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## Liberalism and the Anger of Punishment

*The Motivation to Vengeance and  
Myths of Justice Reconsidered*

Our liberal democracy is incapable of generating its own moral guidance, say the critics. It articulates “rights” but not “the good,” says Michael Sandel. It has abandoned the virtues, says Alasdair MacIntyre, and the traditions that once guided a way of life. It has tried, argues Habermas, but cannot “administratively reproduce” the motivating morality on which it has always relied. As its formal justice presents issues in terms of individual rights or states’ rights in the law, it frequently misses what is more deeply at stake. It is unable to give people their “just deserts,” insists Stanley Brubaker, to punish wrongdoing or reward merit, or to recognize the worthiness of those who work hard, pay their taxes, and answer first to their God.<sup>1</sup> In the pursuit of its comforting legal abstractions, one might say, liberal democracy and its justice have ended the bitter feuds and religious wars that have threatened perpetual vengeance, but at the expense of the commitments and values that once made that democracy worth having.

I begin in partial agreement with this lament, yet with the suspicion that it paints its target too easily, aiming at the weak underbelly of certain theoretical constructs of liberalism when the real foe lies somewhere else. Liberalism surely is a body of thought that has tried to extricate itself from such local entanglements and to rise above particular cases. In matters of law and public life, the ‘real’ individual with all of his or her concerns and devotions is sacrificed to the ‘abstract individual’ with such disturbing regularity that one might long for a simpler time when a sense of good or moral duty seemed less confusing, when justice, perhaps, was more basic, and the punishment fit the crime.

Yet it is precisely this longing that has been overlooked by those who offer their diagnosis at the level of failed ideology or lost values. They rush too quickly to say what is missing – classical virtues, moral education, religious instruction – to see what has happened on the affective side, where the passions aroused by such things may be less concerned with civic life or moral

regeneration than they think. They do not see how the anger that Americans express in declaring their “War on Drugs” is as much at stake. Or how the “outpouring of grief,” after the Oklahoma City bombing, and the wish to see the perpetrator put to death express the same frustration.<sup>2</sup> They do not weigh the eagerness with which Americans met their enemy in the Gulf War, or search for one in the “War on Terror,” or their special indignation over the World Trade Center attacks and their astonishment that anyone should hate us so much. They do not see how these things are linked; how the gut feeling with which so many Americans cheered the death penalty in the 1980s or still cling to it in the face of DNA evidence that innocents are being executed reflects the same cathartic need to give expression to an otherwise inexpressible rage. It is not a lack of values, exactly, that explains the public anger at this level, but something more pressing in the sense of moral vacancy. It is not simply moral failure that drives Americans in this pursuit, but a singular distress that has left them preoccupied with mortal loss, unaccountable grief, and the vengeful expiation of injustice.

In the work that follows I want to suggest that the source of this distress lies deep within our conception of justice – not so much within ‘justice’ as liberal or legal theories elaborate it, but in the tension between that system and the strong public feelings that now run counter to it. This distress is on the one hand, an expression of frustration with that justice for not doing more to protect us, for not being simple and effective. It is on the other hand, a result of the failure of that justice to grasp the nature of such strong public feeling, and to define its proper relationship with it. That failure, I suggest, reflects a longstanding inability of liberal justice to address the problem of vengeance and to face its implications. It has left us in a state of contradiction, with a system of justice that denies vengeance, and a culture that is utterly obsessed with it.

Ever since Locke made “calm reason” the central condition for a justice based on “consent,” that same justice has tried to check the vengeful impulses at the door. It has deluded itself into thinking that because it is practically and philosophically necessary to do so, that it could actually be done. The difficulty, it appears, is that along with the beliefs and values that this justice consigns to a private sphere, it has left *those* feelings out there too – the anger at slights or offenses to honor, vindictiveness, moral self-certainty, which had all found greater comfort in earlier systems of justice and which seek, or rather seek again, to be admitted to this one. That liberalism had presumed that the world could be divided between reasonable subjects who make contracts and adhere to rational principles of behavior, and irrational people who do violence, break contracts, or take the law into their own hands. It has produced a world in which vengeance and justice appear as opposites – in which one need not worry how the two might really be entwined, or how their interdependence must always present a dilemma for democracy.

