

FRIEDRICH NIETZSCHE, THE CODE OF MANU, AND THE  
ART OF LEGISLATION  
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From: *New Nietzsche Studies* v. 6-7 (2005-2006).\*

“Now, the gods who govern life are the meters, for it is thanks to the  
meters that all living things here below are sustained.”

—*Satapatha Brahmana*, 8, 2, 2, 8<sup>1</sup>

“*Wir müssen das Irren lieben und pflegen, es ist der Mutterschooß  
des Erkennens. Die Kunst als die Pflege des Wahnes—unser Cultus.*”

(“We must love and care for error, it is the womb of knowledge.  
Art as the care of illusion—our cult.”)

—*Friedrich Nietzsche*<sup>2</sup>

## INTRODUCTION

Political and legal theorists ask the question: What should law be? In so doing, they implicitly or explicitly overlook what law is. This preference for the normative as opposed to the ontological approach to law is rooted in the assumption that law serves social and political ends.

Indeed, in deference to its normative interests, legal scholarship has embraced a diversity of social sciences to assist in the discovery of

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<sup>1</sup> ROBERTO CALASSO, LITERATURE AND THE GODS 148 (Tim Parks trans., 2001).

<sup>2</sup> 9 FRIEDRICH NIETZSCHE, *Nachgelassene Fragmente 1880-1882*, in KRITISCHE STUDIENAUSGABE 504 (Giorgio Colli & Mazzino Montinari eds., 1988) [hereinafter 9 NIETZSCHE, *Nachgelassene 1880-1882*]. All citations from Nietzsche are translated by the author from the *Kritische Studienausgabe*. For some passages in Nietzsche’s *Nachlass*, the author has helpfully consulted the unpublished translation of selections from Nietzsche’s notebooks, *From Nietzsche’s Notebooks: The Notes From “The Will to Power” Restored to Their Integrity and Chronological Order*, by Philippe Nonet (manuscript on file with author). Unless otherwise noted, emphasis in the quotations from Nietzsche’s *Nachlass* follows the conventions instituted by the *Kritische Studienausgabe*, the now standard edition of Nietzsche’s work. Accordingly, all italicized words are those Nietzsche underlined once. Boldfaced words are those he underlined twice.

the best laws. For example, the marriage of law and sociology seeks social norms of fairness according to which particular laws should be understood and interpreted. Similarly, the science of moral philosophy strives to isolate intersubjective moral norms that will guide legislation and legal interpretation. Positivist legal science strives to determine rules of recognition for the identification of valid laws that guaranty the certainty and security promised by the rule of law. Most recently, the sciences of both rational and behavioral economics have emerged as powerful tools, facilitating the discovery of those laws that maximize efficiency.

These various sciences of law embrace different ends governed by their different understandings of justice. However, as important as these differences are, these legal sciences share an equally important and often overlooked assumption about the nature of law. Law, according to normative-positivist-socio-economic legal scholars, is something knowable through scientific inquiry. In other words, the different positivist sciences of law presuppose a common subordination of law to science. As a result, the reduction of law to an object of science threatens to transform law into a means to an end so that law's foundation in justice, as opposed to politics, becomes, at best, questionable, and at worst, impossible.

No thinker has been so struck by the transformation of law from an activity into a knowable object of science as Friedrich Nietzsche. Against the belief that scientific truth leads to justice, Nietzsche affirms the necessity of illusion and error. As Nietzsche writes in the above epigraph, art, as "the care of illusion," must replace truth as the "womb of knowledge." Art, Nietzsche writes, "*is worth more* than "truth."<sup>3</sup> Just as truth is set within the aesthetic realm of creative action, so too must law be, in truth, a work of art.<sup>4</sup> In other words, law is given not through science but in the act of artistic legislation.

To understand what Nietzsche means by the art of legislation, this essay turns to his writings on the Code of Manu. What Nietzsche refers to as the *Gesetzbuch des Manu* first appears within his discussion of "The 'Betterers' of Mankind," in *Twilight of the Idols*.<sup>5</sup> Nietzsche's notebooks from 1888, especially notebooks fourteen and fifteen, are filled with references to Manu, the ancient Hindu God and legislator. These pages show Nietzsche's intense efforts to work through the significance of the Hindu religion as expressed in the Manu Code. And nowhere is Nietzsche's intense attraction to the Manu Code more evident than in his problematic book, *Der Antichrist*, the first and only completed volume of Nietzsche's projected four-volume work, the

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<sup>3</sup> 13 FRIEDRICH NIETZSCHE, *Nachgelassene Fragmente 1887-1889*, in KRITISCHE STUDIENAUSGABE para. 14[21], at 227 (Giorgio Colli & Mazzino Montinari eds., 1988) [hereinafter 13 NIETZSCHE, *Nachgelassene 1887-1889*].

<sup>4</sup> I am indebted to Philippe Nonet who first inspired me to investigate the relation between law and the work of art.

<sup>5</sup> 6 FRIEDRICH NIETZSCHE, *Götzen-Dämmerung*, in KRITISCHE STUDIENAUSGABE 100 (Giorgio Colli & Mazzino Montinari eds., 1988) [hereinafter 6 NIETZSCHE, *Götzen-Dämmerung*].

*Revaluing of All Values*.<sup>6</sup> As Giorgio Colli rightly saw, the Manu Code made an “enormous and exaggerated impression on him.”<sup>7</sup>

It has long since been determined that what Nietzsche knew of the Manu Code he got from the translation by Louis Jacolliot.<sup>8</sup> Jacolliot, an amateur Indiophile, claimed to have completed his translation, with the help of a learned Brahmin, from an authentic edition of the Manu Code he discovered in the Tamil region of southern India.<sup>9</sup> Unfortunately, the original text from which Jacolliot worked has never been found.<sup>10</sup>

Jacolliot’s translation of the teachings of Manu has been universally discredited.<sup>11</sup> It differs widely from the more scholarly editions, sometimes significantly; as a result, many of Nietzsche’s citations from Manu are nowhere to be found in the authoritative texts.<sup>12</sup> In one important instance, Nietzsche’s citation of Manu’s regulations governing the Chandala in *Götzen-Dämmerung* is taken neither from the Manu text, nor from Jacolliot’s free translation. Rather, it is appropriated from a rambling twenty-two page footnote in which Jacolliot defends his inconceivable theory that the Manu Code was written in its final formula 13,300 years before the birth of Christ and that all Semitic cultures are traceable back to an emigration of Chandala occurring between 8,000 and 4,000 years before Christ.<sup>13</sup> At the same time, Jacolliot opines that western civilizations, including the peoples of Europe and Egypt, are the result of emigration by the Hindus, and the higher castes, under the influence of the Manu Code. Annemarie Etter, in a thorough analysis of the reliability of Nietzsche’s impression of the Manu Code, characterizes Jacolliot’s notes as “scientifically worthless curiosities.”<sup>14</sup> Her evaluation of Nietzsche’s image of the Manu Code is similarly critical.<sup>15</sup>

