and the difference between "closed" justice and "open" justice. I will then argue that Nietzsche's idea of "mercy" reflects a radicalization, taking the creative emotions Bergson sees as opening justice and society beyond the law. After laying this foundation, I will move on to Michel Foucault and Jacques Derrida to see how the two French philosophers of the 20th century dealt with analyses of mercantilism in the context of punishment and the gift respectively. To conclude, I will turn to a preliminary discussion of a new narrative ethics, with examples from Angela Davis's *Are Prisons Obsolete?*, which I will argue can extend and radically change the way we see justice and ethics as caught up in the circle of economy.

“Second Essay, ‘Guilt,’ ‘Bad Conscience,’ and the Like”: The Creditor/Debtor Relationship and Bad Conscience

The project of the second essay of the *Genealogy* is stated clearly in its title: it will attempt to give genealogies for “guilt” and “bad conscience.” In the next few pages, I will explain how Nietzsche creates genealogies of guilt and bad conscience through creditor/debtor relationships and the internalization of man. He begins with a discussion of forgetting and remembering. He writes, “To breed an animal *with the right to make promises*—is not this the paradoxical task that nature has set itself in the case of man? Is it not the real problem regarding man?” (57). To understand why this is such a problem for nature, Nietzsche goes on, we must understand to what extent forgetfulness must be strong in order to keep us present and not overwhelmed by experience. (58).

To clarify this initial point, we will turn to Gilles Deleuze’s *Nietzsche and Philosophy*. He writes that the faculty of forgetting mediates the unconscious and conscious brain. (113). The conscious brain contains reactions to experiences that take conscious excitations as their object. Although those excitations are reactive, they cause us to act. The unconscious brain contains traces. It is a passive absorber of all that comes to it. Both are separated by forgetfulness, a function abstracted from activity, which continually renews consciousness through conscious excitations. This allows those excitations to be without the weight of the mnemonic traces absorbed through experience. (113-114). So, when Nietzsche describes forgetting as a doorkeeper, we can think of it as a function mediating and restricting the movement of mnemonic traces to the conscious brain, allowing us to not dwell on parts of experience which are not essential to our survival.

This faculty, Nietzsche argues, has to be strong to keep those mnemonic traces from interfering with the conscious brain. This is part of what makes its counterpart, memory, so impressive. Why do we have to remember? To make promises. The act of making promises, according to Nietzsche, requires that

we be able to sustain and calculate our will, projecting it from the present into the future. He calls this the “memory of the will.” (58). This memory, abrogating forgetfulness, is able to keep track of the mnemonic traces that Deleuze described. The question still remains: how was memory able to overcome forgetfulness? For Nietzsche, the answer is pain. (61).

Beginning in the contractual relationship between a “creditor” and a “debtor,” we had to learn how to remember what we had done in the past, how to interpret causality, and otherwise make use and sense out of our memories, because if we didn’t, we would experience some kind of pain. (63) The relationship between a creditor and debtor, Nietzsche describes, is the relationship between someone who has lent something of value to another person. The debtor has to be able to repay this loan, and if they cannot, they must substitute what is owed with another, equally valuable, replacement. (64-65). Nietzsche argues that this replacement was often decided by the creditor, who becomes free to vent their power onto the debtor if they do not repay a loan. In this sense, suffering makes memories to the extent that it can balance debt. (65).

Nietzsche writes that the setting of prices and determining of values, originally popularized through the creditor-debtor relationship, preoccupied our earliest thinking to such a degree that they make up much of thinking in its entirety. (70). It was out of this most basic form of legal rights that we began to structure our power against others; valuing and making equivalences is not only good for trade, but for justice. Nietzsche writes:

The lawbreaker is a debtor who has not merely failed to make good the advantages and advance payments bestowed upon him but has actually attacked his creditor: therefore he is not only deprived henceforth of all these advantages and benefits, as is fair—he is also reminded *what these benefits are really worth*. (71).

In the aid of mnemonics, the community with laws acts as a creditor who benefits all those living within the community. The loan of being able to call oneself a community member is transgressed

through acting against the law the community describes as necessary. This is how, in the second essay, justice comes out of the relationship between creditors and debtors.

Because of this conception of justice, Nietzsche wants to push back against the “moral psychologists” who find the origin of justice in *ressentiment*. To do this is to find the home of justice in reactive feelings, for Nietzsche believes the administration of law and the need for it is a struggle *against* the reactive feelings. (74). He writes:

‘Just’ and ‘unjust’ exist, accordingly, only after the institution of the law....To speak of just or unjust *in itself* is quite senseless; *in itself*, of course, no injury, assault, exploitation, destruction can be ‘unjust,’ since life operates *essentially*, that is in its basic functions, through injury, assault, exploitation, destruction... (76).

So, to universalize just and unjust in the sphere of what is reactive (i.e. *ressentiment*) would be misleading and hostile to life. Just and unjust for Nietzsche, are a means in struggling between power complexes, not a means to prevent all of struggle in general. (ibid).

We will turn now to Deleuze briefly to clarify this point regarding reactive feelings. Deleuze, in *Nietzsche and Philosophy*, connects reactive forces, active forces, and *ressentiment*. For Deleuze, when Nietzsche describes *ressentiment* as a reactive force, he is talking about the desire of *ressentiment* “to deprive active force of its material conditions of operation, to keep it strictly separate from what it can do.” (127). This is an extreme case of a reactive force, Deleuze writes; usually reactive forces act only to redirect us. (111). In the case of *ressentiment* and Nietzsche’s genealogy, however, *ressentiment* is created through the lapse in the faculty of forgetting that allows traces of memory, once forgotten, to fill our consciousness. (123). Nietzsche doesn’t want to place justice, then, *merely* in the sphere of reactive feelings happening after the abrogation of forgetting. To do so would be to reduce its scope and deprive it of its power. He doesn’t want us to underestimate the way in which a desire for justice comes not just from anger at injury incurred, but also the action-oriented pleasure of venting power.

We have already touched on how justice becomes inseparable from punishment, but we will now devote further time to describe how it is part of the machinery that shapes bad conscience. Nietzsche sees punishment as ultimately undefinable¹, he writes, “Punishment is supposed to possess the value of awakening the *feeling of guilt* in the guilty person; one seeks in it the actual *instrumentum* of that psychological reaction called “bad conscience.”” (81). However, he goes on, because punishment reflects the creditor-debtor relationship, it also functions to give a space to allow the society to freely vent power upon its subjects, which is tangential to its supposed purpose. This is why Nietzsche says that the awakening of guilt rarely happens when punishing. Instead, punishment generally makes the people it affects cold, makes them feel alienated, and strengthens their power of resistance. (ibid). Thus, punishment is not where bad conscience grows. (82).

Instead, punishment is a part of how bad conscience grows in that it contributes to the enclosing of human beings “within the walls of society and peace.” (84). Nietzsche argues that in having to live amongst others, the human beings had to turn their instincts inward. They had to instead mediate survival instincts with their new organization. (ibid). In having to make promises, participate in being a creditor and a debtor, “Hostility, cruelty, joy in persecuting, in attacking, in change, in destruction—all this turned against the possessors of such instincts: *that* is the origin of the ‘bad conscience.’” (85). This way, we came to look down upon what Nietzsche calls natural instincts. Unable to exercise those instincts on the external world freely, we had to turn them inward or otherwise mediate them through a system of credit or justice. This is the origin of the bad conscience, it is how we came to look down on our natural instincts and even worse: vent them on ourselves.

