Nietzsche, La Mettrie, and the Question of the Legitimacy of Punishment: A Hidden Source?

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Abstract

Friedrich Nietzsche (1844-1900), starting from the years of *Human, All Too Human* (*Menschliches Allzumenschliches*: 1876-1878) elaborates a conception of punishment based on an organic reflection on the origin of morality, the function of custom, the critique of remorse and the origin of justice, a reflection that then finds a definitive reworking at the time of On the Genealogy of Morality (*Zur Genealogie der Moral*: 1887). About one hundred and thirty years earlier, in his Discourse on Happiness (*Discours sur le bonheur*: 1748-1751), Julien Offray de La Mettrie (1709-1751) had elaborated a conception of punishment with several analogous lines. Starting from this theoretical coincidence, in this article we ask ourselves: did Nietzsche know the theories of La Mettrie? Had he read his works? Do the two philosophers really support the same theories? To try to give an answer to these questions, we will first present the doctrine of La Mettrie and then that of Nietzsche, before presenting a final balance sheet of the survey.

I. La Mettrie and the Legitimacy of Punishment

The ethics of Julien Offray de La Mettrie (1709-1751) is consistent with the materialistic framework of his thought.[1] In its most mature form it is contained in his Discourse on Happiness, published in three different versions between 1748 and 1751.[2] One of the fundamental mainstays on which it is based is the idea

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[1] On the La Mettrie's thought see: R. Boissier, *La Mettrie. Médécin, pamphlétaire et philosophe* (Paris: Les Belles Lettres, 1931); P. Lemée, Julien *Offray de La Mettrie, St-Malo, 1709, Berlin, 1751, médecin, philosophe, polémiste, sa vie, son oeuvre* (Mortain: Éditions du "Mortainais", 1954); K. Wellman, *La Mettrie. Medecine, Philosophy and Enlightenment* (Durham/London: Duke University Press, 1992); C. Morilhat, *La Mettrie. Un matérialisme radical* (Paris: Presses Universitaires de France, 1997); A. Punzi, *I diritti dell'uomo-macchina: studio su La Mettrie* (Torino: Giappichelli, 1999); U.P. Jauch, *Jenseits der Maschine: Philosophie, Ironie und Ästhetik bei Julien Offray de la Mettrie, 1709-1751* (München/Wien: C. Hanser Verl., 1998); M.Á. Cordero del Campo, *Materialismo y voluptuosidad en la filosofía de Julien O. de la Mettrie* (León: Universidad de León, 2003); A. Paschoud and F. Pépin eds, *La Mettrie, philosophie, science et art d'écrire* (Paris: Éditions matériologiques, 2017).

[2] J.O. de La Mettrie, *Discours sur le bonheur*, critical edition by J. Falvey, *Studies on Voltaire and the Eighteenth Century*, ed. by T. Besterman, vol. CXXXIV (Banbury: The Voltaire Foundation/Thorpe Mandeville House, 1975); partial Engl. transl. *Anti-Seneca or the Sovereign Good*, in Id, *Machine Man and Other Writings*, transl. and ed. by A. Thomson (Cambridge: Cambridge University Press, 1996), 117-144 (texts respectively cited hereafter with the abbreviations

that free will is a chimera.[3] An idea that is at one with the principle of moral irresponsibility, anchored in the absolute determinism that governs our actions, which we erroneously consider free, unwilling to accept to consider ourselves slaves of necessity:

> The will is necessarily determined to desire and seek what is to the immediate advantage of the soul and the body. (…) And yet I think that I have chosen and congratulate myself on my liberty. All our freest actions are like that one. An absolutely necessary determination carries us away, and we will not admit that we are slaves! How insane we are, and all the more unhappily insane for permanently reproaching ourselves with not having done what it was not at all in our power to do (!) (DB 160-161; AS 141).

The determinism professed by La Mettrie finds its roots in a sort of medical philosophy or philosophical medicine, according to which our conduct would find its causes in the individual temperament,[4] which is therefore configured as a permanent and substantially non-modifiable element, once the process of its development is completed:

> When I do good or evil, when I am virtuous in the morning and wicked in the evening, it is the fault of my blood, which makes me cheerful, serious, lively, playful, amusing, mocking or mad, and which makes me will and determines me in everything (DB 160; AS 141).

The medical philosophy promoted by La Mettrie is therefore in open contrast with the traditional theological metaphysics, and has no fear of assuming unpopular and such radical positions as to recall the anger of conformist people:

> What a point have we reached, cry the theologians, if there are no inherent vices or virtues, no moral good or evil, no justice or injustice? (…) We shall leave them to make speeches and start calmly along this new path, where we are led by the best philosophy, that of physicians (DB 150; AS 135).

The radical materialism that guides medical medicine allows us to establish a second key principle of the ethics of La Mettrie, that of the arbitrariness of virtue, which, so to speak, assumes an unequivocal validity when the field is cleared of metaphysical prejudices: 'Stripping away little by little of his prejudices, he (the

DB and AS, followed by the Arabic number of the page or pages cited). Henceforth, the text of the *Discours sur le bonheur* will be quoted in the mentioned English translation, where available (in fact it stops at the end of Section III, on page 117 of the manuscript or on page 165 of the critical edition edited by John Falvey), while always maintaining the reference to the pagination of the Falvey edition. The translation of the passages not included in Ann Thomson's English translation is ours.

[3] C. Morilhat, n 1 above, 93.

[4] See K. Wellman, n 1 above, 188.

philosopher) will esteem, the virtue for that which it is, arbitrary' (DB 215).

The criticism of metaphysics then leads the physician-philosopher to establish another fundamental principle of his materialistic ethics, namely the indifference of good and evil with respect to happiness:

> As the pleasure of the soul is the true source of happiness, it is therefore very obvious that in relation to felicity, good and evil are totally indifferent in themselves, and that he who has greater satisfaction in doing evil will be happier than whosoever has less satisfaction in doing good. Which explains why so many rogues are happy in this world, and which shows us the existence of particular individual happiness without virtue and even in crime (DB 161-162; AS 141-142).