Despite the unreliability of Nietzsche’s source material, however,

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<sup>6</sup> Nietzsche at times suggested that the Antichrist was itself the complete Revaluing of All Values: “Meine *Umwertung aller Werthe*, mit dem Haupttitel ‘**der Antichrist**’ ist fertig. In den nächsten zwei Jahren habe ich die Schritte zu thun, um das Werk in 7 Sprachen übersetzen zu lassen; die *erste* Auflage in jeder Sprache c. eine Million Exemplare.” Letter from Nietzsche to Paul Deussen, Nov. 26, 1888, in 8 FRIEDRICH NIETZSCHE, KRITISCHE SAMMTLICHE BRIEFE 492 (Giorgio Colli & Mazzino Montinari eds., 1986). *But see* Giorgio Colli, *Die Schriften von 1888*, in 6 NIETZSCHE, *Götzen-Dämmerung*, *supra* note 5. Such sentiments reflect Nietzsche’s already failing mental state in 1888, his increasing “loss of contact with reality,” and his abandonment of his philosophical project of the “*Wille zur Macht*” in favor of a more personal and polemical attack on modernity.

<sup>7</sup> 13 NIETZSCHE, *Nachgelassene 1887-1889*, *supra* note 3, at 667 (“[G]roßen, ja übertriebenen Eindruck auf ihn.”).

<sup>8</sup> LOUIS JACOLLIOT, *LES LÉGISLATEURS RELIGIEUX: MANOU, MOÏSE — MAHOMET* (A. Lacroix: Paris, 1876).

<sup>9</sup> *See* Annemarie Etter, *Nietzsche und das Gesetzbuch des Manu*, in 16 NIETZSCHE-STUDIEN 340-352, 346 (Ernst Behler et al. eds., 1987).

<sup>10</sup> *Id.*

<sup>11</sup> *See generally* Introduction to THE LAWS OF MANU xvi-xxii (Wendy Doniger & Brian K. Smith trans., (Penguin Books: New York, 1991). For a more sustained critique, see Etter, *supra* note 9.

<sup>12</sup> *See* Etter, *supra* note 9.

<sup>13</sup> *See id.* at 349.

<sup>14</sup> *Id.* at 351.

<sup>15</sup> *See id.* at 342-44, 352.

an understanding of the Manu Code is an essential part of any inquiry into the role of art in Nietzsche's legal as well as his metaphysical thinking. On one level, the Manu Code is an example of Nietzsche's identification of positive law (*Gesetz*) and art. Both *Gesetz* and art are artifices. They are semblances (*Schein*). As such, they are delusions and errors that are the foundations and justifications for all claims to truth. Just as truth is a lie that has come to be believed, so too is law (*Recht*) a posited law (*Gesetz*) that has come to be accepted as just.

On another level, Nietzsche's claim that *Gesetz* founds *Recht* reveals that positive law does not merely reflect a higher, more natural law. Positive law (*Gesetz*) is not simply the expression of a prior idea of law, but names, instead, a revolutionary and decisively modern understanding of law itself. *Gesetz* comes to justify *Recht*, so that what is right and just is indistinguishable from what is legally posited. In other words, *Gesetz* stands above *Recht* as art stands above truth, thereby inverting the traditional hierarchies.

The priority of *Gesetz* and art over *Recht* and truth reveals an important relation between *Gesetz* and art. *Gesetz*, for Nietzsche, is always given in art.

If law is positive law given through a work of art, then law awaits at least two potential fates.<sup>16</sup> One is that law, and with it art, becomes an object of science. Since law is an artifice that must deny its artificiality, it is fated to become law whose absolute separation from morality leaves it in need of justifications—justifications that are increasingly sought in various legal sciences. To the extent that law today is increasingly the province of science (be it social science, psychology, or economics), the scientific fate of law is our own. And the fact that opposing sciences now provide opposing justifications is simply a reflection of modern nihilism—the thoughtless belief in the truth of science in spite of an equally firm conviction that science is an instrument of politics rather than truth.

A second possible fate of positive law, however, is that law might escape its fate and abandon its need for scientific justification. While positive law is in need of rationalization to defend its authority, non-positive law disdains justification. Nietzsche's interest in the possibility of a non-positivist idea of law leads to his hypothesis of the relation between law and art. Insofar as law is known through the artistic creation of a beautiful form that calls the members of a culture to the law, then law, as a creative and life-affirming positive law, operates as a "thou shall't" beyond science, morality, and politics. Nietzsche struggles towards just such a non-moral and non-scientific ideal of positive law—a modern *Sittlichkeit der Sitte* as opposed to a *Moralität der Moral*—throughout his work.

To explore these two potential fates of law—to become science or

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<sup>16</sup> For an account of law has become a product of science, see Roger Berkowitz, *The Gift of Science: Leibniz and the Modern Legal Tradition* (Cambridge, MA: Harvard University Press, 2005).

art—this essay asks four questions. First, how does positive law establish itself in a work of art? Second, what is the proper end of artistic legislation? Third, why is law—and with it art—necessary? Fourth, and finally, how can positive law erect natural law and in so doing redeem life? As a whole, the essay seeks to shed light on Nietzsche’s statement, first formulated in *The Birth of Tragedy* and reaffirmed throughout his work, that, “only as an *aesthetic phenomenon* is existence and the world to be eternally *justified*.”<sup>17</sup>

## I. THE HOLY LIE OF LAW (*GESETZ*): ART

Nietzsche’s interest in the Code of Manu is, in part, an example of how law establishes itself through art and artifice. The authority of law is derived from what Nietzsche calls a “Holy Lie.”<sup>18</sup> The core thought of the Holy Lie is that for law to be spoken in the imperative as a “thou shall’t,” it is also necessary that the law be taken as true.<sup>19</sup> Paradoxically, for law to speak the imperative of truth, law must lie. Positive law, Nietzsche insists, depends upon a lie, an artifice, so that law, like the world itself, can only be redeemed through a “semblance,” (*Schein*).<sup>20</sup> Specifically, positive law must appear as a beautiful semblance, one with the power to awe and to seduce man to its authority. Positive law, as the Holy Lie, is posited in the work of art.