The genealogy of the second essay, which attempts to uncover origins for the bad conscience and guilt, finds those origins not directly in *ressentiment*, but rather in the enclosure of society, the formulation of memory, of promises, of the creditor-debtor relationship, and the mitigating of reaction

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with justice and law. But what is this culture or society that we have been referring to? In what kind of dynamic could the bad conscience flourish? In the following section, we will turn Bergson's *Two Sources* and I will argue that the bad conscience flourishes in the closed society.

The Two Sources and the Closed Society

Bergson begins *The Two Sources* by writing that our earliest memory is the remembrance of the “forbidden fruit.” (9). He means that our earliest memories are wishing to act and being inhibited; we were given a prohibition from someone like a parent or teacher, and we obeyed. It is their relation to us, he argues, that shapes our reaction to them, (ibid). He goes on to write:

From this first standpoint, social life appears to us a system of more or less deeply rooted habits, corresponding to the needs of the community... We can evade it, but then we are attracted towards it, drawn back to it, like a pendulum which has swung away from the vertical. A certain order of things has been upset, it must be restored. In a word, as with all habits, we feel a sense of obligation. (10).

In other words, living within a society, we are obligated to certain habits that match the needs of that society. These habits come from all areas of the social order and each of these obligations work together for the cohesion of society.

The difference between the laws of the social order and natural law, is that the former can be evaded. Its pressure is obligation, not necessity. On the other hand, natural law is inescapable. (12). However, the two are related, Bergson writes, in the way in which social law reflects the same kind of inevitability when applied to a community. This is why when we breach the social order it seems almost anti-natural, even when frequently repeated. An acting out of the social order is “what a freak creation is to nature.” (13).

Obligation is not just a social relation for Bergson, but it is also a relation of the individual to themselves. In order for us to even be individual selves and to act, we have to act in a social sphere. (14-15). In other words, no matter how individual we think ourselves, everything we are is learned and supported through societal conditions which put us into contact with others. This is why we scarcely take

note of obligations we feel or roles we play. He writes, “It assumes a peremptory aspect, like all deep-seated habits, only if we depart from it.” (19). Thus, in everything we do, we are following some kind of obligation and there is almost nothing untouched by obligation. And, it is the case that we almost always obey rules and submit to obligations. Bergson says, “Every instant we have to choose, and we naturally decide on what is in keeping with the rule.” (ibid).

Bergson asks, if following obligation is natural, how is that there are cases when it feels like a strain to the individual? In cases where obedience necessitates an overcoming of the self, it is met with resistance by the consciousness of that self. (19-20). But we have to resist this resistance in order to keep with the course of nature and follow our duties. In order to do so, we developed obligation in the form of reasons with strong motivation. Bergson writes, “In a word, an intelligent being generally exerts his influence on himself through the medium of intelligence.” (22). Hence, we created reasons and maxims (as in Kant), and searched for first principles to logically coordinate reasons to act against our individual interests and for the good of society. Logical coordination is our way of making sense of the obligations inculcated on us by the society in which we are apart. (23).

For Bergson, similarly to Nietzsche, “Logical co-ordination is essentially economy. From a whole it first roughly extracts certain principles and then excludes everything which is not in accordance with them.” (24). We can compare this argument from Bergson about the logical consistency of a morality based on social cohesion to the creditor/debtor relationship. For Nietzsche, as we have discussed prior, the creditor/debtor relationship is the act of determining values and equivalences. (70). Bergson continues Nietzsche’s argument that the logical co-ordination that acts as a resistance against the intelligence in opposition to instinct originates in the basic ideas of economy. For Bergson, this logical co-ordination and valuing determines so much of our thinking as such that even the person who does not directly reason out their thoughts will live “reasonably” if he lives in a society that dictates reason. (24).

It is in this sense that, for Bergson, the development of moral obligation is a return to instinct. Bergson writes that all of these habits are a result of living in a society with a morality based on social

cohesion and are incidental and created. He writes, “the habit of contracting these habits, being at the very basis of societies and a necessary condition of their existence, would have a force comparable to that of instinct in respect of both intensity and regularity.” (24). We should recall now yet another similarity in formulation to Nietzsche.² Our mechanic following of the creditor-debtor relationship, the actions we take to maintain the privilege of living within a society, exert such a force on our will that it could be mistaken for the force of instinct.

The role of the closed society in developing these obligations to resist resistance turned into reasons or principles is clarified in Vladimir Jankeilevitch’s *Henri Bergson*. Jankeilevitch writes that, in a closed morality, we resist the resistance of intelligence for the purpose of relieving the tension involved in doing duty. In his words, “Obligation thus undoes what the intellect has done; via a detour it restores a cohesion that instinct should have sufficed to guarantee.” (156). The intellect created a version of the self that makes duties feel like a strain on that self. So, acting as what Bergson will call a “virtual instinct,” the creation of obligation is meant to create habits that enforce duties to one another in the face of “rebellious intelligence” and the common good. One example of an obligation created to enforce duty is the kind of justice we will discuss in the next section and what Jankeilevitch’s describes as “tit for tat” justice. (157).

Deleuze clarifies what Bergson means by a virtual instinct in the fifth chapter of *Bergsonism*. Virtual does not mean possible. Whereas virtual possesses a reality, in that it can create “its own lines of actualization in positive acts,” (97), the possible has no reality, but an actuality. (96). What Deleuze means here is that Bergson uses the term virtual in order to not pretend like that which is designated

² Deleuze noted this similarity in *Nietzsche and Philosophy*: “Every historical law is arbitrary, but what is not arbitrary, what is prehistoric and generic, is the law of obeying laws. (Bergson will rediscover this thesis when he shows, in *Les Deux Sources*, that all habits are arbitrary but that the habit of taking on habits is natural.)” (133).

virtual is ready-made by virtue of its real counterpart. The possible, on the other hand, is ready-made and comes into existence through “an order of successive limitations.” (97). The virtual instinct of creating habits that make us feel an obligation to act actualizes itself in the way in which it exerts force on our will.

Our current society, dominated by a virtual instinct, is not that different in this sense from the community nature may have intended for us (like ant societies), if it were not for intelligence: both kinds of society dictated by an instinct for social cohesion and obligation following are closed societies. (30). Bergson says of the closed societies that “...their essential characteristic is none the less to include at any moment a certain number of individuals and exclude others.” (31) and asks, “when we lay down that the duty of respecting the life and property of others is a fundamental demand of social life, what society do we mean?” (31). For Bergson, the answer is simple, a closed society. (32). This closed society resembles the “walls” of the society that turned human beings inward for Nietzsche. The closed society expresses rules and the obligation to follow rules, and, in general, constitutes a pressure that is as strong as instinct, a virtual instinct. This virtual instinct of creating habits along with our impulse to resist our resistance to those habits, makes obligation into “logical coordination.” But, for Bergson, this society is not the only one and this justice is not the only kind. In the next section, we will discuss briefly Bergson’s open society and then discuss his analysis of closed and open justice, in order to imagine what Nietzsche meant by mercy and justice overcoming itself.

Opening how? And, How Can We Radicalize Creative Emotion?

The closed society Bergson describes is not separate from the open society he will continue to describe in the first chapter of the *Two Sources*. He writes to clarify this point:

In a word, the social instinct which we have detected at the basis of social obligation always has in view—instinct being relatively unchangeable—a closed society, however large. It is doubtless overlaid by another morality which for that very reason it supports and to which it lends something of its force, I mean of its imperative character. But [the closed society] is not itself concerned with humanity. (32).