In other words, according to La Mettrie, as we have already noted, there is no good and no evil in itself, but this does not mean rejecting the existence or usefulness of a relative good or evil. However, these are moral norms whose sole foundation is social, as they are established solely and exclusively 'to make life in society possible'.[5] It follows therefore not only that these norms produce socially useful behaviors, but also a certain kind of happiness, which is therefore induced and in some way stands out and in some ways even contrasts with natural happiness, indifferent to the social good. Despite being advantageous for society as a whole, La Mettrie, consistent with this materialistic framework, does not consider this a 'purer' happiness:

> One source of happiness, which I do not believe to be any purer for being nobler and finer to the minds of almost everybody, is that which derives from the order of society. The more man's natural determination has seemed wicked, and as it were monstrous, in relation to society, the more it has been thought necessary to counteract it in different ways. Hence the ideas of generosity greatness and humanity have been linked to actions which are important for men's intercourse. Esteem and consideration have been accorded to the man who would never harm anyone however much good it might bring him; respect, honours and glory have been given to the man who would serve his country, friendship, love or even humanity to his own cost; and by means of these noble incitements, how many animals with human faces have become immortal heroes! (DB 162; AS 142).

The man of La Mettrie is essentially a natural being before a social being, and therefore the history of morality must be understood as a history of contrasting the natural unsociability of individuals, who are molded thanks to education, which corrects their natural egoism: in other words the social virtues, as far as 'socially

[5] C. Morilhat, n 1 above, 96. See also: K. Wellman, n 1 above, 219.

useful', 'are unnatural'.[6] In this way, however, the pedagogical action applies a mask over the nature of man that can always split apart, making the underlying physical being re-emerge. And just as the feelings of good and evil turn out to be social constructions lacking a natural foundation, even remorse turns out to be another construct, or an acquired habit:

> Remorse is (…) only an unpleasant remembrance, a former habit of thought, which returns in force (…) an old prejudice (DB 150-151; AS 135).[7]

La Mettrie adheres to the Cartesian philosophy of habit, based on the physiological doctrine of animal spirits, which we find operating in numerous authors between the late sixteenth and eighteenth centuries, substantially from Francis Bacon to David Hume.[8] This doctrine seeks to provide a scientifically founded explanation of a phenomenon of which we are aware by analyzing our life experience, that is, the possibility of replacing an acquired habit with another habit, even making it stable. A phenomenon that can be guided by reason, that is it can be oriented through a voluntary effort aimed at replacing a prejudice with a rational counter-habit.[9]

> Luckily this cruel enemy is not always the victor. Any longer-standing or stronger habit must necessarily defeat it. The most beaten track fades away, as a path is closed or a precipice filled. Another kind of education (*habitude*) brings another route for the spirits, other dominant traces and other feelings, which can enter our soul only on the ruins of the earlier ones, which are abolished by a new mechanism (DB 151; AS 135-136).

Therefore remorse, also because it is 'not is an innate sentiment', is not invincible, however rooted and 'engraved on the brain at a very early age':[10] by relying on reason it is possible to escape the power of habit, which La Mettrie identifies with an unhealthy education, which torments man by preventing him from following his own nature, his natural propensity to happiness, thus imposing an excessive weight on him which unjustly distances him from a disposition to pleasure in itself honest and innocent:

> Was man – whom nature has tried to attach to life by so many allurements, destroyed by depraved artifice – in particular the honest man,

[6] ibid 227.

[7] La Mettrie had already talked about the remorse in *L'Homme machine* (1747), showing it to be not at all connected to a presumed natural right of way: see K. Wellman, n 1 above, 197-198.

[8] See M. Piazza, *Creature dell'abitudine. Abito, costume, seconda natura da Aristotele alle scienze cognitive* (Bologna: il Mulino, 2018), 100-101.

[9] See ibid 105-110.

[10] K. Wellman, n 1 above, 220. Wellman shows the Lockean root of epistemology professed by La Mettrie about the difficulty of replacing primitive impressions with later ones when the former are simple and strong (ibid 220-221).

> created in order to be delivered up to tormenters? No, let him use the power of his reason to provide him with what is provided for so many rogues by the force of habit (*habitude*). For one villain who stops being unhappy and returns to peace and tranquillity, which he did both deserve in his relations with other men, how many wise and virtuous individuals, undeservedly tormented amidst a charming and innocently delicious life, would finally throw off the yoke of an oppressive education, enjoy clear cloudless days and replace the cruel worry which devours them with sweet pleasures? (DB 153; AS 137).

La Mettrie clearly contrasts a moralistic socialization with an eudemonistic socialization, in which man is led back to his own nature through an appropriate education that frees him from the chains of prejudice and remorse, thus demonstrating that his physiological determinism does not coincide with a rigid metaphysical determinism.[11] And to give a sort of demonstration of the validity of his own perspective, he uses a utilitarian argument: what is the purpose of remorse if it is useless to avoid the action considered immoral?

> Who has ever abstained from doing what gave him pleasure or what could make his reputation or fortune, simply through fear of feeling remorse? It (…) is therefore useless before a crime. But while one is committing it and is carried away by one's passion, one thinks of nothing less than that feeling by which one is going to be racked. And when the crime has been committed and remorse rises up as if to avenge society, only those who do not need it can profit by it. The suffering of the others, whose wickedness is innate and organic, rarely (if ever) prevents them from reoffending. Thus, remorse is in itself, philosophically speaking, as useless after as during and before a crime (DB 154; AS 137).

If remorse is useless, as La Mettrie tries to prove, the same cannot be said of punishment, the necessity of which is exclusively political, or arbitrary, and conversely void philosophically, since the determinism to which our actions are subjected relieves us of responsibility, to which the legitimacy of the punishment would connect. Therefore, the punishment is in itself unjust, but useful and even necessary from a social and political point of view.[12] Obviously the awareness of this makes its use more conscious, but it is only inspired by the principle of social utility, to which it looks – with a mixture of lucid cynicism and 'tolerance'[13] – the 'philosophical prince', split between the recognition of the injustice of punishment and the conviction of its inevitable necessity for the purposes of social governance:

[11] See K. Wellman, n 1 above, 223.
[12] See ibid 222.
[13] ibid.