The identity of positive law and art is a consequence of law’s need for semblance that strikes the Nietzschean legislator. Even as Nietzsche insists that the good lawgiver is the nobleman who naïvely and confidently issues commands that he expects to be obeyed, he recognizes as well that the imperative tone of a good *Gesetzbuch* is as priestly as it is noble. Only the priest, as the mouthpiece of God, has both the “right to lie” and “the *cunning* of revelation.”<sup>21</sup> It is as a knower of hidden and sacred law that the priest-legislator asserts his authority.<sup>22</sup> As the priest says: “The truth is there,”<sup>23</sup> so must the legislator say: “*Das Gesetz* is there.” The legislator, as the priest, achieves his goal—power—through a lie—namely the erection of the lie as truth and of the *Gesetz* as the natural and true law of God’s will.<sup>24</sup> The legislator, like the priest, must be an artist, skilled in artifice—the art of transforming semblance into truth.

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<sup>17</sup> 1 FRIEDRICH NIETZSCHE, *Die Geburt der Tragödie*, in KRITISCHE STUDIENAUSGABE para. 5, at 47 (Giorgio Colli & Mazzino Montinari eds., 1988) [hereinafter 1 NIETZSCHE, *Die Geburt*]. See also Nietzsche’s “Attempt at Self-Criticism” published with the reissue of the *Birth of Tragedy* in 1886 in which he links the artist-metaphysics of the *Birth of Tragedy* to his lifelong pursuit of a pessimism beyond good and evil. *Id.* at 17.

<sup>18</sup> 6 FRIEDRICH NIETZSCHE, *Der Antichrist* para. 55, in KRITISCHE STUDIENAUSGABE 239 (Giorgio Colli & Mazzino Montinari eds., 1988) [hereinafter 6 NIETZSCHE, *Der Antichrist*].

<sup>19</sup> *Id.*

<sup>20</sup> 1 NIETZSCHE, *Die Geburt*, *supra* note 16, at 17.

<sup>21</sup> *Id.*

<sup>22</sup> See 13 NIETZSCHE, *Nachgelassene 1887-1889*, *supra* note 3, at 382.

<sup>23</sup> See 6 NIETZSCHE, *Der Antichrist*, *supra* note 18, at 239.

<sup>24</sup> *Id.*

The “art of legislation” is the art of the Holy Lie, the creative act through which the legislator positively erects his will as the truth for a people. To say that priestly legislation is an art is to say that legislation is a means to the creation of truth. The art of *Gesetzgebung*, in other words, is the name for the “*Origin of Morality*,”<sup>25</sup> the creative act through which the legislator posits his will as the truth for a people. The great legislator is a gifted artist. What unites the artist and the legislator is their ability to institute truth and to posit *Recht*.

The Holy Lie allows the Manu Code to speak, as any good code must, in the imperative, because it allows positive law (*Gesetz*) to appear as natural and true law (*Recht*). “A *Gesetzbuch*,” Nietzsche writes, “never explains the uses, grounds, the casuistic in the pre-history of a *Gesetz*: to do so, it would lose the imperative tone, the “you shall,” the presupposition for being obeyed.”<sup>26</sup> On the basis of the Holy Lie, the authority of the Manu Code “is grounded on the thesis: God gave it, the forefathers lived it.”<sup>27</sup> God and the forefathers, “revelation” and “tradition,” are the “double wall” that underlie the legislator’s unquestioned authority to set down the law without having to prove or justify it.<sup>28</sup> By creatively securing the truth of the illusion as nature, revelation, and tradition, the legislator-priest succeeds in giving his commands not only the authority of force, but the authority of reason and custom—the ultimate and necessary authority for law.

The Holy Lie is central to Nietzsche’s understanding of proper legal authority; the successful artifice of the Holy Lie, however, is not in itself sufficient for Nietzschean legislation. The Christian Code, just as much as the Manu Code, was an artistic achievement of a Holy Lie that granted its Commandments imperative force. Even more successfully than the Manu priests, Christian priests have insinuated Christian morality into the history and fiber of the Western World. And yet it is against the success of Christianity’s Holy Lie and as a critique of the Christian artist that Nietzsche imagines his book, *Der Antichrist*, to be a curse upon Christian legislative morality. Great artistry, while necessary, is not a sufficient criterion of a good lawbook.

What elevates the Manu Code, from Nietzsche’s perspective, is not the artistic means, but rather, the ends for which the Manu legislators enact the Holy Lie. “In the final account,” Nietzsche writes, everything “depends on what end (*Zweck*) is lied for.”<sup>29</sup> The overriding question of legislation then becomes: To what end does one prevaricate?

## II. THE ORDER OF CASTES AND THE SANCTION OF NATURE

Following Nietzsche, we must ask: What ends does the Manu Code

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<sup>25</sup> 13 NIETZSCHE, *Nachgelassene 1887-1889*, *supra* note 3, at 382.

<sup>26</sup> 6 NIETZSCHE, *Der Antichrist*, *supra* note 18, at 241.

<sup>27</sup> *Id.* at 242.

<sup>28</sup> *Id.* at 241.

<sup>29</sup> *Id.* at 239.

serve that necessitate and sanctify its Holy Lie?

Nietzsche asserts three fundamental ends that elevate the Manu Code above other legal and moral codes, particularly the canons of Christianity. First, Nietzsche's preference for the Manu Code is its valuation of preservation over destruction. "In fact," Nietzsche writes, "it makes a difference . . . whether one [with the lie] preserves or *destroys*."<sup>30</sup> Law, like art, is valuable only insofar as it furthers life. The art of legislation, simply put, must be evaluated under the optic of life.<sup>31</sup>

From the perspective of life, the *Gesetzbuch des Manu* is preservative whereas Christian morality is destructive. Christianity erects its Holy Lie in the name of a "beyond" and thus commits itself to the destruction of this world and the imposition of a slave morality. In order to gain power, the Church had to tear down all of the leading institutions of the Ancient World, including both the Jewish priesthood and the Roman empire. The Code of Manu, on the other hand, sought to preserve, rather than destroy, the hierarchical authority. In part, this is simply a historical matter. The Brahmin priests who received the revealed laws of the Manu *Gesetzbuch* were already esteemed members of India's ruling class. In propagating the Holy Lie, therefore, they sought not to destroy the civilization over which they reigned, but to preserve and sustain its existence. The Holy Lie of the Manu Code, therefore, emerges, not out of a hateful spirit of revenge against the rulers, but out of the Brahmin priests' desire to maintain and augment their own power.