The morality of the open society will have obligation similarly to that of the closed society. But as opposed to the end goal being social cohesion, the morality of the open society, which is created through creative emotions, has a goal of love for humankind always in view. Bergson differentiates these creative emotions from emotions in general by saying that there are emotions which are produced by a representation, remain distinct from that representation, and are the consequence of an idea. (43). Creative emotions, on the other hand, are not produced by a representation from which they remain distinct. Instead, “it is pregnant with representations, not one of which is actually formed, but which it draws or might draw from its own substance by an organic development.” (44). It is these creative emotions that Bergson says are productive of ideas. This will be further explained, along with the difference between the closed and open societies, in the proceeding analysis of justice.

Bergson begins with the justice defined by equality and compensation. He says that this justice is characteristically connected with references to arithmetic and geometry. Because of this, he locates the origin of justice in simple societies that functioned with exchange and barter. In any community that does this, there is a clear idea that the two objects that are exchanged are equal in value, or in other words, both could be exchanged for a definite third object. (69). Then, this kind of valuing that Bergson refers to as justice, comes to be involved in the relationship between people. In which case, he writes, “it will then

consist mainly in the regulation of natural impulses³ by the introduction of the idea of a no less natural reciprocity, for example, the expectation of an injury equivalent to the injury done.” (69). Added to this is class, Bergson continues, which skews equivalences based on who has committed the crime and who the crime is done to (70).⁴ This is the justice of the closed society, one bent on habitual social cohesion. Justice presents itself as a result of the virtual instinct of creating habits that exerts its force through logical coordination.

This is how the closed society is manifest through justice. But the open society, too, has its version of justice. Bergson describes exemplars, and we will use the example of the Prophets of Israel, who give to values a new character. For those Prophets, it was the “violently imperative character which [justice] has kept, which it has since stamped on a substance grown infinitely more extensive.” (76). Like a work of artistic genius (75), this introduction of a “violently imperative character,” a new feeling, fundamentally disconcerted the closed society, but, when accepted explained a leap: that of wanting to act justly just to those in your community, to wanting to act justly to all people. (77) This called forth, Bergson argues, new legislation and concepts of morality that serves to consolidate the initial new feeling. (78) Bergson concludes the argument on justice by writing:

For relatively stable justice, closed justice, which expresses the automatic equilibrium of a society fresh from the hands of nature, manifests itself in customs to which the totality of obligation is attached, and this totality of obligation ends by incorporating, as public opinion progressively accepts them, the decrees of the other justice, the justice which is open to successive creations. This the two substances, the one supplied by society, the other a product of man’s genius, come to be cast in the same mould. (80)

³ This phrase is suspiciously similar to the language Nietzsche uses to describe the “internalization of man.”

⁴ This is nuance to justice that Nietzsche does not explicitly state.

By this excerpt, as with the summaries above, we can see that the closed society is not something that necessarily exists or could possibly exist. (95). But with the possibility of openness in mind, there have been exemplars able to create new emotions, creative emotions, that further extend the reach of justice. This is a resistance on the part of the individual to resist the resistance of the virtual instinct to the individuals' resistance to habit or obligation. (ibid). I contend that what Bergson means here is that exemplars exhibiting creative emotions are resisting the notion that one must follow obligation for long enough to ask, "how can we recast obligation in such a way to create societies that encompass all of mankind and exhibit a love of creating?" This is the process of opening through which changes in morality have proceeded.

My interpretation of what Bergson means here is that justice represents the way in which the closed and open societies are not quite separate entities in the way we can access them. By this I mean, in living in closed societies, it is impossible to tell to what extent a true open society could be possible. However, we can imagine what it might be like. And, by virtue of imagining, we can look to exemplars⁵ who have exhibited a creative emotion and see how our societies have progressively become increasingly more open. Now we will turn to Nietzsche to connect creative emotion to his concept of "mercy" to see if we can preliminarily imagine a creative emotion that transcends legality.

⁵ I would like to contend, perhaps in another, more far reaching work, that Bergson's "exemplars" should not be seen as individuals who raise themselves higher than the masses but rather the groups that do so. What if we could extend the name of exemplar to groups as Bergson does when he talks about the "Prophets of Israel"? Activism, then, would seem to be the process of gathering individuals with the purpose of bringing to light creative emotions to fundamentally change the closed society in which we live.

Mercy and Radicalizing Creative Emotion

Nietzsche, too, has an idea for how justice self-overcomes, or in Bergsonian terms, opens: mercy.

He writes:

The justice which began with, ‘everything is dischargeable, everything must be discharged ends by winking and letting those incapable of discharging their debt go free: it ends, as does every good thing on earth, by *overcoming itself*. This self-overcoming of justice: one knows the beautiful name it has given itself—mercy; it goes without saying that mercy remains the privilege of the most powerful man, or better, his—beyond the law. (73).

Despite describing just prior to this quotation how the law implements mercy as it has less and less to lose, Nietzsche returns to its current selectivity and the way in which now it is only possible for those who live outside of the law to have access to mercy. This begs the question: why does mercy, despite its obvious impression on the law now, remains beyond the law in its fullest?

As we have already located Nietzsche’s bad conscience in the closed society, the parts of the machinery that create the bad conscience must also belong to the closed society, as discussed extensively above. Justice and punishment are part of that machinery which turns the human being inward and creates the bad conscience. For Bergson, justice can be ever-widened and improved upon by creative emotion. Both the open and the closed are represented by reason and because of this, he writes, “Justice thus finds itself continually broadened by pity; “charity” assumes more and more the shape of justice...” (85). Creative emotions like charity act to both go beyond and encompass closed concepts but must come back down to reinterpretation under the law. Mercy, as Nietzsche’s self-overcoming of justice, then belongs in the category of creative emotion but is an alteration of it. The difference between Nietzsche’s mercy and Bergson’s conception of creative emotions given by exemplars is that those creative emotions given by exemplars are meant to reach above the closed society for a moment in order to proliferate back into the

law a concept that is fundamentally open. After this reaching above, creative emotions come back down to earth and enter the form of logical coordination and laws that can be followed. Mercy, on the other hand, is beyond the law and seems to be a radicalization of creative emotion because it challenges and extends the fundamental ideas of justice and punishment so much that in accepting mercy, we would have to discount justice and punishment as such. The entire mechanism of justice, the creditor-debtor relationship, would end at its very conception if the creditor were to show mercy. (73). Mercy thus viewed seems to be both a kind of creative emotion and a challenge to it.

What can Nietzsche and Bergson give to us today? Perhaps we have already hinted at it. The mechanisms of justice and punishment as fundamentally mercantile in origin, seeking equivalences created by those already in power, and their function as a way to vent what has been transgressed back on the transgressor, leads us to wonder what happens when we analyze our contemporary handlings of justice and punishment as part of the same mechanism, a strange growth and evolution. The second part of this essay will be devoted to two texts, one explicitly influenced by Nietzsche and one not. Michel Foucault and Jacques Derrida, during the 20th century, took up the interrogation of the circle of exchange more radically than both Nietzsche and Bergson. I want to argue that these thinkers are getting at the same thing: why are justice and punishment fundamentally “unjust” today? And, what can we do about it? From here, I will provide the foundation for arguing for a new kind of narrative ethics, as an area of study that consults personal testimony as seriously as perceived moral law when addressing matters of justice.

