Against Penal Moralism: Nietzsche on the Nonmoral Foundations of Punishment

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ABSTRACT

This paper develops a Nietzschean account of punishment that challenges the moralized frameworks that dominate contemporary political philosophy. Drawing on On the Genealogy of Morality, *I argue that punishment originates not in moral desert, responsibility, or justice, but in relations of power structured by socially sanctioned cruelty. Nietzsche's genealogical account purports to reveal that punishment initially functioned as an affective practice of power gratification, later overlaid with moral interpretations that obscure its nonmoral foundations. I trace how, on Nietzsche's account, cruelty becomes moralized through the production of guilt and responsibility, thereby allowing modern penal institutions to present themselves as rational and humane while continuing to rely on affective satisfactions tied to domination and sovereignty, understood here as the authorized exercise of punitive agency. I conclude that Nietzsche's genealogy undercuts prevailing theories of punishment by forcing us to confront the nonmoral, affective dimensions that sustain punitive institutions, even in liberal democracies.*

1. Introduction

Punishment occupies a central place in modern political philosophy as a practice that demands moral justification. Whether defended in retributivist, deterrent, or communicative terms, punishment is typically understood as a response to wrongdoing grounded in responsibility and desert. To punish is to give an offender what they deserve, or at least to impose a harm that can be justified by reference to moral norms governing culpable action. Even where consequentialist considerations are emphasized, punishment is commonly assumed to be constrained by a background commitment to justice, proportionality, and respect for persons. The moral intelligibility of punishment thus appears as a necessary condition of its political legitimacy.

This paper challenges the assumption that some form of moral justification (desert, deterrence, social defense, etc.) has explanatory priority in accounting for the existence and persistence of punishment by reconstructing Nietzsche's genealogical account of punishment as a practice whose origins and continuing force cannot be adequately explained in moral terms. Nietzsche's claim, developed most explicitly in the second essay of *On the Genealogy of Morality*, is not merely that existing justifications of punishment are historically contingent or ideologically distorted, but that they systematically misidentify the forces that give punishment its social efficacy. Punishment, Nietzsche argues, did not originate as a response to guilt or wrongdoing, but as an expression of power structured by cruelty—the socially sanctioned enjoyment of making others suffer (GM II.4–6). Moral interpretations of punishment emerge only later, as retrospective rationalizations that obscure its nonmoral, affective foundations.[1]

1 Nietzsche himself emphasizes that the *Genealogy* is not intended to stand entirely on its own. On the verso of the title page of the first edition, the work is described as written "for the supplementation and clarification of the previously published *Beyond Good and Evil*," and in the Preface Nietzsche remarks that the *Genealogy* will be clear only "presuming familiarity with my earlier writings." This textual framing is philosophically significant. It suggests that the *Genealogy* operates against the background of substantive philosophical commitments—concerning morality, value,

Nietzsche's critique gains its explanatory traction from its ability to account for features of punitive practices that moral theories struggle to explain, including the persistence of harsh penal regimes, the emotional investment in punitive outcomes, and the symbolic importance of punishment as a display of authority. Even setting aside disputes about its instrumental benefits, if punishment were fundamentally about desert or social defense, it would be difficult to explain why its most extreme forms retain such political salience and continue to command intense public and institutional investment.[2] Nietzsche's genealogical account suggests that punishment continues to function, at least in part, as a framework of power gratification, even where it is articulated in the language of justice and humanitarian concern.

I develop this Nietzschean analysis by focusing on the role of cruelty in punishment and by examining capital punishment as a limit case in which the non-moral foundations of punishment become especially visible. In particular, I consider the widespread intuition that condemned offenders who die before execution are said to have "evaded justice," despite the fact that the outcome—death—has occurred. This reaction poses a problem for moralized accounts of punishment, since neither retribution

psychology, and power—that Nietzsche takes himself to have developed and defended elsewhere, rather than fully justifying them anew. Read in this light, the *Genealogy* should be understood less as a self-contained refutation of moral concepts than as a historically and psychologically oriented inquiry whose critical force depends on assumptions articulated in earlier works. This bears directly on the present argument. The genealogical exposure of punishment's nonmoral foundations and of our affective investment in punitive practices does not, by itself, preclude the possibility that punishment might be given a moral justification at a different philosophical level. Nietzsche himself does not claim to settle that question definitively within the *Genealogy*. My argument therefore concerns the explanatory limits of moralized accounts of punishment as they function within political and institutional practice, rather than the impossibility in principle of any moral justification of punishment. Situating the *Genealogy* in relation to Nietzsche's broader corpus helps to clarify both the scope of its critique and the kind of philosophical work it is meant to accomplish.

2 For skeptical assessments of the deterrent and corrective effects of severe punishment, see, e.g., National Research Council, *The Growth of Incarceration in the United States: Exploring Causes and Consequences* (Washington, DC: National Academies Press, 2014); Daniel S. Nagin, "Deterrence in the Twenty-First Century," *Crime and Justice* 42, no. 1 (2013): 199–263.

nor deterrence appears to have been frustrated. I argue that such cases are best explained by recognizing *a persistent desire to be the agent of punishment itself*: a desire bound up with sovereignty and the pleasures of exercised power. By bringing these constitutive features of punishment into view, I seek to undermine dominant justificatory frameworks and to show how Nietzsche's view poses a challenge to the prevailing moral theories. In particular, I aim to show that Nietzsche's account helps explain why punitive justice is often experienced as incomplete when the state is denied the authorized agency of punishment, even where the relevant outcome has occurred. I argue that the central explanatory payoff of Nietzsche's genealogy lies in its ability to account for punitive dissatisfaction even when morally relevant outcomes are achieved.

The paper proceeds as follows. Section 2 outlines Nietzsche's genealogical method and argues that it destabilizes the aspiration—shared by retributive, communicative, and expressive theories—to ground punishment in moral desert or moral address. Section 3 turns to Nietzsche's account of the origins of punishment, emphasizing the constitutive role of cruelty and the plurality of functions punishment has served, rather than any unified moral purpose. Section 4 examines the moralization of punishment through the production of guilt and responsibility, contending that these concepts emerge as effects of punitive practices rather than as their justificatory grounds. Section 5 develops the claim that punishment continues to operate as an *institutionalized form* of power gratification even within contemporary legal systems characterized by formal legality, procedural constraint, and humanitarian reform. Sections 6 and 7 turn to capital punishment as a limit case, focusing in particular on cases in which condemned offenders die before execution in order to show how punitive dissatisfaction persists despite the achievement of morally salient outcomes. Section 8 situates these dynamics within a broader account of punishment as spectacle, while section 9 develops an analytical account of sovereignty in punishment, understood as the authorized exercise and recognition of punitive agency. Section 10 concludes by drawing out some of the implications of Nietzsche's account for contemporary political philosophy, arguing that prevailing theories

of punishment remain incomplete insofar as they fail to recognize the nonmoral affective dimensions that sustain modern punitive practices.