A second advantage of the Manu *Gesetzbuch* is that it seeks to preserve social rank. Christianity, on the other hand, attacks the powerful and noble by "taming" and, ultimately, leveling mankind.<sup>32</sup> While this leveling, with the aim of improving man in the name of some higher ideal, has a rich history it is particularly virulent in Christianity. To make man less prideful, weaker, and more moral, Christianity turns man against himself by preying on his guilt. The guilty man is tamed, but Nietzsche disputes that he is thus "improved."<sup>33</sup> Rather, he is "weakened," "disfigured," and "fundamentally castrated."<sup>34</sup> Improvement is better characterized as a taming of the beast that requires a harming of the beast. Neutered and tamed, Christian man is rendered harmless.

Contrary to the Christian desire to tame man, the Manu Code seeks to "breed" him.<sup>35</sup> It does not take as its enemy the powerful "Man-the-beast" that must be tamed, but sets its sights on the impure man, the

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<sup>30</sup> *Id.* at 245.

<sup>31</sup> See 1 NIETZSCHE, *Die Geburt*, *supra* note 17, at 14.

<sup>32</sup> 6 NIETZSCHE, *Götzen-Dämmerung*, *supra* note 5, at 99.

<sup>33</sup> See generally 6 FRIEDRICH NIETZSCHE, *Die "Verbesserer" der Menschheit [The Improvers of Mankind]* para. 2, in 6 NIETZSCHE, *Götzen-Dämmerung*, *supra* note 5 [hereinafter 6 Nietzsche, *Die "Verbesserer"*].

<sup>34</sup> 13 NIETZSCHE, *Nachgelassene 1887-1889*, *supra* note 3, at 445.

<sup>35</sup> See generally 6 NIETZSCHE, *Die "Verbesserer"*, *supra* note 33, para. 3, at 100.

*Nicht-Zucht-Menschen*, the mish-mash-man, the Chandala.<sup>36</sup> This Chandala must be rendered harmless and bred to his servitude. To this end, the Chandala must be made sick: This is what Nietzsche reads into the sanitary rules of the Manu *Gesetzbuch* that require the Chandala to eat unclean vegetables, that limits their sustenance to garlic and onions, and that stipulates that their water cannot be taken from wells or ponds, but only out of marshes and puddles.<sup>37</sup> Through these and other rules, the Manu wages war not on the few and the powerful, but against the many, die “*grossen Zahl*.”<sup>38</sup> Instead of taming the strong, it breeds the weak for their assigned societal roles. The many will be sick; however, the great benefit of the Manu Code is that the few, the powerful, are bred into strength and health.

Third, and most importantly, the superiority of the Manu Code rests upon Nietzsche’s assertion that its division of society into four castes, each with its own particular obligations and rights, is a desired end because it reflects the natural order of society. “The *order of castes*,” Nietzsche writes, “the highest, the most dominant *Gesetz*, is only the sanction of a *natural-order*, natural-legal-positing of the first rank, over which no willfulness, no ‘modern idea’ has power.”<sup>39</sup> It is nature, he insists, not Manu or the Brahmin legislators, that divides the predominantly intellectual from those who are predominantly physically or temperamentally strong, and both of these from the mediocre, who are extraordinary in neither intellect nor strength.<sup>40</sup> The Indian caste system is an artifice, a Holy Lie—but it is a lie that serves natural ends.

The order of castes rests upon the observation that there are at times either three or four kinds of men in nature.<sup>41</sup> First comes the “highest caste,” of whom Nietzsche says: “I name them the fewest.”<sup>42</sup> They are the “*geistigsten Menschen*.”<sup>43</sup> Only these “most spiritual men” have the privilege (*Vorrecht*, literally, a prior right) to establish beauty and the good upon the Earth. It is from their ranks that the artists and legislators emerge. The second kind of man is the muscular man—the members of the warrior class. Following Plato, Nietzsche calls these men “the guardians of *Recht*.”<sup>44</sup> They are exemplified, above all, by the king, as both warrior and judge—the executive of the most *Geistig*. The third kind of man includes the mediocrities, encompassing not only the businessmen, handworkers, and farmers, but also the scientists, academics, and the largest part of artists, those who busy themselves with a career.<sup>45</sup> Finally, the fourth kind of man—whom Nietzsche at

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<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 101.

<sup>38</sup> *Id.* at 100.

<sup>39</sup> 6 NIETZSCHE, *Der Antichrist*, *supra* note 18, at 242.

<sup>40</sup> “*Die Natur, nicht Manu, trennt die vorwiegend Geistigen, die vorwiegend Muskel- und Temperaments-Starken und die weder im Einen, noch im Andern ausgezeichneten Dritten, die Mittelmässigen, von einander ab . . .*” *Id.* at 242.

<sup>41</sup> See 13 NIETZSCHE, *Nachgelassene 1887-1889*, *supra* note 3, at 394.

<sup>42</sup> *Id.* at 395.

<sup>43</sup> 6 NIETZSCHE, *Der Antichrist*, *supra* note 18, at 243.

<sup>44</sup> *Id.*

<sup>45</sup> See *id.* at 244.



times leaves out of his reckoning—is the one of the lower and submissive kind, recognized to be a servant race.<sup>46</sup>

Together, these three ends—the preservation of power, the breeding of each to his proper social role, and the sanctioning of the order of castes—comprise the core of Nietzsche’s defense of the Holy Lie of the Manu *Gesetzbuch*. In short, what Nietzsche values in the Manu Code is the creative and artistic sanction of a natural and life-affirming inequality. Whereas Christianity is dominated by the teaching of the equality of the soul, the equality of man, and the equality of right, the Manu Code creates, teaches, and perpetuates the natural “feeling of distance between man and man,” that is the “*presupposition* for every elevation and every growth of culture. . . .”<sup>47</sup> If the doctrine of equality is a weapon “against *ourselves*, against all nobility, gaiety, big-heartedness on the earth, against our happiness on the earth,” the feeling of difference first opens the possibility for the affirmation of life.<sup>48</sup>

In *Beyond Good and Evil*, the pathos of distance is not only that which separates noble men from slaves, but also is that internal feeling of “a demand for an ever newer widening of distance within the soul itself, the production of ever higher, rarer, further, more-wide-reaching, more-encompassing conditions, in short, just the elevation of the type ‘man,’ the advanced ‘self-overcoming of man,’ to take a moral formula in an over-moral sense.”<sup>49</sup> The pathos of distance, as Andreas Urs Sommer has suggested, becomes a “fundamental condition for what first makes possible higher forms of individuation, the ‘breeding’ of a higher man.”<sup>50</sup> Differentiation, and with it inequality, are natural drives of man.

