



# NIETZSCHE

## COMES OF AGE IN AMERICA

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There is an apocryphal story associated with James Hogg, a nineteenth-century Scottish man of letters, that captures some of the excitement of Nietzsche's reception among his European contemporaries. Hogg grew up in rural Scotland and began his working life as a shepherd. He acquired a taste for books while working for a landowning novelist, but had little time for literary pursuits. One of his tasks as a shepherd was to take his sheep to market in Edinburgh. On one such occasion, he sold his flock and then purchased a copy of Nietzsche's newly published *Thus Spoke Zarathustra*. He took the book back to his lodgings and read it overnight in one uninterrupted sitting. The next day, abandoning his career as a shepherd forever, he set out on foot for London. He walked the 450 miles to the British capital and there embarked upon a successful career as a novelist and poet.

It is possible to fall in love with a book. Nietzsche once asked the question, "Of what use is a book that does not lead beyond all books?" He meant it was possible for books to change lives; a book could influence a lifestyle or become a visceral part of how a reader lives, thinks, and acts. For such to be possible, readers had to be attentive, open, and ethical in the sense of embodying the ideas that they encountered. Like James Hogg, readers

had to experience the excitement of ideas and had to be prepared to engage actively in overthrowing their history or biography and its various filiations. Most were not, and are not, such good or attentive readers. Nietzsche himself predicted that it would be a century or more before his works acquired an audience patient and thoughtful enough to understand the radicalism, the poetry, and particularly the orientation of his thought—not to the past but the future.

Nietzsche wrote in the future tense about a being and a community that were yet to come. The future, however, has not always been kind to his ideas. Adopting a very loose set of stereotypes, the English saw him as a threat to the faith, as a heretic and a challenge to the monarchical order of common law. The French flirted with his aesthetic theory but took his philosophy less than seriously, while in Germany fascism made brief use of his ideas of racial purity, a future aristocracy, and a higher order of being that was yet to come. His most serious reception was in Scandinavia where the bleakness of his metaphysics was appealing and where, appropriately enough, his death mask came to rest in Stockholm. More recently, feminists have rightly attacked Nietzsche's misogyny, and liberals have worried about his scorn for the hitherto-existing forms of democracy and law. Particularly in the legal academy in the United States, his work has been inaccurately dismissed as a source of

nihilism or as a threat to belief in law. His work has been received in the main negatively. A law professor, Edgar Bodenheimer, even thought it worthwhile to write a book disproving nihilism by arguing that 'in sum' law has done more good than harm. The excitement of Nietzsche's work, his radically positive view of the future and of our abilities as future readers, has yet to be embraced.

Nietzsche died in 1900. A century on, as he foresaw, it is time to look to the future of his ideas and so address their contemporary relevance. For sure, Nietzsche was a threat. Zarathustra announced the death of God and smashed the commandments, the tables of the law. Elsewhere in his writings, Nietzsche argued that truth was a metaphor distinguished only by the fact that we had forgotten that it was a metaphor. He argued that European culture, and particularly the Pauline creed, was antihumanist, repressive of both sensuality and pleasure, and profoundly nihilistic. He wished, in other words, to overturn the law, to rethink it from a materialist or even hedonistic perspective. He wanted to wake the lawyers up and at the same time arouse their slumbering cousins, the scholars or philologists who spelled out and uselessly preserved the sources but not the inspirations of the law.

Where better than in the legal academy to return to the questions that Nietzsche posed to scholars as lawyers, and lawyers as scholars? Where better than the United States—Europe without brakes—to address the future tense of his work?

Nietzsche was not a nihilist. In *The Will to Power*, he described a certain nihilism, a life-denying quality, a hostility to the body and to pleasure that was intrinsic to St. Paul's interpretation of Christian doctrine. In Nietzsche's account, nihilism was a stage in the trajectory of metaphysics. With the slow realization and incorporation of the death of God, it would become possible to move beyond nihilism towards an affirmation of the body and an attention to the pleasures, rhythms, tones, and modulations of a 'this-worldly' existence. Nietzsche's nihilism was specific and temporary. It smashed the idols of a paternity and law that had outlived their geographical and historical sources. By the same token, a

Nietzschean reading of positive law is concerned with overthrowing an archaic legalism and methodology in favor not of ending the law but of knowing it better.

If the anecdote about James Hogg shows that reading Zarathustra can change a life, the contemporary scholarly reconsideration can show that reading Nietzsche can potentially inspire people to rewrite the law. Perhaps uniquely, Nietzsche offers an anthropology of legalism and of lawyers. In the future tense, he wanted to know what colors law will add to existence. He wanted to know how laws attach to places, characters, and peoples. Most of all, he was keen to move beyond a legal scholarship based upon emulation, repetition, and the closure of imagination, towards new laws or law tables for the community yet to come. Just as Nietzsche argued that an understanding of the classics required "a head for the symbolic," an understanding of law requires an appreciation of law as a form of life, as an embodied practice, an ethic or, in Nietzsche's idiom, aesthetic and lifestyle. In the end (and here James Hogg's abandonment of his earlier life is perhaps too extreme an emblem) Nietzsche does not recommend giving up or abandoning the law. His work may offer criticism of the archaic tone and backward-looking style of much legal practice, but his thesis is that we need to understand the law better so as to write it anew. ■

EDITOR'S NOTE: Professor Goodrich and *Cardozo Law Review* have organized a two-day conference "Nietzsche and Legal Theory" that will be held at Cardozo October 14–15, 2001. For more information call 212-790-0324 or e-mail: jaclynss@mindspring.com.