2. Genealogy and the Critique of Penal Moralism

This section examines Nietzsche's genealogical method in order to show how it destabilizes a widespread assumption in contemporary theories of punishment about the explanatory priority of moral justification. By "penal moralism," I mean the tendency in contemporary theories of punishment to treat moral justification—whether articulated in terms of desert, responsibility, moral address, or expressive condemnation—not only as normatively central but as explanatorily prior.[3] On such views, punishment is understood primarily as a response to wrongdoing *as such*, and the moral intelligibility of punishment is taken to suffice for explaining its persistence, structure, and political significance. This assumption is shared, in different ways, by retributive, communicative, and expressive accounts of punishment, even where they disagree sharply at the level of normative justification. What unites these approaches is a commitment to explaining punishment by reference to its moral point, while abstracting from the nonmoral forces—affective, institutional, and political—that shape punitive practices. It is this shared explanatory orientation, rather than any particular moral doctrine, that Nietzsche's genealogy places under pressure.

Recent political-theoretical engagements with Nietzsche have tended to emphasize his critical resources while downplaying the implications of his genealogical account for the justification of punishment. Scholars drawing on Nietzsche in debates about power, discipline, or biopolitics

3 Representative examples include retributive theories that ground punishment in desert (e.g., Michael S. Moore, *Placing Blame: A General Theory of the Criminal Law* [Oxford: Oxford University Press, 1997]), communicative or address-based accounts that justify punishment as a form of moral censure directed at responsible agents (e.g., R. A. Duff, *Punishment, Communication, and Community* [Oxford: Oxford University Press, 2001]), and expressive theories that understand punishment as the symbolic expression of societal condemnation (e.g., Joel Feinberg, "The Expressive Function of Punishment," *The Monist* 49, no. 3 [1965]: 397–423).

often treat his analysis as compatible with broadly moral or reformist accounts of penal institutions. Others interpret Nietzsche's critique of moralism as opening space for theories of punishment that dispense with idealized moral assumptions and instead attend to the actual social and political functions punishment serves. In this paper, I take a more skeptical view. While granting that Nietzsche can be read in reformist directions, I argue that these interpretations nonetheless underestimate the extent to which his genealogy destabilizes punishment's moral self-understanding. By foregrounding cruelty, power gratification, and sovereign agency, Nietzsche does not merely criticize particular justifications of punishment; he calls into question the very project of grounding punishment in moral desert or in the idea that punishment functions primarily as a communicative expression of moral censure. In this respect, my argument is directed (without attempting a survey) against prominent moral theories of punishment associated with retributivism, communicative or address-based justification, and expressive condemnation. My contention is that Nietzsche's genealogy of punishment exposes a deeper tension than these approaches acknowledge, showing that the aspiration to ground punishment in moral desert, moral address, or expressive condemnation systematically overlooks the nonmoral impulses and drives that give punishment its political efficacy.[4]

Nietzsche's analysis of punishment proceeds not through moral evaluation but through genealogy: a method designed to unsettle prevailing self-understandings by tracing the historical and psychological conditions under which practices acquire their meanings. In the second essay of the *Genealogy*, he insists that social institutions do not possess a single origin or essence, nor do their current justifications reveal the purposes they initially served. Instead, practices such as punishment

4 By "political efficacy," I do not mean moral legitimacy or normative correctness. Rather, I mean the capacity of punishment to stabilize political authority, to secure compliance and public acquiescence, and to persist institutionally despite contested moral or empirical credentials. On the account developed here, punishment "works" politically by mobilizing nonmoral affects—such as fear, reassurance, or satisfaction tied to the exercise of authority—rather than by successfully addressing offenders as moral agents.

undergo successive reinterpretations as they are taken up by different forces, each imposing new meanings upon an underlying set of behaviors. Nietzsche's account is therefore directed less at recovering an original intention than at exposing the contingent and often nonmoral functions that precede and survive moral rationalization.[5]

This methodological commitment is especially significant for Nietzsche's treatment of punishment. Nietzsche rejects what he calls the "English psychologists'" assumption that punishment arose as a response to wrongdoing or as a means of cultivating responsibility ("Punishment was not invented because of guilt" [GM II.4][6]). Such accounts, he argues, project modern moral concepts backward onto practices that originally had no connection to guilt, intention, or justice.

By contrast, Nietzsche approaches punishment as a premoral social technique whose effects on subjects—particularly the production of memory and obedience—precede any moral interpretation. The genealogical task is thus to disentangle punishment from the moral meanings that have come to dominate its modern self-understanding.

A central feature of Nietzsche's critique is his insistence on the plurality and instability of punishment's functions: "Punishment has never had one single meaning; rather, a whole synthesis of 'meanings' is involved . . . all kinds of purposes have been superimposed upon punishment" (GM II.12). In a well-known passage, he lists a range of purposes that punishment has served, including deterrence, compensation, exclusion, ritualized cruelty, and the expression of communal power (GM II.12). No single aim unifies these functions, nor does any one of them exhaust the practice's significance. This multiplicity undermines the search for a foundational moral justification since punishment cannot be reduced to the realization of a single normative end. Moral theories that treat

5 On Nietzsche's genealogical method as a critique of moral explanation rather than a form of historical reconstruction, see Bernard Williams, *Shame and Necessity* (Berkeley, CA: University of California Press, 1993), chap. 3; Brian Leiter, *Nietzsche on Morality* (London: Routledge, 2002), chaps. 1–2; David Owen, *Nietzsche's "Genealogy of Morality"* (Stocksfield: Acumen, 2007), introduction.

6 I use Friedrich Nietzsche, *On the Genealogy of Morality*, ed. Keith Ansell-Pearson, trans. Carol Diethe (Cambridge: Cambridge University Press, 2006). Originally published 1887.

punishment as essentially retributive or communicative thus mistake one historically late interpretation for the practice itself.[7]

Nietzsche's account also reveals the direction of explanatory priority. He argues, contentiously, that responsibility and guilt do not ground punishment; rather, they emerge as effects of punitive practices. Through the repeated infliction of pain, subjects are trained to associate suffering with specific actions, thereby acquiring the capacity to remember, to calculate, and eventually to internalize blame: "One burns something in, so that it stays in the memory: only that which never ceases to hurt stays in the memory" (GM II.3; cf. II.16). The moral subject who can be held responsible is thus not presupposed by punishment but produced through it. This inversion of the standard justificatory sequence is central to Nietzsche's challenge to penal moralism. If guilt is the outcome of punishment rather than its justification, then appeals to desert cannot explain why punishment persists or why it commands affective investment.[8]

For political philosophy, the significance of Nietzsche's genealogical critique lies in its capacity to expose a tension between penal justification and penal function. Modern states present punishment as a morally constrained response to wrongdoing, yet genealogical analysis suggests that punishment continues to operate as a technique of power whose efficacy depends on affects—fear, satisfaction, *ressentiment*—that cannot be fully reconciled with punishment's moral self-understanding. Genealogy

7 Cf. Keith Ansell-Pearson, *An Introduction to Nietzsche as Political Thinker: The Perfect Nihilist* (Cambridge: Cambridge University Press, 1994). For discussion of Nietzsche's rejection of essentialist accounts of punishment, see Leiter, *Nietzsche and Morality*, 115–22; Owen, *Nietzsche's "Genealogy,"* 79–85.