> If someone who is guilty in relation to society is not free in his actions, it no doubt follows clearly that he was not free not be guilty and that he is guilty as if he were not guilty; he is guilty in one sense – in the sense of arbitrary, wisely established relations – but is not at all in another, not intrinsically, in the absolute sense or philosophically speaking. To put it bluntly, he is clearly not guilty at all and only deserves compassion. Even when a philosophical prince punishes him, he groans at being forced to come to this sad extremity; he knows that legal punishment is as absolutely unjust as it is relatively necessary and that consequently the political reasons which are the basis of law of retaliation do not prove that the man we hang is hanged with justice or equity (DB 164; AS 143).

The result is a double truth: the philosophical one, which however has a purely individual and intrapsychic range of action, and the political one, which has no philosophical foundation, but governs human relations. The philosopher is he who manages the painful contradiction between these two heuristic levels, and if on the one hand he represents the subject most capable of emancipating himself from prejudice, on the other he cannot escape the social law, the custom, embodied by the *nomos*:

> You, who we usually call unhappy and who are such in the face of society, can therefore feel comfortable before yourself! You just have to stifle remorse with reflection (…) or with contrary habits, which are much more powerful. If you had been raised with other principles, or without the ideas that underlie yours, you would not have had to fight these enemies at all. (…) Thief, parricidal, incestuous, thief, wicked, infamous and legitimate object of the execration of honest people, you will still be happy! In fact, what unhappiness or pain can cause actions that, no matter how black and horrible they may be, would not leave (according to the hypothesis) any trace of crime in the criminal's soul? But if you want to live, be careful, politics is not as lenient as my philosophy. Justice is his daughter; the executioners and the gallows are at his command: fearful more than your conscience and the gods (DB 195).

The reasoning is therefore taken to extremes by La Mettrie: a parricide or an incestuous person who came for hypotheses made completely devoid of any trace of moral education and were not influenced by the moral judgments of those around them, would be happy, since their acts are actually effects of a necessary determinism that has nothing to do with their freedom of action. But it is clear that this is a philosophical fiction, since the hypothesis disregards the political dimension from which we cannot escape and which, so to speak, obliges us to deal with the historical contingency. A contingency made up of real politics and the execution of laws inspired by principles of social utility that

reintroduce morality expunged in theory. Therefore, if we can be free from the conditionings of morality in the space of our conscience, we cannot act in conformity with this amoralism when we act as members of a political-social collective governed by principles, legislators and executors of punishments.

II. Nietzsche and the Legitimacy of Punishment in the Epoch of *Human, All Too Human*

Starting from the composition of Human, All Too Human, between 1876 and 1878, Nietzsche elaborates a conception of punishment that is part of a project of deconstruction of morality and metaphysics fed among other things by the assiduous and repeated meditation of Neo-Kantian and Darwinian theses by Friedrich Albert Lange. Of this author he had begun to read the monumental History of Materialism (first published in 1866) very early, one of the readings, together with that of Schopenhauer, which influenced him to move from philology to philosophy.[14] We have traces of his reading this volume in the letters of Nietzsche from August 1866 and then already in the fragments of autumn 1867 – spring 1868, about the ancient materialism of Democritus, Epicurus and Lucretius.[15] Unfortunately we do not have the copy of the first edition of Lange's text that belonged to Nietzsche, because he would have given it away before 1875.[16] Nietzsche again mentions the book in his correspondence and fragments starting from 1884 and in 1887 he purchases a copy of a reprint of the fourth edition of the volume (first published in 1882), still held in the Nietzsche Library, with numerous traces of reading.[17] Compared to the first

[14] F.A. Lange, *Geschichte des Materialismus und Kritik seiner Bedeutung in der Gegenwart* (Iserlohn: J. Baedeker Verlag, 1866). The second edition, with major revisions, was published by the same publishing house in 2 Vols: Vol. I, 1873; Vol. II, 1875. It is probable that Nietzsche also had this edition in his hands: see G. J. Stack, *Lange and Nietzsche*, in E. Behler et al eds, *Monographien und Texte zur Nietzsche-Forschung*, Band 10 (Berlin/New York: Walter de Gruyter, 1983), 13 (fn 9), 23. In this article the works of Nietzsche, except when not included therein, will be cited by: F. Nietzsche, *Digitale Kritische Gesamtausgabe Werke und Briefe*, based on the critical text by G. Colli and M. Montinari, edited by P. D'Iorio (Paris: Nietzsche Source, 2009), available at https://tinyurl.com/57hx8wrv (last visited 30 June 2021). References to this edition are indicated by eKGWB followed by the standard abbreviations used for Nietzsche texts, for example GT-8; preceded by www.nietzschesource.org this abbreviation allow readers to directly consult the text at the address https://tinyurl.com/3b9nzyxu (last visited 30 June 2021). I warmly thank my friend Paolo D'Iorio for his invaluable bibliographical information on Nietzsche and Lange as well as on the English editions of Nietzsche's works, without which I could not have completed this article.

[15] F. Nietzsche, *Nachgelassene Aufzeichnungen. Frühjahr 1864 – Herbst 1868*, *KGW I/4*, *Nietzsche Werke. Kritische Gesamtausgabe*, ed. by J. Figl and I. W. Rath (Berlin /New York: Walter de Gruyter, 1999), P I 6, Fr. 57[26], 390.

[16] T. H. Brobjer, *Nietzsche's Philosophical Context. An Intellectual Biography* (Urbana and Chicago: University of Illinois Press, 2018), 16.

[17] F.A. Lange, *Geschichte des Materialismus und Kritik seiner Bedeutung in der Gegenwart*. Wohlfeile Ausgabe. Zweites Tausend. Besorgt und mit biographischem Vorwort versehen von H.

edition, it is increased and revised, and we are at the time of the composition of *On the Genealogy of Morality*.