What cannot be emphasized enough is that Nietzsche insists that the pathos of difference and the order of castes sanctioned by the Manu Code is a natural division. “To say it again,” Nietzsche reiterates, “nothing is arbitrary, nothing is ‘made.’”<sup>51</sup> The positing of the order of castes into *Gesetz* only sanctifies the natural division of man into physiological types. In Nietzsche’s words: “[T]he *order of castes* is only the sanctioning of a natural difference between more *physiological types* (characters, temperaments, etc.)—it is only the sanction of experience, it does not precede experience, less still does it cancel experience.”<sup>52</sup>

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<sup>46</sup> See 13 NIETZSCHE, *Nachgelassene 1887-1889*, *supra* note 3, at 395. That this basic tripartite division of man that Nietzsche adopts is in many ways closer to Plato’s division of men between philosophers, warriors, and handworkers in the Republic than to the order of castes in the Manu Code does not detract from Nietzsche’s insistence on the all-important naturalness of the division. See ANDREAS URS SOMMER, FRIEDRICH NIETZSCHE’S “DER ANTICHRIST” EIN PHILOSOPHISCH-HISTORISCHER KOMMENTAR 573 (Basel: Schwabe & Co., 2000).

<sup>47</sup> 6 NIETZSCHE, *Der Antichrist*, *supra* note 18, at 218.

<sup>48</sup> *Id.*

<sup>49</sup> 5 FRIEDRICH NIETZSCHE, *Jenseits von Gut und Böse*, in KRITISCHE STUDIENAUSGABE para. 257, at 205 (Giorgio Colli & Mazzino Montinari eds., 1988) [hereinafter 5 NIETZSCHE, *Jenseits*].

<sup>50</sup> SOMMER, *supra* note 46, at 414.

<sup>51</sup> 6 NIETZSCHE, *Der Antichrist*, *supra* note 18, at 243.

<sup>52</sup> “[D]ie Ordnung der Kasten ist nur die Sanktionierung eines Naturabstandes zwischen

*Gesetz*, as positive law, formulates and sanctions the natural order. It is, as *Schein*, i.e., as the semblance of the rank order of castes, that the legislative order of castes preserves and defends life. Nietzsche writes: “The order of the castes, the *rank-ordering*, only formulates the highest *Gesetz* of life itself, the division of the three types is necessary for the preservation of society, for the possibility of the higher and highest types.”<sup>53</sup> The order of castes serves the final goal of life by justifying the natural division of man into the three types. This division of man into castes, satisfying the need for distinction among men, is the highest law of life.

What Nietzsche stresses is not the specifics of any particular division of nature, but rather that nature—and with it life—demands distinctions among men. Life, understood as will to power, is the natural drive for man and all beings to assert themselves in their difference and superiority over others.<sup>54</sup> The pathos of distance is what first allows a ruler to issue his command with the expectation of obedience; it predates even the “*Sittlichkeit der Sitte*” (in English, the customariness of custom, or the ethic of the ethos) as the original source of law and morality.<sup>55</sup> “The pathos of distance,” Nietzsche writes, namely, “[T]he feeling of differentiation of rank, lies as the ultimate ground of all morality.”<sup>56</sup>

Since inequality and distinction are necessary in nature, the sanctioning and justification of natural distinction and inequality is the presupposition for the possibility of life itself. The Manu *Gesetzbuch*’s success as an artistic creation, its success in justifying a life-affirming inequality, is precisely what induces Nietzsche to firmly embrace the ancient Brahmin code as a Holy Lie in the name of life.

### III. THE NEED FOR ART: NATURE, PESSIMISM, AND THE PROBLEM OF TIME

Given Nietzsche’s apparent naturalism, the question arises: If the division of man into different “breeds” is natural, why is the artistic division of man into an order of castes in the Manu *Gesetzbuch* necessary for the preservation of society? This mirrors the question that bedevils Lockean and Kantian theories of a social contract: If natural

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*mehreren physiologischen Typen (Charakteren, Temperamenten usw.)—sie ist nur die Sanktion der Erfahrung, sie geht ihr nicht voraus, noch weniger hebt sie dieselbe auf . . .*” 13 NIETZSCHE, *Nachgelassene 1887-1889*, *supra* note 3, at 395.

<sup>53</sup> 6 NIETZSCHE, *Der Antichrist*, *supra* note 18, at 243.

<sup>54</sup> See 5 NIETZSCHE, *Jenseits*, *supra* note 49, para. 13, at 27.

<sup>55</sup> See 3 FRIEDRICH NIETZSCHE, *Morgenröthe*, in KRITISCHE STUDIENAUSGABE 21-24, 26-28, 29 (Giorgio Colli & Mazzino Montinari eds., 1988). See also 5 FRIEDRICH NIETZSCHE, *Zur Genealogie der Morale*, in KRITISCHE STUDIENAUSGABE 293-94 (Giorgio Colli & Mazzino Montinari eds., 1988) [hereinafter 5 NIETZSCHE, *Zur Genealogie der Morale*].

<sup>56</sup> “Das Pathos der Distanz, das Gefühl der Rangverschiedenheit liegt im letzten Grunde aller Moral.” 12 FRIEDRICH NIETZSCHE, *Nachgelassene Fragmente 1885-1887*, in KRITISCHE STUDIENAUSGABE (Giorgio Colli & Mazzino Montinari eds., 1988) [hereinafter 12 NIETZSCHE, *Nachgelassene 1885-1887*].

law already exists in the state of nature, why is there a need of a contract to move into civil society? Similarly, we may ask of Nietzsche: If the highest law of life develops unformulated and unsanctioned in nature, why is there a need for it to be set out in artistic legislation?

To understand why the positive sanctioning of the highest *Gesetz* of life in the Manu Code is necessary, it is helpful to recall Nietzsche's statement that art "is the great enabler of the possibility of life, the great seducer to life, the great stimulant of life."<sup>57</sup> Art, as does the posited sanction of the order of castes in the Manu legal code, enables life. The absence of art would render life unbearable; hence, for the sake of life, we need art.