8 Nietzsche's claim that guilt and responsibility are effects rather than presuppositions of punishment is among the most controversial elements of the *Genealogy*. The central argument of this paper does not depend on accepting this strong genealogical thesis. Even if one holds that guilt and responsibility are only partially shaped or intensified by punishment, Nietzsche's analysis remains significant insofar as it shows that appeals to guilt and desert cannot exhaustively explain the persistence, intensity, or affective investment associated with punitive practices. The argument developed here relies only on the weaker claim that moral justification lacks explanatory priority in accounting for punishment's political efficacy.

does not by itself condemn punishment, but it deprives moralized accounts of their explanatory authority. In doing so, it opens a space for analyzing punishment not as the application of justice, but as a political practice sustained by historically sedimented forms of cruelty and power.

3. Cruelty and the Origins of Punishment

As I have said, Nietzsche's genealogical account denies that punishment originates in guilt or moral accountability. In the second essay of the *Genealogy*, he instead reconstructs punishment's emergence within the creditor–debtor relation, where its primary function is compensatory rather than moral. When an obligation is breached, the creditor acquires a right to inflict suffering, not as a means of moral correction but as a substitute satisfaction for the loss incurred (GM II.5).

What is crucial for present purposes is that this compensatory logic is intelligible only on the assumption that human beings are capable of experiencing the infliction of pain as satisfying. Compensation through suffering would make little sense unless cruelty were already available as a source of pleasure—unless, that is, there exists a pervasive human tendency to derive enjoyment from *inflicting suffering*, a tendency that is frequently, though not exhaustively, expressed through the exercise of power over others. Nietzsche treats this tendency not as a pathological deviation but as a deeply ingrained feature of human psychology evidenced, inter alia, by the historical persistence of punitive cruelty and its acceptance as a legitimate social practice.

Nietzsche supports these claims not by abstract speculation but by appeal to what he takes to be overwhelming historical and anthropological evidence. He repeatedly invokes the ubiquity of violent rituals, public punishments, and sacrificial practices across cultures as evidence that cruelty has long been woven into the fabric of social life (GM II.6–7) and, as such, is "one of the oldest festive joys of mankind" (GM II.6).

The point is not merely that cruelty has occurred, but that it has been publicly organized and ritualized. The earliest punitive practices, Nietzsche suggests, functioned within this broader economy of

cruelty: pain served as a medium through which debts were repaid and hierarchies affirmed. The logic governing this exchange was not justice but equivalence—a measurable harm answered by suffering. Cruelty is therefore not an inessential surplus to punishment, but the affective condition that renders punishment effective as compensation and intelligible as a social practice.[9] Crucially, Nietzsche insists that cruelty in this context is not driven primarily by hatred or revenge. On the contrary, it is often described as affirmative and even festive. "To see others suffer does one good; to make others suffer even more so," Nietzsche writes, calling this a "hard proposition" but also an "old, mighty, human-all-too-human proposition" (GM II.6). Public punishments, bodily mutilations, and spectacles of suffering serve not merely to deter or discipline, but to generate shared experiences of power and efficacy that bind communities together.

The enjoyment derived from cruelty is thus neither secret nor shameful; it is openly acknowledged and socially cultivated. By emphasizing the festive character of early punishment, Nietzsche resists attempts to sanitize its origins by treating its violent dimensions as regrettable but essential means to moral ends. What punishment reveals, on this account, is not a primitive concern with justice, but a collective willingness to find pleasure and affirmation in the authorized infliction of pain. [10]

At this point, however, a natural worry arises: does this emphasis on cruelty and power gratification collapse punishment into sadism, thereby ignoring the moral seriousness with which punishment is typically defended? If so, Nietzsche's genealogy would appear to pathologize punishment by attributing it to base impulses rather than principled judgment.[11]

9 On the role of cruelty in Nietzsche's account of tragic pleasure, see Daniel Came, "The Aesthetic Justification of Existence," in *A Companion to Nietzsche*, ed. Keith Ansell-Pearson (Oxford: Blackwell, 2005).

10 On cruelty as an affirmative and culturally formative force in Nietzsche, see Ansell-Pearson, *The Perfect Nihilist*, chap. 6; Aaron Ridley, *Nietzsche on Art* (London: Routledge, 2007), 98–110.

11 For versions of this objection, see Duff, *Punishment, Communication and Community*, 17–20; Moore, *Placing Blame*, chap. 2.

This objection mischaracterizes both Nietzsche's account and the claim I am advancing. Nietzsche's concept of cruelty does not denote gratuitous or private sadism. Nor does it imply an absence of normative constraint. Cruelty, as Nietzsche employs the term, refers to a socially organized and publicly authorized enjoyment of the exercise of power over others (GM II.6). Punitive cruelty is rule-governed and embedded in institutional practices; it is not the arbitrary indulgence of violent impulses. When Nietzsche describes cruelty as one of humanity's "oldest festive joys" (GM II.6), he is not psychologizing punishment but identifying an affective dimension that is partly constitutive of its social function.

The argument is therefore explanatory rather than reductive. To say that punishment is sustained by cruelty is not to deny that it is governed by rules, justified by reasons, or constrained by procedures. It is to insist that its motivational and affective foundations cannot be captured by moral reasoning alone. Moral seriousness may regulate punishment, but it does not explain why punishment remains compelling, why it attracts emotional investment, or why it persists even when its instrumental benefits are doubtful.

In this respect, Nietzsche's account parallels critiques of idealized theories of punishment that abstract from the actual social and political functions punitive institutions serve and model punishment as if it were governed solely by its *normative aims* (desert, communication, deterrence, etc.).[12] What Nietzsche adds is the claim that the moral self-understanding of punishment is itself an achievement of power: a way of rendering cruelty compatible with a self-image of justice and civility (GM II.16). Far from reducing punishment to sadism, Nietzsche's genealogy explains how punishment can be both morally articulated and affectively gratifying at the same time.