The influence of Lange's book on Nietzsche's philosophical formation for some years has been the subject of attention by scholars.[18] After all he could not go unnoticed; just think of this statement by Nietzsche himself: 'Kant, Schopenhauer and this book by Lange: I don't need anything else'.[19]

In summary, Lange considers materialism to be a philosophical school and as a kind of prophylaxis against idealism. His reading of materialism is aimed at its re-actualization (see the subtitle of the work, which literally sounds: Criticism of its Importance in the Present) which passes through neo-Kantianism. For him it is a question of developing Kantianism in harmony with the development of the physiology of the sensory organs. But materialism is also treated as an ontological metaphysics that is problematically founded on the assumption that reality is composed of matter and force. George J. Stack, who dedicated an entire volume to Lange's influence on Nietzsche, states that

> In his early notes of the mid-1860s one finds direct references to Lange's History and even in the notes of the late 1880s there are numerous entries that are identifiable Langean themes.[20]

Or that 'In his earliest notations of the 1870s and in his last notes before madness overtook him, traces of Lange's influence can be found'.[21]

According to Stack, the ingredients of the anthropomorphic idea of truth and knowledge presented by Nietzsche in On Truth and Lies in a Nonmoral Sense (1873) are directly influenced by his reading of the first edition of Lange's book, which in several passages, and above all where it deals with La Mettrie, exposes a theory of evolutionary signs in which words are the effect of excitations of specialized brain areas struck by sounds.[22] Furthermore, after noticing some similarities with the moral theory illustrated in Human, All Too Human (as well as analogies between Lange/La Mettrie and a passage from Dawn),[23] Stack writes:

Cohen (Iserlohn und Leipzig: J. Baedeker, 1887, XXX + 852). See the file relating to the copy held by Nietzsche's Personal Library (from now on: BN) in G. Campioni et al eds, *Nietzsches persönliche Bibliothek (BN)* (Berlin/New York: Walter de Gruyter, 2002), 346. There is a poor-quality translation of the second edition, reprinted several times: *The History of Materialism and Criticism of Its Importance*, transl. by E.C. Thomas, 2 vols. (London: Trübner & Company, 1877–1881).

[18] J. Salaquarda, 'Der Standpunkt des Ideals bei Lange und Nietzsche' *Studi Tedeschi*, XXII, 1, 133-160 (1979); G.J. Stack, 'Nietzsche and Lange' *The Modem Schoolman*, LVII, 2, 137-148 (1980); Id, n 14 above.

[19] eKGWB/BVN-1866,526 - Brief AN Hermann Mushacke: November 1866.

[20] G.J. Stack, n 14 above, VII.

[21] ibid 2.

[22] See ibid 138, 59.

[23] See ibid 140.

> Although there are other similarities between the views of Lamettrie and Nietzsche, a consideration of them would carry us too far afield.[24]

The ground on which the similarities to which Stack refers is certainly that of the critical genealogy of morality conducted by Nietzsche from the mid-seventies, within which he places his theory of punishment.

In a first phase Nietzsche elaborates a 'history of moral sentiments' in which morality is the object of scientific investigation: that is, you have to study its evolution, you have to grasp its natural causes. It is a matter of overcoming our resistance to investigate the motives of human actions and therefore we must proceed to a psychological dissection of morality.[25] On the basis of a common reflection with his friend and disciple Paul Rée,[26] in this phase Nietzsche will develop an articulated theory based on some key assumptions: a) the moral irresponsibility of the individual, according to which we erroneously believe that our actions are based on free will and instead are the effect of natural determinism and therefore of necessity (principle shared with Rée and well summarized by the aphorism 39);[27] b) the origin of 'good' (*Gut*) and 'evil' (*Böse*) brought back to a play of forces, to an exchange of power in which those who have the power to reciprocate, recognizing the power of those who are more powerful, are said to be 'good' (*Guten*), while 'bad' (*Schlechten*) is one who is unable to requite, and is part of the mass of impotent;[28] c) the origin of morality from the law, according to which morality is not spontaneous and therefore if we perform defined good actions we do not do them other than because without knowing it we follow the custom, so that altruism results an effect and not the cause of our 'good' action (in this regard see in particular aphorism 96, where Nietzsche crosses the theme, dear to him, of the first and second nature);[29] d)

[24] ibid 140-141. After Stack's work, the critique highlighted how about the theory of language developed by Nietzsche since *On Truth and Lies in a Nonmoral Sense*, it was also influenced by Nietzsche's reading of Gustav Gerber's book *Die sprache als Kunst* (in zwei Bänden, Bromberg: H. Beyfelder, 1871-1872). See: E. Behler, *Selbstkritik der Philosophie in der dekonstruktiven Nietzschelektüre*, in G. Abel and J. Salaquarda eds, *Krisis der Metaphysik. Wolgang Müller-Lauter zum 65. Geburstag* (Berlin/New York: Walter de Gruyter, 1989) 283-306.

[25] See the precise reconstruction in: M. C. Fornari, *La morale evolutiva del gregge. Nietzsche legge Spencer e Mill* (Pisa: ETS, 2006), 17-120.

[26] While Nietzsche was working on *Human, All Too Human*, Rée for his part was writing: P. Rée, *Der Ursprung der moralischen Empfindungen* (Chemnitz: Schmeitzner, 1877) and was already the author of: Id, *Psychologische Beobachtungen* (Berlin: C. *Duncker, 1875)*. The works of Rée can be consulted today in: *Supplementa nietzscheana*, hr. von Th Böning, W. Müller-Lauter, K. Pestalozzi, Band 7: *Paul Rée: Gesammelte Werke 1875-1885*, hr. von H. Treiber, mit einer Einleitung und einem Kommentar (Berlin/New York: de Gruyter 2004). On the theory of moral sentiments of Rée see: J. Salviano, 'O naturalismo moral e o pessimismo em *A Origem dos Sentimentos Morais* de Paul Rée' *Cadernos Nietzsche*, 39.2, 197-204 (2018).

[27] eKGWB/MA-39; Engl. transl. with an Afterword, by G. Handwerk, F. Nietzsche, *Human All Too Human, I* (Stanford, California: Stanford University Press, 1995), 47-49.

[28] eKGWB/MA-44 and eKGWB/MA-45; Engl. transl., 51-52.