Our Next Analysis: Modern Prisons and the Closed Society

Michel Foucault described the project of *Discipline and Punish* in “Prison Talk” as a “genealogy of morals.” (53). And according to James Miller in the article, “Carnivals of Atrocity: Foucault, Nietzsche, Cruelty,” Foucault’s affinity towards Nietzsche is no secret. It is explicitly stated in the chapter on the Panopticon in *Discipline and Punish*. The panopticon was Jeremy Bentham’s ideal prison structure: there is a central tower that is surrounded by a ring. The tower has wide windows that look into the inner part of the ring. That ring is divided into cells that stretch the width of the building. There are two windows, the one that looks into the central tower, and one that looks out to the side of the building. (200). For Foucault, the major purpose for the panopticon is “to induce in the inmate of state of conscious and permanent visibility that assures the automatic functioning of power.” (201). Later, he writes that this kind of surveillance, with intersecting gazes (the two windows) renders useless the eagle and the sun. (217). This is where Miller connects Foucault to Nietzsche. In *Thus Spoke Zarathustra*, a book that follows the prophetic Zarathustra, Zarathustra rises at dawn in the prologue and delivers a speech involving the sun and the eagle, envisioning their relation to freedom. Miller discerns that these the possible overcoming the last man for Nietzsche. Zarathustra says to those willing to go beyond: “I say unto you, one must still have chaos in oneself to be able to give birth to a dancing star...Alas the time is coming when man will no longer give birth to a star....Behold, I show you the *last man*” (17). The last man in this instance is the man who no longer wishes to live intensely or free but is instead happy to fall into line with the society in which they live. Miller argues that reading into this connection between Foucault and Nietzsche, we can understand *Discipline and Punish* as a genealogy of the modern soul of “the last man,” bad conscience, and the internalization of man, following Nietzsche’s own *Genealogy*. (473-474). What we will search for, then, as we read through excerpts of Foucault’s *Discipline and Punish* is evidence of the modern prison system, modern culture, as products of the closed society, the

society which turned the human being inward. In doing so, we will hope to pave the ground to discussing Jacques Derrida's conception of the gift, to further see how philosophers have attempted to think of that which is outside of the circle of credit and debt.

Due to the nature of this paper, we will not be granted the space to give a full close reading of *Discipline and Punish*. We will instead rely on a secondary source and brief excerpts of the text to focus on the way in which Foucault's analyses of punishment as fundamentally mercantile in origin, and most importantly, how what we have been calling "creative emotions" as well as concepts like Nietzsche's mercy, came to make/or simply allow the institution of punishment to be cruel.

Early in *Discipline and Punish*, Foucault writes that although now, in contemporary time, we see ourselves as less cruel, the focus of our punishment has just changed targets—from the body to the soul. (16). The difference between the punishment of the body and of the soul can be seen in one of the largest changes in the way we punish overall: the end to public executions. One of the reasons we changed the way we punish Foucault argues, is the ambiguous role of the spectator, "at once an element of [public executing's] functioning and the principle of its perpetual disorder. (57). At the same time as the public being needed to pursue the very purposes of public execution—to scare, to repulse—people drawn to the spectacle of punishment could just as easily terrorize the entire system, revolt, on the grounds of it being "unjust." (59). From the 18th century on, common perception of the punishment changed: "In this new genre, there were no more popular heroes or great executions; the criminal was wicked, of course, but he was also intelligent; and although he was punished, he did not have to suffer." (69).

This newfound conception of the criminal, as deserving, at least, to not have power vented back onto him in such a public, physically torturous way, forced our conception of punishment to change. Foucault argues that there arose three new ways to organize the power to punish. First, punishment remained a part of old monarchical law. It is the right of sovereignty to punish and deploy ritual marks of the vengeance on the punished person and to remain itself, beyond its own laws in doing so. Second, those reforming this old tradition see punishment as a way to requalify people to be subjects using

symbols. Last, the prison was being developed in order to coerce individuals via traces to adopt habits for their reinstating back into society at large. All three are technologies of power, Foucault argues. But, the third, is the one that remains most prominent. The question that remains for Foucault is, “How did the coercive, corporal, solitary, secret model of the power to punish replace the representative, scenic, signifying, public, collective model?” (130-131). What began as a protest to the cruelties of public torture turns the mechanism of punishment inward—to discipline. The habits that this institutional turn created turn the subjected bodies into what Foucault calls “docile” bodies. He writes, “Discipline increases the forces of the body (in economic terms of utility) and diminishes these same forces (in political terms of obedience).” (138). This sentence should give us pause. Is this not exactly what Nietzsche said came about in when the human being internalizes all outside forces? Is this not the way that a closed morality comes to develop in a closed society? The turning inward of punishment parallels the turning inward of the human being—and it begins, for Foucault, with the mercy taken on the person being executed, when spectators choose to instead throw stones at the executioner, when they choose to be more ‘merciful’, might we even say ‘charitable’? (68?).

Let’s turn back to Miller to further analyze this change. He writes,

With the abolition of death by torture, ‘the people was robbed of its old pride in its crimes.’ No longer was traversing the law permitted to be a source of shared pleasure...Deprived of a shared public forum for savoring displays of cruel omnipotence, subject to disciplinary regimens that painlessly ‘dissociate power from the body,’...mankind finds its potential for greatness—its ability to exercise its ‘super-power’—squandered. (481)

This should be a familiar idea to us. As Nietzsche writes in the *Genealogy*, “I regard the bad conscience as the serious illness that man was bound to contract under the stress of the most fundamental change...when he found himself finally enclosed within the walls of society and peace.” (84). In a similar regard, as soon as punishment found itself in our more advanced society, a society demanding “mercy”, it turned itself inward. Creating a reactive force out of what was once active, as Miller writes. (485).

Writing itself back into the laws that function systematically to vent power equally in exchange for transgressions, our creative emotions, our desires to be free, only advance this oppressive agenda.

We remain stuck. Foucault illuminates for us the modern implication of the closed society on the bodies and souls of the punished. The turning inward came upon punishment too and we remain a surveilled version of Zarathustra's last man. The question we want to deal with now is, was this really because of the mercy of the spectator? The charity? I contend that instead, the turning inward of punishment, the Panopticon translated into all of our modern institutions is the natural next step to Bergson's creative emotions. The spectator of the public execution had a radical thought: punishment for a crime can be unjust. But, in throwing stones at the executioner, pushing for fair punishment (a contradiction in all its forms) translated a radical thought back into a system of laws that necessitate the use of mercantile kinds of exchange when determining justice; the radical spectator throwing stones kicked off the creation of the Panopticon, a creation of lives always surveilled by those in power and those not alike. That which is deemed unjust becomes at once the conditions for the possibility of "just" and the conditions for the impossibility of "just".⁶ Where can we go from here? Perhaps we should turn back to what Nietzsche wrote when he wrote of mercy:

The justice which began with, 'everything is dischargeable, everything must be discharged ends by winking and letting those incapable of discharging their debt go free: it ends, as does every good thing on earth, by *overcoming itself*. This self-overcoming of justice: one knows the beautiful name it has given itself—mercy; it goes without saying that mercy remains the privilege of the most powerful man, or better, his—beyond the law. (72).