His account also explains why cruelty proves so resistant to abolition. As punitive practices evolve, their outward forms may be softened and their justifications moralized, but the affective satisfactions they provide do not simply disappear. Instead, cruelty is redirected, ritualized, or

12 See, for example, David Garland, *The Culture of Control*: *Crime and Social Order in Contemporary Society* (Chicago, IL: University of Chicago Press, 2001).

internalized. The pleasure of making suffer is transformed into the satisfaction of seeing justice done, of witnessing the authority of law affirmed, or of knowing that punishment has been properly administered. In this way, cruelty survives not in spite of moralization, but through it.

Accordingly, the genealogical significance of cruelty lies not merely in its historical presence but in its enduring function. By foregrounding cruelty, Nietzsche exposes a dimension of punishment that moral theories systematically overlook: the role of affective gratification in sustaining punitive practices. Punishment endures not only because it deters or communicates norms, but because it provides opportunities for the exercise and enjoyment of power. Recognizing this fact does not amount to endorsing cruelty, but it does challenge proponents of moral defenses of punishment to confront the nonmoral forces that continue to animate punishment beneath the language of justice and reform.

4. From Cruelty to Guilt: The Moralization of Punishment

If cruelty lies at the origin of punishment, a further question arises: How does a practice grounded in the pleasure of making suffer come to be understood as a *moral* response to wrongdoing? Nietzsche's answer is not that cruelty is gradually overcome by moral progress, but that it is reinterpreted and internalized through a complex process of moralization. Punishment does not become moral by abandoning cruelty; rather, cruelty is preserved under a new description, one that renders it compatible with emerging ideals of responsibility, justice, and humanitarian restraint.

As I have said, on Nietzsche's account, guilt and responsibility are produced by punitive practices rather than presupposed by them. His account of guilt, therefore, reverses the justificatory order assumed by moral theories of punishment. In the *Genealogy*, guilt (*Schuld*) initially names a relation of debt, not a moral state. Through repeated exposure to punitive pain, individuals learn to associate specific actions with suffering and to anticipate punishment in advance. Over time, this externally imposed discipline produces a capacity for memory, calculation, and self-

surveillance. What begins as the infliction of pain by others becomes an internalized relation to oneself. The bad conscience emerges as cruelty turned inward, as the instinct to make suffer redirected from external targets to the self (GM II.16).

This inversion of cruelty provides the psychological basis for moral responsibility. Once suffering is internalized, punishment can be redescribed as deserved rather than inflicted, as the consequence of a freely chosen act rather than an exercise of power. Guilt thus appears not as the justification of punishment but as its effect.[13] Nietzsche's quite radical genealogical claim, then, is that the moral subject who can be held responsible is produced through punishment, not presupposed by it. The sequence assumed by moral theories—responsibility first, punishment second—is therefore reversed.

The moralization of punishment also serves an important political function. By framing punishment as an expression of justice rather than power, moral discourse stabilizes penal authority and deflects attention from the affective gratification that punishment continues to provide. The enjoyment of cruelty is displaced into the satisfaction of moral judgment, the reassurance that order has been restored, or the belief that suffering has meaning. In this way, cruelty is rendered compatible with a self-image of civility and moral progress.

However, Nietzsche is insistent that this transformation is never complete. The moral meanings attached to punishment remain historically fragile and psychologically dependent on the very affects they seek to deny. The persistence of punitive zeal, the appeal of harsh penalties, and the difficulty of abolishing extreme forms of punishment suggest that cruelty continues to animate penal practices beneath their moral veneer. Moralization, on Nietzsche's account, is not the overcoming of cruelty but its most effective concealment.

This analysis has important implications for the theory of punishment. If guilt and responsibility are effects of punishment rather

13 Nietzsche's claim that responsibility and guilt are effects of punishment rather than its preconditions is discussed by Williams, *Shame and Necessity*, 92–98; Owen, *Nietzsche's "Genealogy,"* chap. 4.

than its grounds, then moral theories that appeal to desert risk mistaking a historically contingent interpretation for a justificatory foundation. Punishment, then, appears not as the application of justice to preexisting moral agents but as a political practice that produces the subjects it claims merely to judge.

The following sections build on this claim by examining how this dynamic becomes especially visible in the case of capital punishment, where the moral language of justice struggles to obscure the exercise of sovereign power and the pleasures of punitive agency.

5. Punishment as Power Gratification

Nietzsche's genealogical account allows punishment to be understood not primarily as moral accounting but as a practice that gratifies a desire for the effective exercise of power. This claim does not, as we have seen, reduce punishment to sadism or arbitrary violence. Rather, it identifies a structural feature of punitive practices: they provide socially authorized occasions for the demonstration, experience, and confirmation of power relations. What punishment offers, on this view, is not merely the correction of behavior or the communication of norms but the affective satisfaction of agential efficacy—the sense that power has been successfully exercised and recognized.[14]

This dimension of punishment is most clearly visible when moral explanations prove insufficient to account for the intensity of punitive commitment. If punishment were exhausted by its deterrent or corrective functions, one might expect it to be evaluated instrumentally and revised or abandoned when those functions are shown to be ineffective. Yet penal practices often persist, and are even intensified, in the face of evidence that their purported goals are poorly served. Extensive criminological research suggests that increases in the severity of punishment—longer prison sentences, harsher conditions of confinement, and capital

14 For discussion of punishment as a site of power and affective satisfaction in Nietzsche, see Leiter, *Nietzsche and Morality*, chap. 6; Christa Davis Acampora, *Contesting Nietzsche* (Chicago, IL: University of Chicago Press, 2013), chap. 2.

punishment—have little marginal deterrent effect and often fail to reduce recidivism.[15] Nevertheless, such measures have expanded dramatically in many jurisdictions, including during periods of stable or declining crime rates. Nietzsche's account helps to explain this persistence by shifting attention from outcomes to affects. The implicit telos of punishment is the satisfaction not only of practical aims but also of affective needs tied to authority, control, and the visible restoration of order.

The gratification at issue is not merely individual but collective. Punishment operates as a public or symbolic act through which a community experiences itself as capable of acting decisively against transgression. Even when punishment is administered bureaucratically and out of public view, it continues to function as a representation of collective power. The language of justice, proportionality, and due process plays a crucial role in this regard: it renders the exercise of power intelligible and acceptable, while simultaneously intensifying its authority. The more punishment appears lawful and deserved, the more effectively it can be experienced as legitimate power rather than mere force.

Nietzsche's emphasis on power gratification also clarifies the importance of agency in punishment. It is not enough that suffering occurs; what matters is that suffering is inflicted in a way that confirms the authority of the punishing agent: "The creditor always enjoyed the right to make suffer . . . the pleasure of being allowed to vent one's power freely upon another" (GM II.5). Hence, punishment affirms not only that a norm has been violated but that someone—or some institution—has the standing to respond decisively to that violation.