[29] eKGWB/MA-96; Engl. transl., 73: 'We call someone "good" who, as if by nature, after long

the political character of morality, for which 'customs', through a process of habituation, make 'mild' what is initially 'hardest' and at the same time transform what is 'useful',[30] from the moment that the 'custom' itself, through the obedience with which it imposes itself, generates in us a kind of 'instinct' to take pleasure in behaving according to morality,[31] an instinct that can be silenced and replaced with another in the moment in which the critical history of moral sentiments allows us to realize that we can derive 'higher degrees' of well-being through 'other customs';[32] e) the instinct of conservation guides our actions: thus the actions considered 'evil' derive from 'the individual's striving for pleasure and avoidance of pain' and therefore not only 'are they not evil',[33] but they also do not derive from the will to cause pain in itself, to hurt the other in itself (since they are not arbitrary), even if there is pleasure derived from the 'feeling of superiority' on the other, which is proved when the other suffers because of us, but this pleasure is due to a sense of fulfillment in the exercise of one's power (therefore it is neither good nor bad, but rather useful or useless).[34]

On the level that closely concerns us here, that of the legitimacy of punishment and of penal responsibility, in this phase Nietzsche reaches the following conclusions:

a) Justice must be understood as a game of equal forces, or as an exchange or compensation: since the struggle between equals would lead to annihilation, one agrees by negotiating one's reciprocal claims;[35] in this perspective justice is a balance promised by the powerful (as an alternative to the marauder who does not do the same): the weak either unite to have equal weight or submit to the powerful, but since they fear annihilation, they choose the second option, generating the aforementioned balance.[36]

b) The origin of punishment lies in justice as revenge: when the balance of forces is broken, the disgrace that falls on those who undermine the balance in view of their advantage against others, as a social disadvantage, restores the troubled balance; the punishment is imposed as a castigation for those who oppose dominance, aspiring to something to which they are not right; the punishment, therefore, recalls the 'harshness of the state of nature'.[37] Thus judicial

inheritance, hence easily and readily, does what is customary'. On the doctrine of the first and second nature in Nietzsche we refer to: M. Piazza, 'Nietzsche e a dialética aporética entre primeira e segunda natureza' *Cadernos Nietzsche,* 39[3], 121-139 (2018).

[30] eKGWB/MA-97; Engl. transl., n 27 above, 74.

[31] eKGWB/MA-99; Engl. transl., 76.

[32] eKGWB/MA-97; Engl. transl., 74.

[33] eKGWB/MA-99; Engl. transl., 75.

[34] eKGWB/MA-103; Engl. transl., 79.

[35] eKGWB/MA-92; Engl. transl., 70-71.

[36] eKGWB/WS-22; Engl. transl. with an Afterword by G. Handwerk, F. Nietzsche, *Human, All Too Human II and Unpublished Fragments from the Period of Human All Too Human II (Spring 1878-Fall 1879)* (Stanford, California: Stanford University Press, 2013), 164-166.

[37] eKGWB/WS-22; Engl. transl., 166.

punishment restores the honor of both private and society. We turn to the court because we want private revenge with respect to the damage suffered and 'public revenge' of our honor publicly trampled and at the same time revenge of the honor of society itself.[38]

c) Punishment is detached from individual responsibility: the person who is punished in fact 'does not deserve the punishment' just as the one who is rewarded 'does not deserve this reward', as both act deterministically.[39] If, by hypothesis, we try to grant the existence of free will, we note that this would invalidate the concept of punishment: punishment is imposed because it is presumed that the offender at the moment in which he committed the crime knew what is good and what is bad and was free to choose between one and the other. But then he would arbitrarily choose evil, that is, without reason. Consequently, he should not be punished because he did not deny his reason voluntarily (in reality, for Nietzsche, as we know, the offender acts in a certain way for reasons he believes to be good, driven by necessary circumstances).[40]

d) Punishment does not punish a fault: justice does not punish guilt because if it really did, it should punish the circumstances that led an individual to commit the crime, that is, it should punish the educators, the parents, and even the judges themselves, who are members of the community to which the offender belongs.[41]

e) Remorse has no reason to be: 'Pangs of conscience are as stupid as the pangs of a dog biting a stone'.[42] If you have understood that you have done wrong, it is sufficient to act well. If an individual is punished for his actions, he bears the punishment, considering himself as 'humanity's benefactor', since we are punished for others not to behave like us (deterrent value of punishment).[43]

f) Punishment is arbitrary: habitual offenders, who should be punished with greater leniency – because they are more conditioned by their nature – are instead punished more harshly. While occasional offenders – who therefore have a less rooted inclination to the crime and could therefore resist more the push to the criminal action – are punished less harshly. This shows that the criterion of punishment is calibrated on society and not on the individual.[44]

g) The social utility of the punishment:

> If punishment and reward were to disappear, the strongest motives that impel us away from certain actions and toward certain actions would

[38] eKGWB/WS-33; Engl. transl., 175.
[39] eKGWB/MA-105; Engl. transl., n 27 above, 81-82.
[40] eKGWB/WS-23; Engl. transl., n 36 above, 166-167.
[41] eKGWB/WS-28; Engl. transl., 170.
[42] eKGWB/WS-38; Engl. transl., 177.
[43] eKGWB/WS-323; Engl. transl., 286.
[44] eKGWB/WS-28; Engl. transl., 170.

also disappear; the utility of human beings requires their perpetuation.[45]

Therefore, for the Nietzsche of the Human All Too Human's era punishment has only social and not moral or metaphysical value, in perfect harmony with what La Mettrie had affirmed in his time.

III. Nietzsche and the Legitimacy of Punishment in the Age of *On the Genealogy of Morality*

In a second phase, partly anticipated in The Gay Science and substantially corresponding to On the Genealogy of Morality, after reading Spencer, Nietzsche returns to the origin and purpose of punishment, completely distancing himself from Rée and embracing a position more attentive to the physiological implications of morality (gregarious structures, herd instinct etc.). Morality is now understood as the fulfillment of every function proper to the human species. The program of a reversal of values is clearly visible, bringing up again the will to live, animality, health, even the wickedness of knowledge against the submissiveness, passivity, anti-naturalness of traditional morality. While Rée and English philosophers hold the equivalence between good action and selfless action, exchanging the effect with the cause, Nietzsche intends to question the very value of morality, reading the power of the custom in filigree: 'Thus no one until now has examined the value of that most famous of all medicines called morality; and for that, one must begin by questioning it for once'.[46] If good is what is spiritually noble, it is a matter of reviewing the meaning of what is noble, it is a question of overthrowing the process that has made the non-egoistic something beautiful and pleasant.[47]

Nietzsche overturns Rée's explanation of justice as the effect of punishment understood as retribution or retaliation (this would presuppose that the offender could act differently).[48]

> "The actions that are necessary cannot be repaid" p. 49. Of course they can! He believes that they shouldn't be, that it would be unfair! That is, he is also subjected to the conditions of morality.[49]

The feeling of justice based on a relationship of forces is the cause of punishment. The historian of morality must study the real utility of defined

[45] eKGWB/MA-105; Engl. transl., n 27 above, 81.