If mercy is the privilege of those beyond the law, it must exist outside of the law. Foucault shows us how justice and punishment overcame themselves, transforming from public execution to everyday

⁶ Here, I make a nod to one of Derrida's *aporias*: the gift in his text *Given Time*. "These conditions of the possibility of the gift (that some 'one' give some 'thing' to some 'one other') designate simultaneously the conditions of the impossibility of the gift." (Derrida 12). The implication of the aporia of the gift is implicated in the problem of justice at large and we will deal with it next.

implicit surveillance. It is as if the creative emotion that led the civilian to throw stones during the execution became translated back into the self-imposed law. With this in mind, we will turn to Derrida's *Given Time* to understand what the gift may have to do with this discussion of justice and punishment. If creative emotions are necessarily translated back into the law, then how can we think above mercantile credit/debt relationships at all? I will contend that Derrida's analysis of the gift gives us the answer to this question

The Gift: Can We Be Within and Outside of Exchange?

Derrida's text *Given Time* attempts to unravel the meaning of the gift and the possibility/impossibility of the pure gift. In the first chapter, Derrida says that "These conditions of the possibility of the gift (that some 'one' give some 'thing' to some 'one other') designate simultaneously the conditions of the impossibility of the gift." (12). This section will be devoted to understanding the meaning of this sentence in the context of the first chapter of *Given Time*, as well as through several secondary sources in order to highlight another way in which philosophy can work outside of the circle of economy, or the mercantile exchange Nietzsche and Bergson analyze. We will begin by analyzing the first part of the chapter, specifically, the epigraph of the book: a selection from a letter written by Madame de Maintenon. As this excerpt kicks off the chapter, it informs the paradox of the possibility and impossibility of the gift. In the second part of this section, we will further elaborate on the quote by means of reading of the first chapter at large, with help from secondary sources. To conclude the section, we will question what Derrida's understanding of the gift means for philosophy and ethics.

Derrida begins *Given Time* with this quotation from Madame de Maintenon: "The King takes all my time; I give the rest to Saint-Cyr, to whom I would like to give all." (1). In the footnote on the same page, Derrida tells us that Madame de Maintenon was the sultan of conscience for Louis XIV. After the death of the Queen, she became a morganatic wife. Although excluded from all titles, she helped him back to his obligation as husband and as a catholic king. (1-2). Despite the focus on the quote primarily taking the position of an analysis of the sentence itself, this background information situates Maintenon as what seems like a willful servant. The king takes her time, she does not necessarily give it. What she wishes to give it to is her charity, San Cyr. By the logic of good economics, Derrida writes, if the King takes everything, there is nothing else to give. (2). And yet, she still desires above all to give what she cannot give, the rest of the rest of her time (as if she can have time) which she cannot make present. Derrida says, "But this rest of the rest of time...that is the whole of her desire. Desire and the desire to

give would be the same thing, a sort of tautology. But maybe as well the tautological designation of the impossible.” (4-5). While Derrida admits that one could accuse him of making something out a very basic sentence, he thinks that perhaps this giving might exist outside of the circle of economy and asks us to consider the implications. (5). Here, we see the beginnings of the impossibility and possibility of the gift: the true gift that Maintenon wants to make is the rest of the time, of which she owns none, to Saint-Cyr—a charity, the ultimate receptacle of a gift. Here desire to give lies entirely outside of what she reasonably has. The conditions for the possibility of the gift are skewed in the impossibility presented. If Maintenon desires to give what she cannot possibly have, perhaps she is giving the pure gift, exceeding both the conditions of the possibility of the gift and the impossibility of the gift. We will return to her as we conclude this section.

For Derrida, the gift is related to economy and time. We cannot understand the gift without economy. He writes, “But is not the gift, if there is any, also that which interrupts economy? That which, in suspending economic calculation, no longer gives rise to exchange?” (7) If a pure gift is given, it must not make room for a return gift, it must take up space outside of the circle of exchange. But the relation is more complicated than that. Derrida goes on to say that if the circle is essential to economy--what one gives, one will receive—the gift must “keep a relation of foreignness to the circle. It is perhaps in this sense that the gift is impossible.” (ibid). The gift must at once be part of the circle, which is also a circle of time--as its first axiom is “In order for there to be a gift...some ‘one’ has to give some ‘thing’ to someone other” (11) --but for it to exist as gift it must be foreign to economic exchange. Therefore, Derrida says, “there could be a gift only at the instant an effraction in the circle will have taken place, at the instant all circulation would have been interrupted, and on the condition of the instant. (9). This instant, he goes on, has to “no longer be a part” of time. To further situate gift in time, Derrida writes, “That a gift is called a present, that ‘to give’ may also be said...’to give a present’...this will not be for us just a verbal clue, a linguistic change or *alea*.” (10). Insofar as time and the present are conditions for the

gift, the uttering of presence and time in the name of the gift situates it back in the temporal circle, binding it simultaneously in an economy. (9). This is why the gift is “the impossible.” (10).

As the gift is merely a name, an attempted unity for conflicting thoughts. Derrida writes that when we think of the gift, we are presupposing a gift event, namely: Someone, gives something, to someone other. Derrida says here, we have already presupposed much, “This is an unsigned but effective contract between us, indispensable to what is happening here, namely, that you accord, lend, give some attention and some meaning to what I myself am doing by giving, for example, a lecture.” (11). This is indispensable, as for Derrida, the contract between the “one” and the “other” is accepted and taken for granted and appears tautological. Yet at the same time, “For there to be a gift, here must be no reciprocity, return, exchange, counter-gift, or debt.” (12). Or, the gift must at the same time as being a relation between “one” and “one other” through a third thing, remain outside of the economic circle.

Here we have preliminary answer to the guiding question of this section: What does Derrida mean when he writes, “These conditions of the possibility of the gift (that some ‘one’ give some ‘thing’ to some ‘one other’) designate simultaneously the conditions of the impossibility of the gift.” (12)? At the same time as we assume that the gift must remain outside of the circle of time and exchange, we base a description of its form in an axiom which is essentially rooted in time and exchange. The gift is immersed in this paradox. The person who receives a gift, Derrida writes, owes it to himself to not return a gift in exchange. Yet, if it appears to him as a gift and he recognizes it as present, it will be annulled. Its very present, presence, gives a symbolic equivalent. This symbol is not merely exchange, but it is what opens and constitutes the law of circulation which then annuls the gift. (13). So, for Derrida, the second axiom of the gift becomes, “There is gift, if there is any, only in what interrupts the system as well as the symbol, in a partition without return and without division [repartition], without being-with-self of the gift-counter-gift.” (ibid). In other words, the gift must resist the person receiving the gift understanding it as a gift in the sense of the symbol of gift, as well as the system of giving and receiving that situates gift-giving in exchange. But, the fact of a relation between two parties by means of a third object constitutes

both the impossibility and possibility of the gift. The questions now become: why is this the case? And, why does it matter?

From the two axioms, Derrida arrives at a conclusion: in order for the gift to be a gift, it must not appear or make itself known as a gift. Crucial to not knowing is absolving all memory. He writes, “For there to be gift, not only must the donor or donee not perceive or receive the gift as such, have no consciousness of it, no memory, no recognition; he or she must also forget it right away...” (16). Nothing must remain in the mind of the person who gives of the gift, not even a repression of it or a censoring of it can be represented to the mind. While repressing the gift may keep its meaning in the sense of its definition, it annuls it in the symbolic insofar as there is a memory of it, credit and debt and be discerned. (ibid). A total complete forgetting would be the condition of a gift, as it would erase the defining relations of the gift as well as the symbolic circulation that regulates it. Derrida writes, for there to be a gift event, what happens in an instant must be forgotten so that the forgetting forgets what it has forgotten and also, itself; He clarifies:

What this forgetting and this forgetting of forgetting would therefore give us to think is something other than a philosophical, psychological, or psychoanalytic category. Far from giving us to think the possibility of the gift, on the contrary, it is on the basis of what takes shape in the name *gift* that one could *hope* thus to think forgetting. For there to be forgetting in this sense, there must be gift.” (17).