This helps explain why punitive practices place such weight on procedures, rituals, and formal declarations of judgment. These elements are not merely safeguards against error; they are mechanisms through which power is made visible and experientially satisfying.

Seen in this light, the moralization of punishment does not eliminate power gratification but refines it. By framing punishment as deserved,

15 See, for example, National Research Council, *The Growth of Incarceration*; Nagin, "Deterrence"; Garland, *Culture of Control*.

moral discourse allows the exercise of power to be experienced not as domination but as justice. This transformation stabilizes punitive authority by aligning affective satisfaction with moral self-approval. The pleasure of punishment is no longer acknowledged as pleasure, but as the fulfillment of an obligation or the restoration of moral balance. Yet the underlying structure remains the same: punishment continues to operate as a *source* of power-related gratification.

This analysis establishes the context for examining cases in which the agency of punishment is disrupted or denied. When punishment fails to take the expected form—when suffering occurs without being properly inflicted, authorized, or witnessed—the sense of satisfaction associated with punitive power is diminished or lost. In such cases, the nonmoral foundations of punishment become most visible.

The following section turns to capital punishment as providing a paradigmatic example of this phenomenon in which the desire to be the agent of punishment, rather than the mere desire for the occurrence of suffering or death, comes sharply into view.

6. Capital Punishment and the Persistence of Cruelty

Capital punishment occupies a distinctive place within modern penal systems, not only because of its severity, but because it concentrates and intensifies the underlying affective impulses Nietzsche identifies as the psychological substratum of punishment. Unlike imprisonment or other forms of penal sanction, execution irreversibly eliminates the offender and thus represents the most decisive assertion of punitive power. For this reason, capital punishment functions as a particularly revealing case for examining the persistence of cruelty beneath the moralized self-understanding of punitive practices in general.[16]

16 On the philosophical use of limit cases in penal theory, see Nicola Lacey, *State Punishment: Political Principles and Community Values* (London: Routledge, 1988), chap. 1; David Garland, *Punishment and Modern Society: A Study in Social Theory* (Oxford: Clarendon, 1990), 17–20.

Standard moral justifications for capital punishment typically appeal to retribution, deterrence, or the expressive condemnation of grievous wrongdoing. Yet these justifications sit uneasily with the distinctive political significance and emotional investment executions continue to carry, even in societies that otherwise emphasize rehabilitation and humanitarian restraint—a tension that is often noted but rarely treated as philosophically significant.

From a Nietzschean perspective, this disjunction is not accidental. Capital punishment persists not because it uniquely satisfies moral criteria but because it provides an inimitably concentrated form of power gratification. It offers a final, incontestable demonstration of authority: the state not only restrains or disciplines but decisively ends a life in the name of order.

Nietzsche's emphasis on cruelty helps to clarify why this demonstration retains such significance. The cruelty at work in capital punishment need not take the form of overt brutality or spectacle. Even where executions are hidden from public view and conducted under procedural safeguards, the decisive element remains intact: the authorized imposition of death. The pleasure involved is no longer acknowledged as pleasure, but it survives as the satisfaction that justice has been done, that an ultimate response has been delivered, and that the power to punish has been exercised without remainder. Moral language here does not negate cruelty; it renders it respectable.

Capital punishment also foregrounds the importance of sovereignty in punishment. To execute is not merely to impose harm but to assert the right to decide who may live and who must die. This sovereign dimension defies the logic of deterrence or moral accounting. It situates punishment within a framework of political authority, in which the state confirms its supremacy over transgressors by demonstrating its capacity for irreversible action. Nietzsche's genealogy suggests that this symbolic function is inseparable from the affective satisfactions punishment provides. The execution reassures not only that a wrong has been answered, but that power remains intact and efficacious.

The persistence of capital punishment thus exposes a limit to moralized theories of punishment. If punishment were fully intelligible as a matter

of desert or social defense, the distinctive attachment to executions would be difficult to explain, particularly given their contested deterrent effects and irreversible risks.

Nietzsche's account offers a different explanation: capital punishment endures because it intensifies the very features—cruelty, agency, and power gratification—that moral theories seek to deny. It is a context in which the nonmoral foundations of punishment are least easily concealed.

This becomes even clearer in cases where the expected exercise of punitive power is interrupted or frustrated. When the condemned offender dies before execution, the symbolic and affective structure of capital punishment is disrupted in a way that cannot be captured by moral reasoning alone.

At this point, it is helpful to distinguish between two analytically separable dimensions of punitive satisfaction: (1) outcome satisfaction—the offender's death as such—and (2) agency satisfaction—the state's authorized act of killing. Moral theories of punishment typically treat outcome satisfaction as either sufficient for, or coextensive with, the fulfillment of justice: once the morally relevant result has been obtained, punishment is taken to have succeeded.

By contrast, Nietzsche's genealogical account suggests that outcome satisfaction is neither necessary nor sufficient to explain punitive fulfillment. What matters is not merely that a certain state of affairs obtains, but that it is brought about through the recognized exercise of punitive agency.

A retributivist might reasonably reply as follows. Of course, retributivists care about agency: agency is built into punishment. Most retributive theories hold that (1) punishment must be deserved; (2) it must be intentionally imposed by a legitimate authority; and (3) it must be imposed for the right reasons (as punishment). So for these theories: the offender's death as such is *not sufficient* for justice, and accidental death, suicide, or natural causes do not count as punishment.

However, my point is not about formal sufficiency conditions in retributive theory. It is about what explains punitive satisfaction in practice and what moral theories implicitly prioritize. Moral theories

tend to model justice in terms of morally relevant outcomes or states of affairs (desert satisfied, censure expressed, proportional harm imposed). They treat authorized agency as normatively required but explanatorily inert—a background condition, not the focus of affective investment. They therefore cannot explain why the absence of authorized killing produces *punitive dissatisfaction* even when the outcome is fixed.

Nevertheless, the retributivist might further argue that retributive justice requires not merely that harm occur, but that it be intentionally imposed by a legitimate authority for the right reasons. When an offender dies before execution, retributive justice is not satisfied because the offender has not been punished. There is no appeal to cruelty or power here—only to desert and rightful imposition.

This response correctly notes that retributivism requires authorized imposition, but it leaves unexplained why the absence of authorized killing generates a distinctive form of punitive dissatisfaction, even when desert is no longer action guiding. Once the offender is dead, no further harm can be imposed, and desert cannot be realized in any further possible world. The insistence that justice remains incomplete, therefore, cannot be explained by desert alone. What it tracks is the loss of an opportunity to exercise punitive agency, a phenomenon that retributive theory presupposes but does not explain.

A communicative theorist, on the other hand, might say: Punishment is not about outcomes or cruelty but about moral communication. When an offender dies before execution, what is missing is not agency satisfaction but the completion of a communicative act—addressing the offender as a responsible moral agent through authorized punishment. The complaint that justice has been "evaded" reflects a failure of moral dialogue, not a desire for cruelty or power.