What in life is unbearable that necessitates the redemptive power of art, and by extension, a posited legal code? The youthful Nietzsche of the *Birth of Tragedy* discovered the "source of art—and of all *Schein*" to lie in the unbearable Dionysian insight into the necessary suffering and contradiction of the truth of being, "the Silenian wisdom that the best thing for man is not to be born and the second best is to die quickly."<sup>58</sup> From his earliest writings, Nietzsche was compelled to the "metaphysical assumption" that "the true being and *Ur-Eine*—as the eternally suffering and full of contradiction—needs the delighting vision, the lustful *Schein*, for its constant redemption."<sup>59</sup> Nietzsche's "particularly dark and unpleasant" pessimism—dictating that "there is only one world, and this is false, cruel, contradictory, seductive, [and] without sense. . ."<sup>60</sup>—is what he later emphasizes as the central insight of the otherwise brash and romantic youthful work. Faced with the unbearable pessimism of the world, "[w]e have need of lies" and of art "in order to live[.]"<sup>61</sup> The core thought of Nietzsche's metaphysics is that the unbearable "[c]ontradiction, the bliss born of pain,"<sup>62</sup> is the root of man's unquenchable need for art as the justification for life.<sup>63</sup>

In Nietzsche's later writings, the suffering in man's existence is formally attached to his temporality. Man's suffering, in short, proceeds from out of his powerlessness before the onslaught of time. The passage of time shows us repeatedly our inability to control what is past. It is beyond the power of man's will to influence the past: "The will cannot will backwards; that it cannot break time and time's desire, that is the will's most lonely affliction. . . . This, yes this alone, is *revenge* itself: the will's counter-will (*Widerwille*) against time and its 'It was.'"<sup>64</sup> Because every will cannot will backwards, every will

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<sup>57</sup> 13 NIETZSCHE, *Nachgelassene 1887-1889*, *supra* note 3, at 521.

<sup>58</sup> 1 NIETZSCHE, *Die Geburt*, *supra* note 16, para. 3, at 36.

<sup>59</sup> *Id.* para. 4, at 38.

<sup>60</sup> 13 NIETZSCHE, *Nachgelassene 1887-1889*, *supra* note 3, at 193.

<sup>61</sup> *Id.*

<sup>62</sup> 1 NIETZSCHE, *Die Geburt*, *supra* note 17, para. 4, at 41.

<sup>63</sup> *See id.* para. 5, at 47.

<sup>64</sup> 4 FRIEDRICH NIETZSCHE, *Also Sprach Zarathustra*, in KRITISCHE STUDIENAUSGABE 180 (Giorgio Colli & Mazzino Montinari eds., 1988) ("On Redemption") [hereinafter 4 NIETZSCHE, *Also Sprach*].

suffers from its powerlessness against its past—“thus willing itself and all life were supposed to be punishment!”<sup>65</sup> Time, the uncontrollable flux of becoming, guarantees that we always, as Nietzsche says in the preface to the *Genealogie*, miscount the bells that wake us to ourselves: “We remain necessarily strange to ourselves, we do not understand ourselves, we *must* mistake ourselves . . . .”<sup>66</sup> At all times, such severe suffering threatens to lead to a pessimism of nihilism.

Against the suffering of will and life at the fate of time—a suffering that leads to the nihilistic denial of life—Nietzsche holds out art as the antidote: “Art here counts as the single superior counter-force against all willing for the denial of life.”<sup>67</sup> Art, *der Schein* or semblance, is the lie that makes living possible, and art is the antidote to man’s powerlessness—to man’s feeling of powerlessness against time.

As life without art is unbearable because of the problem of time, so is life without the *Gesetzbuch* similarly unbearable because of the cold hard fact of inequality. Inequality exists in nature. Indeed, inequality is a fundamental law of nature: “The *inequality* of rights (*Recht*) is first the condition that there are rights at all.”<sup>68</sup> Each kind of man has a pre-historical and natural way of being that precedes *Gesetz*. The highest men have the privilege (*Vorrecht*) of finding their blessedness and lust in their instinctive self-discipline and asceticism.<sup>69</sup> The warrior kings have the *Vorrecht* to rule, and the mediocre have the great *Vorrecht*—not to be undervalued—of being a cog in the wheel.<sup>70</sup> None of these privileges come easily. It is the creation of the Holy Lie (*Gesetz*) through the *Gesetzbuch* that ennobles, elevates, and justifies the harshness of the labyrinth that is life. Just as art is a stimulus to life, so too is the caste-order legislated by the Manu Code. The ultimate end of the Manu Code must be the willful and artistic creation of a beautiful lie that makes the actuality of existence bearable.

#### IV. THE FREE FORM OF ART AND GESETZ

The question imposes itself: How can Nietzsche’s art of legislation succeed in redeeming life by erecting *Recht*?

Again, guidance is to be sought through the analogy between *Gesetz* and art. Art redeems and justifies truth insofar as it does not simply reflect the suffering and tragedy of the world, but does so in a way that beautifies, ennobles, and thus redeems the world in spite of its temporality and contradictions: “Art is essentially *affirmation, blessing, deification of existence*.”<sup>71</sup> In the creation of beauty, art elevates and

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<sup>65</sup> *Id.*

<sup>66</sup> 5 NIETZSCHE, *Zur Genealogie der Morale*, *supra* note 55, at 247 (Preface 1).

<sup>67</sup> 13 NIETZSCHE, *Nachgelassene 1887-1889*, *supra* note 3, at 225.

<sup>68</sup> 6 NIETZSCHE, *Der Antichrist*, *supra* note 18, at 243.

<sup>69</sup> *See id.* (“*Die schwere Aufgabe gilt ihnen als Vorrecht*”, i.e., as a privilege and prior-right).

<sup>70</sup> *See id.* at 244.

<sup>71</sup> 13 NIETZSCHE, *Nachgelassene 1887-1889*, *supra* note 3, at 241.

justifies existence—giving it beautiful form. Artistic creation gives form that may further life, depending on the strength of its creative force and its capacity to seduce.