Forgetting represents the conditions of the gift and the gift represents the conditions of forgetting. Here, we can begin to see that the problem of the gift is primarily a problem of language that Derrida is set to “obsesses” with. (18). The forgetting must be a radical forgetting that wipes any desire or thought to repay or be in debt is annulled; in the same sense, the gift must be radical enough to erase the memory of the symbols and systems of exchange. Otherwise, the consciousness of the gift, in either sense, sends one back to the circle of economy. (23).

But it isn't just the consciousness of the gift that does so. As soon as a subject exists as the person giving or receiving the gift, as soon as the subject can be named, the circle exists. Derrida writes, "That is why, if there is gift, it cannot take place between two subjects exchanging object, things, or symbols. The questions of the gift should therefore seek its place before any relation to the subject..." (24). Here, we see more clearly what Derrida means when he says the first axiom of the gift constitutes the possibility and impossibility of the gift. The existence of subjects along with the existence of a third object to be given is at once the impulsive definition of gift and the force that pushes gift giving into the circle of economy, memory, and cyclical time. As soon as there are subjects, there is memory; as soon as there is memory, we are subject to the rules and regulations of symbols and systems of exchange.

Derrida writes, to begin to conclude this chapter, "It so happens...that the structure of this impossible *gift* is also that of being—that gives itself to be thought on the condition of being nothing...and of time which...is always defined in the paradoxia or rather, the aporia of what is without being, of what is never present of what is only scarcely and dimly." (28). Here, we arrive at the importance of the gift and its content, as foreshadowed by Madame de Maintenon: time might be what can be given, because it is properly nothing and belongs to anyone. The most serious stake of political economy hinted to here is that it is not time itself that we ever possess to give, but what there is in our time can be given. (ibid). But, if we are subjects doing the giving, the gift remains an aporia.

The aporia of the gift is what makes it what we might call revolutionary. Despite the impossibility of the gift, we think, desire, and say it according to the measure of impossible. Derrida writes, "If one wants to recapture the proper element of thinking, naming, desiring, it is perhaps according to the measureless measure of this limit that is possible, possible as relation *without* relation to the impossible." (29) Here, Derrida's analysis of the gift becomes explicitly political. In order to understand the true elements of thinking, we must consider the ways in which we are able to think the impossible. If we can think outside of the circle of economy, the gift, the impossible measured by measureless measure, may be a way to do so. Further supporting this analysis, Derrida writes that the gap between gift and economy

lies in a parallel location to the gap between thought, language, and desire and knowledge, philosophy, science. He says,

The gap is not present anywhere it resembles an empty word of transcendental illusion. But it also gives to this structure or to this logic a form analogous to Kant's transcendental dialectic, as relation between thinking and knowing, the noumenal and phenomenal. Perhaps this analogy will help us and perhaps it has an essential relation to the problem of 'giving time.' (29).

The gift as illusion can give us the ability to render an account of our desire to render an account of the gift; like rendering an account of thought, language, and desire through the lenses of knowledge, philosophy, and science gives us an ability to understand our drive to render an account of thought, language, and desire. Note again the quotation this paper seeks to define and understand: "These conditions of possibility of the gift (that some 'one' give some 'thing' to some 'one other') designate simultaneously the conditions of the impossibility of the gift." (12). In Derrida's analysis of the gift, we see that the existence of time, of the object being given, of the subject, of memory, all provide a direct contradiction to the second axiom of the gift, which states that the gift must interrupt the system and symbol of economy. Yet, it has possibility in the fact that we can think it. Thus, the importance of this quotation, in the analysis of the gift, is that it *gives* us access to that which is immersed in the relationship of economy and exchange, credit and debit, but which is fundamentally defined as an interruption to that very economy and exchange, credit and debit. Derrida's final assertion, that time is that which can be given, accounts for the way in which gift must be someone giving something to some one other but also interrupt the symbolic order of that which is economic. This assertion lies behind the excerpt of Madame de Maintenon's letter, "The King takes all my time; I give the rest to Saint-Cyr, to whom I would like to give all." (1). Maintenon has no time left because it has been taken, but she desires to give all her time. The conditions for the possibility of the gift are the conditions for the impossibility. The moral implication that Derrida gives seems to be this: if we can render an account of the gift, we can render an account of that rendering account to understand what may interrupt economy, exchange, credit or debt;

but, we also must full well be prepared for the gift's annihilation in the process, or its absorption back into the circle. (29)

To begin the conclusion of this section, I will consult with two secondary sources, to ask what about the gift constitutes an ethical problem or—what should we do, with this way of thinking about the gift? In a book titled *The Philosophy of Derrida*, Mark Dooley and Liam Kavanagh write of the gift in Derrida, “We therefore find ourselves caught in a peculiar bind. We desire to give gifts unconditionally but the only way we can do so is by entering into an economy of exchange. (9). The conclusion Dooley and Kavanagh take from this is that desiring an impossible gift makes us ready to see that our tradition and institutions will never be absolute, “that they can always be reformed in the light of unforeseen appeals for justice.” (10). Dooley and Kavanagh’s interpretation is one of progress. If we can understand the impossibility of the gift, we can prepare to think the impossibility of other traditions and institutions. Derrida seems to allude to this kind of conclusion when he marks the question of the gift as explicitly political.

Along the lines of this interpretation, in a paper titled, “Derrida and the Ethics of the Impossible,” François Raffoul writes that Derrida is not trying to create an ethics, a list of rules for what must or must not be. “It would rather be an issue for him of problematizing...what he calls, following Levinas, the ethicality or ethnicity of ethics, its very possibility.” (271). Derrida is returning to the impossibility of ethics, returning to its aporias, “which are both constitutive and incapacitating, possibilizing and impossibilizing, thus marking ethics with an irreducible impurity.” (272). Both texts seem to be asking the question, if we can think the impossible what else can we do? And perhaps, this is a question Derrida does not answer for the sake of providing an ethics. But I contend that this may provide the ground for faith in progress against the old tradition and institutions that have the propensity to oppress us, to restrict us, to keep us trapped in the circle of economy and memory.

We set out to find an understanding of what Derrida meant when he wrote, “These conditions of possibility of the gift (that some ‘one’ give some ‘thing’ to some ‘one other’) designate simultaneously

the conditions of the impossibility of the gift.” (12). We have arrived at several conclusions of possible importance to our central thesis. First, the axiom “that some ‘one’ give some ‘thing’ to some ‘one other’” situates the gift back in economic exchange. A third object goes between two subjects. Second, when the person receiving the gift understands it as gift, they are met with the impulse to return. As soon as there are subjects and there is memory, there is memory of a gift to be returned. We would have to be absolutely forgetful, a non-subject in order to give a gift. And yet--our third conclusion—we can think the gift and we think the impossible. At the same time that the axiom represents the impossibility of the gift, we can think of its possibility. It is here that we have reached a road block—what now? What does it mean that we can think the gift?