This objection redescribes rather than explains the phenomenon at issue. In many cases of death prior to execution, the communicative aims of punishment—public condemnation, formal judgment, and moral censure—have already been fully realized through conviction and sentencing. Yet punitive dissatisfaction persists. This suggests that what is experienced as lacking is not moral communication, but the authorized

performance of the punitive act itself. Communicative theories can accommodate this dissatisfaction only by tacitly importing a demand for agency that their own justificatory framework does not independently motivate.

So while moral theories typically require authorized agency as a condition of punishment, they nevertheless conceptualize justice primarily in terms of outcome satisfaction. That is to say, actual punitive responses track agency satisfaction more closely. When death occurs without execution, outcome satisfaction is achieved, but agency satisfaction is not. The judgment that justice has been "evaded" therefore tracks a failure of authorized punitive agency rather than the nonrealization of a morally relevant outcome.

So both communicative and retributive theories appeal to authorized agency as a necessary condition of punishment, but neither explains why the frustration of that agency generates punitive dissatisfaction even when their own normative criteria can no longer be satisfied. Nietzsche's genealogy targets this explanatory gap.

7. "Evading Justice": Death before Execution as a Philosophical Test Case

Cases in which condemned offenders die before execution—whether through suicide, illness, or natural causes—are frequently described as instances in which justice has not been done. Public commentary often suggests that such individuals have "escaped," "cheated," or "evaded" justice, despite the fact that the punishment to which they were sentenced—death—has in fact occurred. This reaction poses a challenge to moralized accounts of punishment—one that, I think, has not been fully appreciated. If punishment is justified by retribution, deterrence, or the prevention of future harm, it is difficult to explain what, precisely, has been frustrated in these cases. The offender is dead, incapable of further wrongdoing, and no longer a threat to society. From the standpoint of outcomes, nothing appears to be missing. My

contention is that claims of "evaded justice" track frustrated punitive agency rather than unmet moral aims.[17]

Nietzsche's genealogical framework offers a plausible explanation of this phenomenon. What is perceived as lacking in such cases is not the occurrence of suffering or death, but the authorized exercise of punitive agency. The state has not killed; it has been deprived of the opportunity to do so. The loss, therefore, is not moral but political and affective. The expected assertion of sovereign power has failed to materialize, and with it, the satisfaction associated with the successful completion of punishment. The language of evaded justice expresses this loss obliquely, translating a disruption of power gratification into a moral complaint.

This diagnosis becomes clearer when attention is paid to the role of agency in punishment. As I argued above, punishment is not merely the production of an outcome but a rule-governed and authorized act through which political authority is affirmed. Execution, in particular, is a performative exercise of power: it declares that the state has the standing to decide matters of life and death. When death occurs outside this framework, the performative act is undone. The offender's death no longer testifies to the authority of law but, instead, appears as an absence, a failure, or even an insult to the punitive order.

From a Nietzschean perspective, the resentment directed toward offenders who die before execution is intelligible as a reaction to frustrated cruelty. The desire at stake is not simply to see the offender suffer or

17 This reaction is not merely hypothetical. In several high-profile cases, public commentary repeatedly framed the offender's death as an evasion or failure of justice. The death of Slobodan Milošević in 2006 while on trial at the International Criminal Tribunal for war crimes was widely described as a failure or frustration of justice, despite the fact that his death permanently prevented further wrongdoing. Public and institutional responses emphasized the loss of authoritative judgment and punishment rather than the absence of harm. Comparable reactions accompanied the deaths of several Nazi war criminals who evaded trial or sentencing by dying beforehand, including figures such as Alois Brunner and Aribert Heim. In these cases, commentary consistently framed death as an evasion of justice rather than its fulfillment, even where guilt was taken to be beyond dispute. Clearly, what is lamented in such responses is not merely the absence of moral condemnation or historical record but the loss of the opportunity for authorized punitive action.

perish, but to be the agent of that suffering or death under conditions of legitimacy. Suicide and natural death deny this satisfaction by removing the offender from the field of punitive action. In doing so, they expose the extent to which punishment remains invested in the pleasures of exercised power, even when cloaked in moral language.

These cases also illuminate the limits of communicative and expressive theories of punishment. According to Antony Duff, "punishment is a communicative enterprise [that] aims to engage offenders in a process of moral dialogue."[18] If punishment were primarily about communicating censure or reaffirming norms, the offender's death would seem to achieve these ends no less effectively. Yet the intuition that justice has not been done suggests that communication alone is insufficient. What is demanded is not merely the symbolic expression of condemnation but the completion of a sovereign act. Nietzsche's genealogy helps to explain why this demand persists: punishment continues to draw its force from the experience of agency, efficacy, and domination, rather than from moral meaning alone.

On Joel Feinberg's expressive-function view, "punishment is a conventional device for the expression of attitudes of resentment and indignation, and of judgments of disapproval and reprobation."[19] Yet in cases where a condemned offender dies before execution, the expressive function of punishment appears to be fully realized: public condemnation has been issued, guilt has been formally established, and societal disapproval has been articulated. The persistence of the intuition that justice has nevertheless been "evaded" therefore indicates that what is at stake in punishment cannot be reduced to expression alone, but involves a further demand for the authorized exercise of punitive agency itself.

One might object that what is missing in such cases is not agency satisfaction or cruelty, but due process or public acknowledgment: punishment must be intentionally imposed and publicly affirmed to count as justice. I do not deny that these considerations matter in many contexts.

18 Duff, *Punishment, Communication and Community*, 28.
19 Feinberg, "The Expressive Function of Punishment," 400.

However, they do not fully account for the characteristic complaint that the offender has "evaded" justice. In many cases, conviction, sentencing, and public condemnation have already occurred; the state's moral censure has been expressed, and the offender's death ensures that deterrence or incapacitation is no longer at issue. The remaining sense of frustration is therefore best explained not by a deficit of communication as such, but by the state's failure to complete the authorized act of killing through which sovereign power is affirmed and punitive agency is experienced as efficacious. Thus, appeals to due process or communication alone cannot explain the felt sense that justice has been evaded.

One might further object that my argument relies too heavily on exceptional cases and fails to account for genuine humanitarian reform. Capital punishment, it might be said, is an outlier: it involves finality and sovereignty in ways that ordinary punishment does not, and its dynamics should not be generalized. Moreover, modern penal systems have significantly reduced cruelty through procedural safeguards, abolition of torture, and an emphasis on rehabilitation.