Artistic creation is the activity of giving form. The essential artistic state, what Nietzsche calls rapture, is an explosive state of creative force. The artist seizes this rapture and bestows form upon things, compels them to take from us, violates them, and, ultimately, idealizes them.<sup>72</sup> From the feeling of rapture and abundance, the rapture of sexual excitement and “the rapture of an overflowing, swollen will”<sup>73</sup>—the artist creates both himself and the world. As Eli Eilon has observed: “Abundance is the aesthetic principle of man’s self-creation.”<sup>74</sup>

Artists form things; they create. For that reason, they “should see nothing as it is, rather fuller, rather simpler, rather stronger: to that end a kind of eternal youth and spring, a kind of habitual rapture must be in their limbs.”<sup>75</sup> The idealizing and creative activity of the artist is to give form to the world in himself. As Nietzsche writes:

The greatness of an artist does not measure itself by the “beautiful feelings” that he arouses: little women may believe that. But according to the degree to which he nears the great style, to which he is capable of the great style. This style has this in common with great passion, that it disdains to please; that it forgets to persuade; that it commands; that it *wills*. . . To become master over the chaos that one is; to compel one’s chaos to become form; to become necessity in form: to become logical, simple, unambiguous, mathematic; to become *law* [Gesetz]—: that is here the great ambition.<sup>76</sup>

Art, in other words, is measured by force, the “feeling or fullness of *stowed-up force*,”<sup>77</sup> through which the artist comes to master the chaos that he himself is. The artist, in “compelling one’s chaos to become form,” wills himself into being and becomes a law for himself—the essential Nietzschean conclusion.

Nietzsche’s art of legislation has unmistakable Kantian echoes. The Nietzschean artist claims his freedom to be who he is, to give himself law, and to master and command himself. However, while the Kantian man experiences the feeling of freedom as a universal duty—I ought freely to act such that I am a law unto myself—Nietzsche embraces the freedom of law as a challenge—“an attempt”<sup>78</sup> to make

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<sup>72</sup> 6 NIETZSCHE, *Götzen-Dämmerung*, *supra* note 5, at 116 (“Expeditions of an Untimely Man” 8).

<sup>73</sup> *Id.* See also 3 FRIEDRICH NIETZSCHE *Die Fröhliche Wissenschaft*, in KRITISCHE STUDIENAUSGABE para. 301, at 540 (Giorgio Colli & Mazzino Montinari eds., 1988) (“Wir erst haben die Welt, die den Menschen Etwas angeht, geschaffen!”).

<sup>74</sup> Eli Eilon, *Nietzsche’s Principle of Abundance as Guiding Aesthetic Value*, 30 NIETZSCHE-STUDIEN 219 (2001).

<sup>75</sup> 13 NIETZSCHE, *Nachgelassene 1887-1889*, *supra* note 3, at 295.

<sup>76</sup> *Id.* at 246-47.

<sup>77</sup> 12 NIETZSCHE, *Nachgelassene 1885-1887*, *supra* note 56, at 555.

<sup>78</sup> 4 NIETZSCHE, *Also Sprach*, *supra* note 64, at 265 (“*ein Versuch, oh meine Brüder! Und kein Vertrag!*” “[A]n attempt, oh my brother! And no ‘contract’!”) (“On Old and New Tablets”

oneself lawful.<sup>79</sup> If Kant's law is a freely assumed moral imperative for all rational beings, Nietzsche's is an aesthetic imperative for artistic souls. The freedom of creating, of making art, and of legislating is always first the imperative to create oneself through the art of legislation.

The artist as creator is a legislator who gives himself and the world the law (*Gesetz*). The artist, a "preliminary stage," must go under so that the "world" becomes "a work of art [that] gives birth to itself."<sup>80</sup> In other words, the rapturous creation of the artist works to let the law shine forth in its splendor. As described by Nietzsche in a note entitled "Physiology of Art," art grasps at the typical and reveres the lawful:

An overpowering of the fullness of the living is in it, measure becomes master, that *repose* of the strong soul lies at its bottom, which moves itself slowly and has a counter-will toward the all-too-living. The general case, the law, is *honored* and *lifted* out; the exception, conversely, is set aside, the nuance wiped away. The firm, powerful, solid, the life that rests broad and reigning and harbors its force—that "*pleases*": i.e. that corresponds with what one holds of oneself.<sup>81</sup>

The artist creates the work of art; more accurately, he lets it be created, so that the law shines forth from within it. Further, the work of art has the potential, in its beauty, to draw others into the original rapture of its creation. It works back upon the artist and his audience as the call to the law. "What alone can restore us?" Nietzsche asks. Only "[t]he *visage of the perfect*."<sup>82</sup> From the longing of strength and overfullness, the artist comes to sacrifice himself to the engendering of that which will call him to himself. The sight of the perfect, that which the artist's work evokes, restores him to himself.<sup>83</sup>

In that art brings man to himself through its beautiful and seductive externalization of the rapturous feeling of form, art is not merely something subject to rules and laws. Rather, as Martin Heidegger has articulated, art, for Nietzsche, is "thought" as law itself.

Art stands not only under rules, it has not only to follow laws (*Gesetz*), but it is in itself legislation; only as such is art true art. The inexhaustible and to be created is the law (*Gesetz*). What the art that dissolves style into mere bubbling of feelings misses is, in its essence, the unrest of finding the law (*Gesetzesfindung*), which only comes to work when the law (*Gesetz*) veils itself in the freedom of form (*Gestalt*), in order that it come into open play.<sup>84</sup>

Only as freedom, at once veiled and made manifest in beautiful form,

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<sup>79</sup> 5 NIETZSCHE, *Zur Genealogie der Morale*, *supra* note 55, at 291 ("To breed an animal that *dares to promise*—is that not precisely that paradoxical task itself that nature has set for itself in regard to man?").

<sup>80</sup> 12 NIETZSCHE, *Nachgelassene 1885-1887*, *supra* note 56, at 119.

<sup>81</sup> *Id.* at 290.

<sup>82</sup> 13 NIETZSCHE, *Nachgelassene 1887-1889*, *supra* note 3, at 507.

<sup>83</sup> See the insightful discussion by Babette Babich in NIETZSCHE'S PHILOSOPHY OF SCIENCE 1, 12 (1994).

<sup>84</sup> 1 MARTIN HEIDEGGER, NIETZSCHE 153-54 (1961).

does law arise as that which raises man over himself and saves him for himself. The creative explosion of the art of legislation is the foundation for the positive establishment of any system of *Recht*. Positive law is, insofar as it is understood as a free and spontaneous work of art, paradoxically resistant to the efforts of the various legal sciences to subordinate law to social or political ends.

## CONCLUSION

### THE DANGEROUS PARADOX OF THE ART OF LEGISLATION

Art stands to truth as *Gesetz* stands to *Recht*—in a founding relation. This is true, not just for the Manu Code, but for Christianity as well. What distinguishes the Manu Code is simply the *Gesetz* that is given. Whereas Christian morality establishes the law of revenge in its battle against the ravages of time and worldly transience, the Manu Code glorifies the brutality of life itself—its inequalities, its humanity, and its tragedy. In celebrating and elevating *this* life in the art of legislation, the Manu Code—if it is successful—seduces those who are struck by it to life.