[46] eKGWB/FW-345; Engl. transl. by J. Nauckhoff, F. Nietzsche, *The Gay Science with a Prelude in German Rhymes and an Appendix of Songs*, ed. by B. Williams (Cambridge: Cambridge University Press, 2001), 203.

[47] See M.C. Fornari, n 25 above, 83.

[48] ibid 116.

[49] eKGWB/NF-1883,16[15]. The quotation contained in the fragment's excerpt is taken from: P. Rée, n 26 above, 49.

good and bad actions, not only the origin of moral judgments. Thus, he will discover that punishment does not originate in an alleged purpose (a critique of the utilitarian point of view), but is merely functional, has taken on many meanings over time (and therefore has been used for different purposes) and its origin is not easily identifiable.[50]

Specifically, on the question of punishment, its purpose and its origin, Nietzsche reaches the following conclusions:

a) Justice does not come from resentment (*ressentiment*). Active affections have priority over reactive ones. While resentment is reaction, the lust for domination, the desire for possession have priority, they are the action that generates the reaction. This against Dühring who considers 'the seat of justice is found in the territory of reactive sentiment'. The active man is therefore closer to the justice of the one who reacts![51]

b) The law represents the fight against feelings of reaction. That is to say, it consists of a stop to the release of the reactive feeling and also to the constraint of an agreement. And this in various ways:

I. tearing the object of resentment from the hands of revenge;
II. putting in place of revenge the fight against the enemies of peace and order;
III. devising and imposing agreements;
IV. raising to laws certain forms of compensation for damage;
V. above all, through the establishment of the law (what is permitted and legitimate vs. what is prohibited and illegitimate);
VI. treating any illegitimate action as an infringement of the law and therefore departing from the victim's perspective, in favor of an impersonal evaluation of the action.[52]

c) Punishment is not born to cause guilt, 'bad conscience' or remorse. Erroneously it is thought that the value of the punishment lies in its arousing in the offender a feeling of guilt, that is to say it is the instrument to provoke that psychic reaction called '"bad conscience" or "pang of conscience"'. In reality, genuine remorse is rare among criminals: penitentiaries are the least suitable places to give birth to this feeling. So 'the evolution of feeling of guilt was most strongly impeded through punishment' due to judicial and punitive procedures, acts that closely resemble those being punished ('spying, duping, bribing, setting traps', 'robbery, violence, slander, imprisonment, torture and murder'). Bad conscience 'did not grow in this soil', because for centuries judges have never thought of having to deal with a guilty person, but with 'someone who had caused harm, an irresponsible piece of fate'.[53] A bad conscience and

[50] See M. C. Fornari, n 25 above, 113.

[51] eKGWB/GM-II-11; Engl. transl. by C. Diethe, F. Nietzsche, *On the Genealogy of the Morality*, ed. by K. Ansell-Pearson (Cambridge: Cambridge University Press, 2nd ed, 2006), 48.

[52] See ibid; Engl. transl., 49-50.

[53] eKGWB/GM-II-14; Engl. transl., 54-55.

remorse are born therefore by effect of traditional morality, not of justice.

d) The incommensurability of punishment and guilt. The 'instinct of freedom' is 'forced back, repressed' by the rules, so much so that it does not find in individuals another object on which to be discharged if not on themselves: this is the origin of a 'bad conscience'. Then it becomes a 'debt towards God', so that our 'animal instincts' are a 'guilt before God'. Thus 'the punishment' will never be 'equivalent to the level of guilt'! Therefore, bad conscience is a 'sickness'.[54]

e) Punishment has only a functional role. In punishment it is necessary to distinguish between the 'permanence' of a succession of procedures ('custom': *den Brauch*) and the 'fluidity', relative to their execution ('purpose': *den Zweck*). Genealogists, Nietzsche says, were wrong to believe that the procedure had been devised for the purpose of punishment. It is, however, impossible today to say why you arrive at the punishment. It can only be argued that the punishment is a synthesis of meanings that forms a unit that is difficult to analyze and completely impossible to define or reduce to a single meaning.[55]

f) Punishment serves only to lower the other.

> The sense of punishment is not that of being a deterrent, but rather that of putting someone lower down in the social order: he is no longer one of our peers.[56]

It turns out that the question of the intentionality of doing damage does not matter, but the mere fact of having been damaged and how much. From here follows the punishment, which humiliates a peer who has broken a pact of peace and loyalty founded on the fictitious presupposition of an equality of feelings and actually founded on a relationship of forces, which is subverted by the offender, with respect to whom the power of the one who commands (and exercises justice) must be valid again.[57]

g) In its evolution penal law is being mitigated, up to an ideal self-suppression of justice. This happens with the growth of power and self-awareness of a community. It is like a relationship between a creditor and a debtor: the richer the former becomes, the more compliant he is. The maximum of 'power' (*Macht*) would be the one in which the community leaves its offenders unpunished, as 'parasites' of which it does not fear the effect. This is a 'self-suppression (*Selbstaufhebung*) of justice', known as 'mercy', which goes beyond the law itself.[58] Note in this regard the right-moral homology: in *The Dawn* (1881) Nietzsche speaks of 'the self-suppression (*Selbstaufhebung*) of morality'.[59]

[54] eKGWB/GM-II-17 and eKGWB/GM-II-22; Engl. transl., 57-58, 63-64.
[55] eKGWB/GM-II-13; Engl. transl., 52-54.
[56] eKGWB/NF-1883,16[29].
[57] See M.C. Fornari, n 25 above, 116.
[58] eKGWB/GM-II-10; Engl. transl., n 44 above, 47-48 (translation modified by us).
[59] eKGWB/M-Vorrede-4; Engl. transl. by B. Smith, F. Nietzsche, *Dawn. Thoughts on the Presumptions of Morality* (Stanford: Stanford University Press, 2011), 6 (translation modified by us).