The Nietzschean response is not to deny the reality of reform but to challenge its self-interpretation. Nietzsche does not claim that punishment is unchanged; he claims that cruelty is transformed rather than eliminated (GM II.16). The abolition of overt brutality does not remove punishment's reliance on forms of emotional gratification tied to the exercise of punitive power; it redirects that reliance into morally acceptable forms such as righteous condemnation, confidence in lawful authority, or reassurance that order has been restored. The recurrent public and political support for harsher punishment, particularly in periods interpreted as threats to social order, suggests that affective investments in punitive power remain operative beneath humanitarian rhetoric.

Nor does the appeal to capital punishment as a limit case undermine the argument. Exceptional cases are philosophically revealing precisely because they intensify features that are otherwise obscured. Capital punishment concentrates agency, sovereignty, and harm into a single act, making visible forces that operate more diffusely in other forms of punishment. The reaction to death before execution reveals a demand

for punitive agency that cannot be explained by deterrence, desert, or communication alone. That similar, though less explicit, demands structure ordinary punishment supports rather than weakens the broader claim.

The dissatisfaction revealed by such cases also raises a more general theoretical question: How should Nietzsche's genealogical account be assessed in relation to contemporary moral theories of punishment that explicitly foreground agency, responsibility, and moral meaning? On communicative accounts, for example, punishment is justified as a way of censuring wrongdoing and addressing the offender as a responsible moral agent (Duff, *Punishment, Communication and Community*); whereas on retributivist accounts, punishment is justified because offenders deserve to suffer in proportion to their culpable wrongdoing ("Punishment is justified by the desert of the offender alone").[20] These views might seem well placed to resist the Nietzschean challenge, since they do not deny punishment's expressive or authoritative character.

It seems to me that Nietzsche's genealogy undermines the justificatory ambitions of both approaches. The central problem is not that these theories are incoherent, but that they presuppose precisely what Nietzsche contends to be historically produced. Both Duff and Moore treat responsibility as explanatorily basic: punishment is justified because the offender is already the kind of agent who can be addressed, blamed, or held deserving of suffering. Nietzsche's genealogical claim reverses this explanatory order. Responsibility, guilt, and moral agency are not the grounds of punishment; they are among its effects (GM II.3–4, II.16).

From this perspective, retributivism mistakes a historically late moral interpretation for a foundational justification. If desert emerges through practices that train subjects to remember, calculate, and internalize blame, then desert cannot explain why punishment is imposed in the first place. Similarly, communicative theories presuppose the very moral subject whose formation Nietzsche traces back to punitive cruelty. To appeal to moral communication, on this view, is to redescribe the outcome of punishment as its justification.

20 Moore, *Placing Blame*, 400.

Moreover, neither retributive nor communicative theories can adequately explain the affective investment in punitive agency highlighted in the capital punishment cases discussed above. If punishment were primarily about moral censure or deserved suffering, it is difficult to see why death prior to execution would be experienced as a failure of justice once condemnation has been expressed and the offender is dead. In my view, this suggests that something other than moral communication or desert is at stake—namely, the completion of a sovereign act that satisfies demands for agency and efficacy.

This does not mean that punishment fails to communicate or that desert plays no regulatory role. It means that these features operate at the level of justificatory discourse, not at the level of punishment's affective foundations. Nietzsche's genealogy exposes a gap between what punishment says about itself and what sustains it.

I have attempted to show in this section that death before execution brings the nonmoral foundations of punishment into sharp relief. By disrupting the expected exercise of punitive power, such cases reveal that what is at stake in punishment is not merely the rectification of wrongdoing but the gratification derived from the authorized infliction of harm. If even the most agency-sensitive moral theories of punishment cannot account for this residual demand for completion, then what remains to be explained is the specifically political dimension of punishment—its role as an enactment of sovereignty rather than merely a moral response to wrongdoing. Accordingly, the next two sections situate this claim within a broader account of sovereignty and spectacle, showing how punishment operates as a political ritual through which power is made visible and affirmed.

8. Spectacle and the Pleasure of Punishment

The reactions examined in the last section point to a broader political dimension of punishment that Nietzsche's genealogy helps to bring into focus: punishment functions not only as a response to wrongdoing, but as a political ritual sustaining sovereignty through authorized harm. Even in modern penal systems that emphasize bureaucratic administration and

humanitarian restraint, punishment continues to operate as a symbolic practice through which authority is made visible. The language of justice, due process, and proportionality serves not to eliminate this function, but to stabilize and legitimize it.

Nietzsche's emphasis on cruelty as a socially authorized enjoyment of power provides a framework for understanding why punishment has historically taken spectacular forms and why elements of spectacle persist even where executions and corporal punishments are hidden from view. Public punishments intensify the experience of collective power by allowing the community to witness its own capacity to act punitively against transgression. The pleasure involved is not reducible to voyeurism or vengeance; it is the satisfaction of seeing authority successfully enacted and recognized. Spectacle, in this sense, is not a decorative or accidental feature of punishment but a mechanism through which authority is reinforced by eliciting emotional responses such as reassurance, satisfaction, or fear.[21]

Modern penal practices often present themselves as having overcome spectacle in favor of impersonal, rule-governed administration carried out through standardized bureaucratic procedures. But Nietzsche's analysis suggests that in such practices, spectacle has been displaced rather than abolished. Court proceedings, sentencing announcements, media coverage of crime and punishment, and public debates over appropriate penalties all function as contexts in which punitive authority is performed and reaffirmed.

Even when punishment occurs behind closed doors, its legitimacy depends on a shared understanding that a decisive act has taken place. The enjoyment of punishment thus persists in attenuated forms, translated into confidence in the system, reassurance about order, or satisfaction that justice has been served.

Capital punishment remains exceptional in this regard because it condenses these dynamics into a single, irreversible act. Execution serves as a final spectacle of sovereignty, whether or not it is publicly witnessed.

21 On punishment as ritualized assertion of authority, see Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan (New York, NY: Pantheon Books, 1977); Garland, *Punishment and Modern Society*, chap. 2.

It confirms that the state retains ultimate authority over life and death, and it provides a focal point for the affective investments that sustain punitive power. The intense reactions provoked when executions fail to occur as expected—through death prior to execution—underscore the importance of this sovereign function. What is experienced as a failure of justice is, more precisely, a failure of spectacle and agency.

From a Nietzschean perspective, these considerations point to the inadequacy of accounts that treat punishment as a purely instrumental or communicative practice. Punishment does not merely aim at deterrence, rehabilitation, or moral expression; it operates as a political ritual that reaffirms authority through the controlled infliction of harm. The pleasure associated with punishment is inseparable from this ritual function. It lies not simply in suffering itself, but in suffering that is ordered, authorized, and meaningful within a structure of power.