As I briefly made note of with the two secondary sources, the ability to think of the gift may represent Derrida’s broader philosophical project, namely: understanding the limits and aporias of philosophical systems, especially for our sake, ethics. If we can think about the limits of philosophy, the impossibility and possibility of the gift, we can give ourselves to think outside of things like economy, even if that eventually leads, as Derrida said it might, to the annihilation of the gift itself. What Derrida seems to be pointing to here is the idea of progress through thinking and the gift becomes something worthy of thinking, maybe even for the possibility of liberation from the confines of economy and exchange.

Perhaps now we will return to Madame de Maintenon. How does the excerpt from a letter to her friend show us the possibility and impossibility of the gift? What does it show us about the practical implications of the possibility and impossibility of the gift? She writes, “The King takes all my time; I give the rest to Saint-Cyr, to whom I would like to give all.” (1). None of us have time left to give. The time is never properly ours. It belongs to no one. But, the content of that time, may be all we have a fractional say in. Our time is being taken; although, for most of us, not by a king but by other structures in our lives which lay out concretely how our time must be arranged. We are not necessarily restricted by

these structures, or whatever they may be, but they take our time. What if we could give the rest?

Maintenon would give to Saint-Cyr. Where would we give?

Maintenon poses Derrida's analysis of the gift in a way that is intuitively possible and linguistically impossible. Much of our time is taken by something external to us, but that does not stop us from desiring to give all that is left or all that there was in the first place. The gift is impossible; it cannot exist in the same plane as exchange, as remembering subjects. And yet, it can be thought. This "aporia" is the limit of philosophy and seemingly of ethics. We may spend all our time creating and justifying "should" while ignoring the aporia underneath, that which is impossible. Much of this understanding of the gift, it seems to me, could be applied to a wealth of ethical concepts. We could see, perhaps in a larger work, how the gift relates to concepts like charity, hospitality, and maybe even love. What is behind what we take for granted is the conditions for the possibility and the conditions for the impossibility at the same time. What are we to do about it? The only answer Derrida gives in this first chapter of *Given Time* is that we must render an account of the desire to render an account of the gift to know the limits of philosophy, to open our eyes to the vast web of possibilities and impossibilities co-habituating in concepts. With this in mind, I will conclude this thesis by arguing that if there is an ethical study which can work in this space of paradoxical concepts, it would involve a new kind of narrative ethics, the likes of which I will proceed to describe preliminarily

Stories to Show Justice Outside of Credit and Debt

I will begin this section by describing an interpretation of narrative ethics by Hilde Lindemann-Nelson, in her book *Damaged Identities, Narrative Repair*, that creates a method of fighting master narratives, specifically in the fields of medicine, which both build and are projections of systems of oppression. (150). Through the creation of counterstories, Nelson contends, people who are oppressed by these systems and stories create their own means to overcoming them, defining themselves, and acting morally. (22). While some ethicists have called for a narrative ethics based on the actual reading of novels and literature (Nussbaum, *Love's Knowledge*), I am most interested in a description of narrative ethics similar to that formulated by Nelson because its emphasis on individual/group testimony puts less limits on who can do the ethical practice it entails. In short, I'd like to avoid saying that people have to read novelists such as Henry James to be moral. Instead, I'd like to focus on the potential of testimony.

For counterstories to be a viable way of resisting oppression, Nelson has to establish identity as narrative in construction itself. In *Damaged Identities, Narrative Repair*, Nelson creates a dialogue with Marya Schectman in order to establish identity in this way. In beginning this discussion with the "reidentification question," or the question of whether one person could ever be identified as the same person over a period of time and change. She argues that this question is not accurate to what we are thinking about when we are considering who and what we are. Instead, she says, we are more concerned with the "characterization question" or, what actions, experiences, and characteristics create our identity. (72). In other words, in our lived experience we assume the basic facts about who we are remain the same, but the actions, experiences, and characteristics we have that may change over time contain the basis for our identity. With this in mind, we avoid the first question, which requires merely a yes or no answer, and must attempt to answer the second, which necessitates less clarity and a multifaceted answer: What characterizes us? (73). Both Schectman and Nelson argue that this question can only be answered narratively and thus identity is a narrative self-constitution. (Ibid).

When both thinkers talk about narrative in this way, they don't mean a linear narrative but instead a group of stories that each contribute differently to different aspects of our identity. (76). This also leads to our identities being influenced by things outside of our selves. Our narrative identity also makes up the way we see and relate to other people in our different roles and relations. (77). Our identity, for Nelson, must also require social recognition. This means we draw on shared histories and identities to understand ourselves, but it also means that we can fall victim to oppressive master narratives about those identities. (81) Master narratives, Nelson writes, take aim at Group identities, taking the form of complex narrative structures and meanings like individual identities. Both identities can be dictated and intentionally harmed by master narratives. The master narratives can cause what Nelson calls doxastic damage, or distortions of self-conception and beliefs about other people. (106). Nelson clarifies what she means by an oppressive master narrative through how Iris Marion Young describes the five main forms of oppression. The first form of oppression is exploitation, taking the result of the labor of a certain group and giving whatever benefits lie there to another, more accepted group. (109). The second is marginalization, or as Nelson defines it, not using a certain groups labor at all. (Ibid). The third is, powerlessness as a result of class division. (110). Cultural imperialism is the fourth form of oppression which culminates in making the dominating group of a culture the norm in that culture. (111). The final form of oppression Nelson covers is violence that stops personal narratives short and tries to halt any chance at an integrated self. (Ibid).

For Nelson, this is where counterstories come into play. But, not all counterstories can effectively oppose master narratives. It is only through stories of moral self-definition that identity can be repaired from the oppression of master narratives. (18). There are two kinds of moral self-definition for Nelson. The first are stories of weak moral self-definition, or, a story that shows an individual or group to be morally competent. The second are stories of strong moral self-definition, which instead of just showing the group creating them to be morally competent, show that moral competency through knowledge of their own history, their own values, and deciding on how to act through that history and those values.

(16). While an individual or group can create stories of these kinds, a group is necessary to legitimize the story of an individual. In Nelson's terms, a counterstory, in order to resist being absorbed into the master narrative must be "authorized" by a community that the individual which has moral resources that are not being utilized in the normal context. (175). Nelson's use of chosen community here is not clear or elaborated on later. But it is my interpretation that if master narratives work by oppressing certain identity groups, then our counterstories to oppose them would have to be backed up by that identity group.

We can begin by seeing justice as formed by credit and debt as a master narrative which fundamentally dictates the stories of those who get caught in its web. Like the gift transforms back into a system of economy, like the public execution that shifts to solitary confinement, all liberatory attempts to get out of the circle of economy and exchange get translated back into the master narrative. While this account of Nelson does not do enough to show how we can get beyond this master narrative, it shows, like Derrida's account of the gift, like Foucault's account of the prison, like Nietzsche's mercy and Bergson's creative emotions, that we can think outside of the master narrative. In this thinking, we can begin to understand ways to transform it. The model of a story remains flexible enough to hold the paradoxes within concepts at the same time. Through knowledge of our own history and through knowledge of our values, we can act in opposition to the mercantile systems of justice and exchange, we can think and understand beyond them, while still remaining a functional member of the society dictated by them. If we seek an ethical system that transforms the mercantile values which leads to justice based on economy, then, I contend, narrative ethics would be it.

This new narrative ethics would have to be involved in paving the ground for revolutionary work. If we are going to imagine what exists outside of oppressive master narratives, our stories must be able to look at the institutions that push master narratives and find the paradoxes that exist within them. I will now look to the prison abolition movement, especially the work of Angela Davis, to provide an example of the kind of work I envision narrative ethics to be the most helpful in.