Therefore, it could be concluded that for Nietzsche right in itself does not exist and the social necessity for penal law is based only on contingent political considerations, in a further radicalization of the thought already expressed at the time of Human, All Too Human. But with results that do not deviate dramatically from those at the time reached by the materialism of La Mettrie.

IV. Nietzsche Reader of La Mettrie: An Open Question

After having illustrated both the theory on the legitimacy of punishment of La Mettrie and that of Nietzsche, it is appropriate, before verifying whether it is possible to prove a direct reading of La Mettrie by Nietzsche, to attempt a direct comparison between their doctrines to evaluate in a more analytical way, similarities and differences, beyond the generic feeling of familiarity that the reader feels by combining certain passages of the two authors.

From a comparison between the doctrines of La Mettrie and Nietzsche different and significant common doctrinal elements emerge, which we summarize here in a synthetic way:

i. the determinism applied to human action, from which moral irresponsibility follows;

ii. the arbitrariness of good and evil, deprived therefore of metaphysical ground;

iii. the existence of a natural foundation of human actions, rejected on a moral level and concealed for social and political reasons, so as to produce the distortion of individuals in favor of a certain project of domination based on prejudice and fanaticism, whose overall human costs are unsustainable;

iv. the idea that justice and penal law have a political-social and non-philosophical foundation;

v. the uselessness of remorse, which, since harmful and unfounded, must be eliminated;

vi. punishment, unfounded from the philosophical point of view, assumes an exclusively social function: there are 'bad' actions for society as a whole, that is actions that damage it and that must be punished for this (a doctrine that however is valid for Nietzsche of Human, All Too Human, but becomes problematic for that of On the Genealogy of Morality).

However, there are also differences between the two doctrines which we can summarize as follows:

i. while for La Mettrie our actions are oriented by the pursuit of pleasure, Nietzsche, especially from On the Genealogy of Morality onwards, considers this inexact, as they are rather oriented by the will for power;

ii. according to La Mettrie, egoism is harmful to society even if it is not reprehensible: Nietzsche cannot agree because for him egoism is useful and it is necessary to give him back a 'good conscience';

iii. for Nietzsche the philosophical critique of morality can call into question the same value of morality and therefore to envisage his own 'self-suppression' and therefore 'good' and 'bad' are not only unfounded but useless: it is an alien problem to La Mettrie, who tends rather to distinguish the fields, on the one hand, of philosophy and on the other of morals, law and politics, endowed with different claims and aspirations.

From this comparison it is clear that on a purely theoretical level it is not at all unreasonable to suppose that Nietzsche may have thought of the problem of the legitimacy of the penalty by confronting the thought of La Mettrie. Indeed, it seems more than probable. What remains to be defined, however, is whether it was a direct or indirect comparison. So let us take a closer look at the elements in our possession in order to try to answer this question.

First of all, with today's computer systems, it is possible to establish with accuracy any occurrences, in the Nietzschean work, of the name of La Mettrie or direct quotations from his work. From this investigation it emerges that the name of La Mettrie is never mentioned by Nietzsche, including letters and fragments, just as there is no citation from the work of this author in the entire Nietzschean corpus, including letters and fragments.[60] However, it is possible to find in this corpus the expression 'man-machine', which does not appear as such, but disjointed in the form of a 'machine "man" ' (*machine "Mensch"*) and in a context that has no explicit connection with the theories of La Mettrie.[61] Just to make a comparison with another possible Nietzschean source, or the philosophy of Helvétius, the name of this philosopher occurs in six textual places and a copy of his *De l'homme* in German translation is still preserved in the BN, with numerous traces of reading.[62]

[60] The survey was conducted on 10.01.2019 within F. Nietzsche, *Digital critical edition of the complete works and letters*, based on the critical text by G. Colli and M. Montinari (Berlin/New York: de Gruyter 1967-), ed by P. D'Iorio, on the web site http://www.nietzschesource.org/ with the following result: 'The expression "La Mettrie" ' occurs in 0 textual units'. Same result by entering the search engine exclusively "Mettrie".

[61] The only occurrence found by us is eKGWB/NF-1884,25[136]. There are also seven occurrences of the expression 'man-plant' or 'plant "man"' (*Pflanze Mensch* or *Planfze "Mensch"*), which apparently refers to the title of one of the works of La Mettrie (eKGWB/NF-1884,27[40]; eKGWB/NF-1884,27[59]; eKGWB/NF-1885,34[74]; eKGWB/NF-1885,34[146]; eKGWB/NF-1885,34[176]; eKGWB/NF-1885,37[8]; eKGWB/JGB-44), but the context has no explicit connection with the theories of the French philosopher. In fact, the true source of this expression has been recognized in Stendhal's *Rome, Naples et Florence* (Paris: Michel Lévy Frères, 1854), 383. See: F. Nietzsche, *Einführung Siglenverzeichnis Kommentar zu den Band 1-13*, in: Id, *Sämtliche Werke. Kritische Studienausgabe in 15 Bänden*, ed. by G. Colli and M. Montinari (München/Berlin: Deutscher Taschenbuch Verlag/de Gruyter, 1980), *Band 14: Einfürhung – Siglenverzeichnis – Kommentar zu Band 1-13*, 354, 724-725**;** N. Regent, *A 'Wondrous Echo': Burckhardt, Renaissance and Nietzsche's Political Thought*, in H.W. Siemens and V. Roodt eds, *Nietzsche, Power and Politics. Rethinking Nietzsche's Legacy for Political Thought* (Berlin/New York: Walter De Gruyter, 2008) 629-665, particularly 654-657; G. Campioni, *Der französische Nietzsche* (Berlin/New York: Walter De Gruyter, 2009) 182.