Recognizing the role of sovereignty and spectacle does not entail endorsing punitive cruelty. Rather, it forces us to confront a dimension of punishment that moralized theories systematically neglect. Nietzsche's genealogy exposes punishment as a practice sustained by affective investments in power and authority that persist even under conditions of liberal legality. In doing so, it challenges attempts to ground punishment solely in moral desert or social utility, and it prepares the ground for a critical assessment of contemporary claims about the humanity and rationality of penal institutions.

Taken together, these dynamics suggest that the persistence of punitive satisfaction cannot be explained by spectacle or symbolism alone, but requires a more explicit account of sovereignty as a feature of punishment itself. I turn to this in the next section.

9. Sovereignty, Punitive Agency, and the Right to Make Suffer

The analysis developed so far suggests that punishment cannot be fully understood in terms of moral desert, deterrence, or communication alone. What remains insufficiently theorized in many contemporary accounts is

the role of sovereignty in punishment. By this, I do not mean a metaphysical doctrine of absolute authority, nor a decisionist theory of the state, but a practical and symbolic dimension of punishment: the *authorized capacity to inflict harm decisively and to be recognized as the agent of that harm*.[22] In this section, I want to argue that Nietzsche's genealogy of punishment brings this sovereign dimension of punishment into view, even though he does not offer a systematic theory of sovereignty as such.

Nietzsche repeatedly links punishment to the enjoyment of command, superiority, and the "right to make suffer" (GM II.5–6). These are not moralized prerogatives but expressions of power. As we have seen (in section 2), punishment, in its earliest forms, functions as a public confirmation that one party has the standing to act affirmatively against another. This emphasis on standing and agency is crucial. Punishment is not merely the production of suffering or the restoration of equilibrium; it is a *performed assertion of authority*. The pleasure bound up with punishment is therefore not exhausted by the mere occurrence of harm, but depends on harm being inflicted by a recognized authority, in accordance with established procedures, and in a way that is publicly intelligible as punishment.

This, I suggest, helps explain why Nietzsche places such emphasis on cruelty as a socially authorized pleasure rather than as a form of private sadism. Cruelty becomes politically salient when it is embedded within a structure that assigns the right to punish and renders its exercise meaningful. In this sense, punishment operates as a sovereign act: it marks the boundary between those who may act and those who may be acted upon. Even where punishment is administered through standardized and impersonal procedures, its efficacy depends on the continued recognition that some agent or institution has the authority to bring punishment to completion.

22 My use of "sovereignty" here is diagnostic rather than doctrinal and should be distinguished from Schmittian decisionism or Foucauldian accounts of disciplinary power; cf. Foucault, *Discipline and Punish*, part 1; Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, trans. Daniel Heller-Roazen (Stanford, CA: Stanford University Press, 1998), introduction.

The relevance of sovereignty becomes especially clear in cases where punishment is experienced as incomplete even when the relevant outcome occurs. As I argued in the last section, when condemned offenders die before execution, the intuition that justice has been "evaded" cannot be explained by reference to deterrence, to the prevention of future wrongdoing through incapacitation, or retributive proportionality. What is missing in such cases is not suffering or death as such, but the authorized exercise of punitive agency. The state has been denied the opportunity to act, and with it, the satisfaction associated with the successful performance of punishment. The complaint that justice has not been done thus registers a frustrated demand for sovereignty rather than an unmet moral requirement.

This also clarifies the relationship between sovereignty and communication in the context of punishment. Communicative theories rightly emphasize that punishment expresses censure and addresses the offender as a responsible agent. But Nietzsche's genealogy suggests that expression alone is insufficient to account for punishment's capacity to elicit and sustain the emotional investments that give it political traction. Punishment does not merely say that a norm has been violated; it *does something* that confirms the authority of the punishing power. The resentment provoked by death before execution persists even where condemnation has been publicly expressed and responsibility established, indicating that what is at stake is not simply the failure of communication but the failure of a sovereign act to occur.

Importantly, my account does not oppose sovereignty to legality or humanitarian restraint. On the contrary, modern penal institutions depend on legality precisely in order to stabilize and legitimate sovereign power. Procedures, due process, and proportionality do not displace sovereignty; they provide the conditions under which punitive agency can be exercised without appearing arbitrary. From a Nietzschean perspective, moral and legal constraints function not to eliminate the pleasure of punishment, but to render it compatible with a self-image of justice and civilization. Sovereignty persists beneath these constraints as the capacity to act decisively in the name of order.

Nietzsche's genealogy therefore exposes a dimension of punishment that prevailing moral theories tend to obscure. By focusing on moral justification, they neglect the extent to which punishment continues to operate as a practice through which political authority asserts, experiences, and confirms its own efficacy. Sovereignty, understood in this minimal sense, names the residual structure of authority that remains once moral foundations have been genealogically dissolved. To confront this dimension is not to endorse punitive cruelty, but to recognize the nonmoral forces that continue to sustain punishment as a political institution.

10. Concluding Remarks

I have argued that Nietzsche's genealogy of punishment poses a fundamental challenge to the moralized frameworks that dominate contemporary political philosophy. By locating the origins of punishment not in guilt, responsibility, or justice, but in cruelty and the affective gratification of power, Nietzsche undermines the assumption that punishment can be fully understood or justified in moral terms. Punishment emerges instead as a political practice sustained by historically sedimented desires for cruelty, authority, and domination—desires that moral reinterpretations of punishment do not eliminate but rather refine and conceal. Thus, Nietzsche forces political philosophy to confront punishment's affective and sovereign foundations.

The analysis of capital punishment and, in particular, of cases in which condemned offenders die before execution brings these dynamics into view. The intuition that such individuals have "evaded justice" cannot be adequately explained by retributive, deterrent, or communicative theories of punishment, since the relevant outcomes have already occurred. What is experienced as lacking is not suffering or death, but the authorized exercise of punitive agency itself. These reactions reveal a continuing investment in sovereignty and power gratification that persists beneath the language of justice, even in societies putatively committed to humanitarian ideals.

Nietzsche's genealogy does not, by itself, dictate a normative conclusion about the permissibility or abolition of punishment. Its significance lies elsewhere: in exposing a persistent tension between the moral self-understanding of penal institutions and the affective phenomena that sustain them. Political philosophy, at least in its dominant forms, cannot resolve this tension by refining moral justifications alone. If punishment continues to draw its force from cruelty, power, and spectacle, then appeals to desert risk functioning as ideological cover rather than genuine foundations.

To take Nietzsche seriously, then, is not to endorse punitive cruelty, but to recognize its role in shaping political authority. Any adequate theory of punishment must reckon with this uncomfortable fact.[23] Until it does, punishment will remain morally defended but philosophically misunderstood.[24]

23 For related concerns about the limits of moralized penal theory, see Williams, *Shame and Necessity*; Lacey, *State Punishment*.

24 I am grateful to audience members at the School of Law, PRIST University, Madurai, India, for valuable comments and discussion on an earlier version of this paper.