Yet, in the end, the question remains, whether art and *Gesetz*, as willful semblances, can indeed justify life. Will not the Holy Lie, once successful, devolve into a calming and intoxicating illusion? How, in other words, does the art of *Gesetzgebung* persist in its creative force?

In a fragment from “Towards a Critique of the Manu *Gesetzbuch*,” Nietzsche emphasizes that the entirety of the Manu Code rests on the Holy Lie, namely, that the entire system is inspired by the semblance of the good of man. In actuality, however, the entirety of the Manu Code rests upon the Brahmin Priests. As Nietzsche explains: “We find a kind of man, the *priestly*, that feels itself the norm, the peak, as the highest expression of the type man: they take the concept of ‘to better’ from out of themselves.”<sup>85</sup> These priests believe in their own superiority and “will” it in fact—“the cause of the holy lie is the *will to power*.”<sup>86</sup>

The Holy Lie and the art of legislation are, in the end, thought from out of the artistic creation that is the will to power. “The lie,” Nietzsche writes, “as supplement of power—a new concept of ‘truth.’”<sup>87</sup> The Manu Code, Nietzsche’s example of a “good” *Gesetzbuch*, is not posited simply as a “thou shall’t,” but depends essentially on an artistic conception of *Recht*, one that is founded upon *Gesetz*. This positing of *Recht* is necessary, because the urge to posit *Gesetz* as a standard for others demands that the legislator believe, in some way, in its truth and goodness. It is in the *Gesetzgebung*, the giving of the code itself as a work of art, that the Manu Code grants to its world the *Gesetz* that

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<sup>85</sup> 13 NIETZSCHE, *Nachgelassene 1887-1889*, *supra* note 3, at 439.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

founds its *Recht*.

As a work of art, *Gesetz* founds *Recht*. This is the inversion of the traditional relation between *Recht* and *Gesetz*, an inversion that Nietzsche announces in sections 10 and 11 of the *Genealogie*.<sup>88</sup> “The most decisive act that the supreme” and legislating “power performs . . . is the institution of *Gesetz*, the imperative declaration of what in general counts as *Recht* in its eyes, and what counts as *Unrecht*.”<sup>89</sup> And yet, legislation, as the ultimate artistic act that erects an entire system of truth in positive law, is also a consequence of man’s desperate will to power—his need to stamp being on becoming. All creative spirits, by whom Nietzsche means “*Genuine philosophers*” who are most essentially “*commanders and legislators*,” speak in the imperative:

[T]hus it *shall* be! They first determine the whither and for what of man. . . . With a creative hand they reach for the future, and all that is and has been becomes a means for them, an instrument, a hammer. Their “knowing” is *creating*, their creating is a legislation, their will to truth is—will to power.<sup>90</sup>

The art of legislation is the becoming creative of the will to power.

In the art of legislation, *Gesetz* is instituted as the ground of *Recht*. Insofar as the institution of *Recht* necessarily claims for itself the status of truth and goodness (for why else would it be instituted?), *Recht* depends upon its justice (*Gerechtigkeit*) that is founded by *Gesetz*. This is why Nietzsche insists that justice has its source in the active will to power that manifests itself in philosophers<sup>91</sup> and master thinkers as the lust for power (*Herrschaft*).<sup>92</sup> Even the “noble soul,” who “accepts the fact of his egoism without any question,” names the will that springs from his self-assertion as “justice itself.”<sup>93</sup>

The word for justice is *Gerechtigkeit*, and *Gerechtigkeit* is a past participle related to the German concept of *richten*, to set right. As a past participle, *Gerechtigkeit*, like its source *Gesetz*, is static, posited, and historical. *Gerechtigkeit*, or a posited standard of justice, is what happens when the legislative artist stamps being on the becoming of *Sittlichkeit*, the customary, fitting, and ethical world. Thus, *Gesetz* stands to *Recht* as *Gerechtigkeit* stands to *Sittlichkeit*.

As an expression of its lust to rule and in its need for justification, positive law exemplifies the “reduction of nature to morality.”<sup>94</sup> And just as morality is a pale reflection of *Sittlichkeit*, so too is *Gesetz*, a “school of the *dumbing-down*”<sup>95</sup> of man culminating in the debasement of man. Thus is the institution of *Recht*, as an expression of will to

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<sup>88</sup> For what follows, see the inspired account by Philippe Nonet. Philippe Nonet, *What is Positive Law*, 100 YALE L.J. 667, 669 (1990).

<sup>89</sup> 5 NIETZSCHE, *Zur Genealogie*, *supra* note 54, at 312.

<sup>90</sup> 5 NIETZSCHE, *Jenseits*, *supra* note 48, at 219-20 (§211).

<sup>91</sup> *Id.* at 20. See also LAURENCE LAMPERT, NIETZSCHE’S TASK 31 (2001).

<sup>92</sup> 5 NIETZSCHE, *Zur Genealogie*, *supra* note 54, at 310 (Bk. II, 11); see also 4 NIETZSCHE, *Also Sprach*, *supra* note 63, at 237-38 (“*From the Three Evils*” 2).

<sup>93</sup> *Id.*

<sup>94</sup> 13 NIETZSCHE, *Nachgelassene 1887-1889*, *supra* note 3, at 385.

<sup>95</sup> *Id.* at 386.



power, “a partial restriction of the will to life” and of the will to power itself.<sup>96</sup>

The paradox of Nietzsche’s account of the Manu Code is that the grand promise of artistic legislation—the successful promulgation of life and will to power through the Holy Lie that sanctions the order of castes—threatens to petrify into a lifeless and will-less morality of justification. The art of legislation carries with it at all times the grave danger, that the institution of a new *Recht* will solidify into a new *Gerechtigkeit*, a morality hostile to life:

A legal order (*Rechtsordnung*) thought of as sovereign and universal—not as a means in the struggle between power-complexes, but as a means *against* all struggle overall, something like the communist cliché of [Eugen] Dühring’s, that every will has to take every will as equal—[such a legal order] would be a principle *hostile to life*, a destroyer and dissolver of man, an assassination on the future of man, a sign of weariness, a slinking path to nothing.<sup>97</sup>

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<sup>96</sup> 5 NIETZSCHE, *Zur Genealogie der Morale*, *supra* note 54, at 310.

<sup>97</sup> *Id.* at 313 (Bk. II, 11).