[62] The name appears, to be precise, in: eKGWB/NF-1883,7[19]; eKGWB/NF-1883,7[77];

Precisely with regard to the Philosopher's Library it is opportune to recall the existence of an 'ideal library' alongside the real one, that is, the one formed by the volumes belonging to Nietzsche and which have been preserved until today, as was well illustrated by Paolo D'Iorio, where he distinguishes between 'library' and 'readings':

> The first set, the library, includes all the books owned by the author. The second set, the readings, includes all the books that the author read, whether they belonged to him or not. The first set includes volumes that Nietzsche did not read, at least in that preserved specimen, while the second includes books that the philosopher read with passion, from which he drew quotes, which influenced the development of his thought, but which we do not have evidence possessed.[63]

In the wake of these considerations we can suppose that Nietzsche had in his hands the works of La Mettrie – on loan from a friend, consulted or borrowed from a library, or purchased and then resold or given away or lost – although not those being included today in the BN. Besides, there were several volumes that were part of it, lost especially in the first years after the death of the philosopher, in addition to those deliberately destroyed by his sister Elizabeth because she considered them immoral or harmful to her brother's posthumous reputation:

> As for the library, the disappearance does not only concern, as she herself acknowledged, a series of volumes lost in Paraguay, among which the *Tales* of Bret Harte, or *Henry the Green* and *The People of Seldwyla* by Gottfried Keller, but even those that she herself offered as a gift to illustrious visitors and patrons of the Nietzsche-Archive, as well as those who suffered her censorship: she did in fact throw away some works that she considered embarrassing or scandalous (something she never recognized). Montinari believed that, in order to preserve his brother's good reputation, he had made Stirner's *The one and his property* disappear, a highly condemnable reading in his eyes, as well as some novels with licentious content, or at least those which she regarded as such, as Stendhal's *De l'amour*.[64]

If we consider that Stirner's work was the object of a purge, a similar fate could be touched in La Mettrie! And at least two hypotheses can be attempted in this regard. According to the first, Nietzsche, on the wave of Lange's youth reading,

eKGWB/NF-1884,25[366]; eKGWB/NF-1885,34[39]; eKGWB/JGB-228; eKGWB/NF-1888,14[97]. As for the copy of the *Discurs über den Geist des Menschen* by Helvétius still preserved in the BN see: G. Campioni et al eds, n 17 above, 289.

[63] P. D'Iorio, 'Geschichte der Bibliothek Nietzsches und ihrer Verzeichnisse', in G. Campioni et al eds, n 17 above, 33-77, 68.

[64] ibid 33-34.

around 1875-76, reads La Mettrie when the first translation of the *L'homme plus que machine* is published in German, edited by Adolf Ritter.[65] And perhaps he goes to look at the second volume of the works of La Mettrie cited in the note in the second enlarged edition of the book by Lange, in which the latter refers in a note to the *Discourse on Happiness*,[66] edition of *History of Materialism* which, as we have already mentioned, according to some scholars Nietzsche may have had in his hands. According to the second hypothesis, which postpones the direct reading of La Mettrie by Nietzsche, the latter could have read it directly, in French and/or in Ritter's translation, in the wake of his careful re-reading of Lange, carried out on the fourth edition of his book, purchased in 1887.

In fact, if we take the copy of Lange's book that belonged to Nietzsche and is still kept at the BN, we find traces of reading on page 257, in the chapter dedicated to the influence of English materialism in France and Germany. On that page we read:

> Nothing was left but to make the experiment of placing sensation as a property of matter in the smallest particles themselves. This was done by Robinet in his book on 'Nature' (1671), while La Mettrie in "L'Homme Machine" (1748) still kept to the old Lucretian conception.[67]

Other traces appear on page 344, in the chapter on German materialism, where the concept of 'Homme Machine' (*Maschinemann*) in direct relationship with La Mettrie is recalled.[68] It should be noted that on the pages immediately preceding and following the name of La Mettrie is mentioned several times, concerning the German reception of his most famous work, *L'homme machine*, the title of which is repeated five times on four pages.[69]

What can we conclude from this? That Nietzsche could not have not read the chapter expressly dedicated by Lange to La Mettrie (although we have no traces of reading on the pages of that chapter in the edition kept in the BN). That Nietzsche probably also read the two pages that Hermann Hettner, in his *Geschichte der französischen Literatur im achtzenten Jahrhundert*, dedicate to La Mettrie.[70] That Nietzsche was certainly aware of the existence of Ritter's

[65] J.O. de La Mettrie, *Der Mensch eine Maschine. Übersetz, erläutert und mit einer Einleitung versehen von Adolf Ritter* (Berlin: Erich Koschny, 1875).

[66] In the second edition, including notes, Lange refers to several French editions of the works of La Mettrie, including the Berlin edition of 1774, in 8th (in two volumes), and the edition published in Amsterdam in the same year in 12th (in 3 volumes): *Œuvres philosophiques. De Mr. de La Mettrie, corrigée & augmentée* (Amsterdam: s. n., 1774). From this last Lange quotes the *Discours sur le bonheur*, which is contained in volume II, on pages 95-190. See F.A. Lange, n 10 above, vol 2, 79 (n 75), 83 (n 77), 84 (n 79).

[67] ibid vol. 2, 29.

[68] ibid vol. 2, 140.

[69] Two occurrences of the title are counted in ibid vol. 2, 137 and three occurrences of the same in ibid vol. 2, 138.

[70] H. Hettner, *Literaturgeschichte des achtzenten Jahrhunderts, 2. Th.: Geschichte der*

German translation, but that it is not certain that he ever had it in his hands nor did he have the French works of La Mettrie, since he does not insert any direct quotation from these in his writings.

While awaiting further investigations and discoveries, we believe, however, that it is right to claim that Nietzsche, surely stimulated by Lange's reading, retraced the steps taken by La Mettrie, leading to even more extreme consequences of his radical materialism and his conception of punishment.

französischen Literatur im achtzenten Jahrhundert (Braunschweig: Vieweg, 1860), 373-375. La Mettrie is discussed by Hettner in the second of the three volumes of which his work is composed. Nietzsche quotes Hettner's work in a generic way in a letter to his mother dated 2 May 1863: eKGWB/BVN-1863,353. There is, however, a certain trace that Nietzsche possessed the second volume of the work, which contains the pages on La Mettrie; see the relative file in the BN: G. Campioni et al eds, n 17 above, 300.