In an article titled “The Prison Contract and Surplus Punishment: On Angela Y. Davis’s Abolitionism,” Eduardo Mendieta argues that Davis’s work in her seminal text *Are Prisons Obsolete?* shows us that “no democracy can coexist with prisons, and prisons cannot but continue a form of abolished democracy.” (293). In the final part of my paper, I want to situate the problem of mass-incarceration in the United States within a system of mercantile justice by putting Angela Davis in conversation with Nelson and the thinkers we have discussed prior. I will contend Davis’s philosophical response to mass incarceration puts us in a position to imagine otherwise and then act from this imagining; this is the act I will argue is central to creating counterstories. In the end, I want to propose a philosophical study that could take part in undermining mercantile justice and the ease with which we have accepted incarceration in America: a kind of narrative ethics.

After locating Davis’s text in a philosophical tradition that includes Michel Foucault, Mendieta describes what he calls the “Political Economy of Punishment.” As we analyze this section, we will begin to see the way in which Davis’s own critique of the prison industrial complex takes a similar tone to Nietzsche and Bergson’s critique of mercantile justice. Mendieta writes that prisons fulfil four primary purposes. They are supposed to incapacitate by removing a criminal from a society so that they are unable to continue to damage that society. Secondly, they are supposed to be a “mechanism of *deterrence*.” Thirdly and fourthly, and perhaps most resonant for us, a prison is supposed to be a way to enact retribution and reformation. Mendieta writes that criminals in prison are thought to pay off their debt to society as well as becoming resocialized in this society. (298). Mendieta then gives a genealogy of critical theory that details the tradition Davis would have been intimate with while writing *Are Prisons Obsolete?* as well as critiques these four supposed aims of incarceration. For the purposes of this paper we will not be discussing this genealogy. We will, however, with an idea of what Angela Davis is writing in opposition to, turn towards her introduction of *Are Prisons Obsolete?*

As of 2016, there were 2,162,400 estimated people incarcerated in prisons and jails (Gramlich), making the USA’s incarceration rate the highest in the world. (World Prison Brief). Even with this many

people in prison, Davis writes, “In most parts of the world, it is taken for granted that whoever is convicted of a crime will be sent to prison.” (9). While much of the world, except the USA, has abolished the death penalty, we generally don’t consider that there has existed a prison abolition movement since the invention of the prison as the locus of punishment. (ibid). Many anti-prison activists, Davis writes, just write about reform. She says this is indicative of how difficult it is to imagine a social order that doesn’t maintain incarceration as the most effective way towards peace. (10). Here, we might say that the necessity of the prison acts as a master narrative, coming from its roots in a mercantile justice. Angela Davis is then trying to imagine a counterstory, not just caught up in reforming the master narrative, but radically transforming the social order as a whole.

Part of this crisis comes from the “tough on crime” stances of former presidents, especially prior to the bush era such as Ronald Reagan and Bill Clinton. But even prior to the 20th century, the prison was built on the idea that the criminal could repay their debt to society by virtue of staying outside of it, theoretically, in prison. (12). This idea has become so natural to us that at first glance, there is nothing problematic about it. Yet, mass incarceration targets unfairly people of color and people of low income, and this dates back, at least in the United States, to the periods immediately following prison abolition. (17). At that point, Black Codes were enacted in order to criminalize black people only when they were absent from work, breaching job contracts, had firearms, or committed vagrancy. This criminalization, as well as the Thirteenth Amendment, allowed police and people in power to criminalize and then enslave people of color. After all, in the wording of the amendment, slavery and involuntary servitude were abolished “except as a punishment for crime, where of the party shall have been duly convicted.” (28)

Our acceptance of this long history makes prison appear both as necessary to our lives but as relatively invisible: we believe it has always existed. Davis writes, “To think about this simultaneous presence and absence is to begin to acknowledge the part played by ideology in shaping the way we interact with our social surroundings. We take prisons for granted but we are often afraid to face the

realities they produce.” (15) Furthermore, we are afraid to face the idea that the prison creates the environment it is supposed to ameliorate.

Davis goes on to describe how to find the alternative of such a practice:

Effective alternatives involve both transformation of the techniques for addressing ‘crime’ and of the social and economic conditions that track so many children from poor communities, and especially communities of color, into the juvenile system and then on to prison. The most difficult and urgent challenge today is that of creatively exploring new territories of justice, where the prison no longer serves as our major anchor. (20-21)

Here, we can see even further how Davis is looking to address crime outside of the circle of economy and exchange that the prison creates. This way of doing work, as well as the work of countless activists that come after Angela Davis and the rich tradition of Black feminisms she is a part of, is emblematic of the radical counterstory Lindemann-Nelson doesn’t go as far as to address.

Concluding Remarks

In this thesis, I have provided a fourfold argument: (1) our system of justice is based on the same kind of mercantile justice Nietzsche and Bergson analyze; (2) whenever creative emotions have come onto the scene, or ideas about being more merciful, they have been translated back into the law, sometimes creating a crueler justice and punishment; (3) Derrida's analysis of the gift shows us how these contradictions are also present in the concept of the gift, which can give us an avenue to understanding how to think outside of mercantile justice, even if we cannot ever get fully outside of it; (4) If there is an ethical system that can negotiate these paradoxes, it would be a kind of narrative ethics, committed to the integrity of stories as well as an opposition to oppressive master narratives like the need for mercantile justice and punishment. I will conclude by restating the necessity for an ethics such as this, while providing some initial comments on how to establish a new kind of narrative ethics. What the mechanism of punishment and justice do is fundamentally end the story for those caught up in the circle, as we elaborated on briefly through Angela Davis. The story is told through our own internalization, through the closed society, through the mechanisms of punishment, and even in giving a gift. How can we tell our own story if it remains fundamentally an internalized part of mercantile justice and the circle of economy?

Here, Derrida's conception of the gift gives us an important clue. That which is unactionable is not always unthinkable. And so long as we can think, we have potential for action. We can think of Madame de Maintenon: as long as we desire to give time, it doesn't matter how much has been taken. Narrative ethics, in the way I have described it, the method of creating counterstories, is a way to think that which otherwise or that which before was unactionable. By telling our stories, we create counter narratives. Although these counter narratives will never have the force of master narratives, in that if they did they would become master narratives, they point to a way that individuals or groups can find their own meaning in a world dictated before them, if only in the comfort of each other.

While this outlook may look bleak at first glance, in another work, we could turn towards the way in which activists have been using a model of creating counterstories for all of recorded history in order to make the world a more livable place. At one time, life without slavery was unthinkable, connection with the world was unthinkable, clean water and food for all was unthinkable, and we could go on for ad infinitum. Despite the fact that even those issues just listed have not fully been resolved to this day, we are already progressing to their being resolved and perhaps, this is what we can hope and work for.

Thus, we come to an end. My aim in this project was ultimately to provide a foundation in the philosophical canon for the study of narrative ethics outside of the bioethical sphere by bringing together the philosophies of Nietzsche, Bergson, Foucault, Derrida, Lindemann-Nelson, and Angela Davis. But I contend that the project has a much bigger scope than that. Namely, justifying philosophy as such. Philosophy allows us to think that which is unactionable, according to Derrida. What use is it then? After the work of this paper, my response is as follows: it allows us to hold paradoxical ideas within concepts together at the same time, to imagine progress, to create progress, and maybe even point us towards liberation.

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- Topics in 19th Century Philosophy: Friedrich Nietzsche
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