I want to suggest that the very abstractions of such liberal thinking have arisen with the denial of that intractable connection – that notions of natural law, consent, rights, tolerance, even distributive fairness as it bears on punishment, depend implicitly on keeping such things from sight.<sup>3</sup> Where they are dismissed, I maintain, they have festered, and where they have festered, they have insinuated themselves more deeply within the culture and its practices of justice. I propose, therefore, that the reluctance of liberalism to confront this difficulty might prove to be a more worthy target than whatever else seems ‘missing.’ If the problem is not one of lost virtue or values that might be restored within the culture, that is, but of a more obstinate inability to reconcile grief, rage, guilt, indignation, and vengefulness – the affects of *broken* attachment – then it is a problem of different magnitude. It is a problem of such magnitude, because those affects independent of their former content and detached from the things that once made them seem virtuous now make unseemly demands upon our institutions of justice.

Indeed, what is called “justice,” on TV or by most Americans, now appears to be as much a manifestation of those demands as anything deserving of the name. When Americans say they want justice, they most often mean something angry and punitive. They may call for it in the name of ‘religion’ or ‘family values,’ but not simply to restore those things themselves. Such justice would address the more immediate feelings that arise when a family member is murdered, one’s home invaded, or one’s faith is challenged – the feelings that attend *ruptured* faith or the *loss* of home or loved ones, although they may be experienced vicariously or with indignation on behalf of others. It might express the “reactive feelings” that Nietzsche elaborated (at least “hatred . . . rancor, and revenge”), which arise when a person feels “aggrieved,” although they may be politicized directly with a different connotation.<sup>4</sup> Such feelings would seem to be part of the “visceral register” that William Connolly finds to be excluded from public life, but which nevertheless make their demands upon justice.<sup>5</sup> It is in facing these reactive feelings as such, I argue, that we will discover more about what is missing than by echoing the common lament.

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In order to do this, however, it is important to see how this problem is at once a much older and larger one. It will be necessary to go to the root of our sense of justice. It will be necessary to examine the fears and longings that have always lain beneath its surface and the complex means by which that justice has tried to resolve them. To do this we must travel in the shadows of the old debate between utilitarians and retributivists where those highly irrational things were supposed to have been resolved within “rational justifications” for punishment – where a ‘pain for a pain’ could be inflicted without so much emotional investment. We must look beyond

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notions of “natural law,” or “justice as reason” or “justice as fairness” for that matter, insofar as they exclude the thing that troubles us, at the risk of discovering a ‘justice’ that is concerned with a very different sense of fairness, one rather more torn and internally at odds than anything that those theories could address. We must see how that troubled sense of justice has overtaken a liberal one, and how its sensibilities of justice are now themselves at risk.

To begin with (Chapter 1), we will consider how the vengeful impulse has become so persistent and so well accepted in American politics and culture. We will see how it finds expression in American law and punishment even as it is formally denied, and how the culture both wants and remains deeply ambivalent about it. We will see how it has lain in wait in the liberal tradition more broadly – in the theories of Locke and Hobbes, Mill and Hegel as each has tried to resolve it. We will trace this tension to an older, mythical idea attributed to the Greeks that vengeance can be transformed into justice. We will consider how this notion is carried forward both in biblical resolutions and in the “myth of enlightenment” that still bear its marks. We will engage Nietzsche to help us see how vengeance is still with us, and what is most deeply at stake in it.

Next (Chapter 2) we will consider the pain of the victim of violence, and see how it has become an obsessive interest in America. We will consider how the public reaction to violence has produced an elaborate alternative conception of justice, and how the prospect of a justice without vengeance has become highly problematic. Here, we will notice how a new kind of retributive justice, replete with victims and heroes, has replaced a more formal justice in the public eye. We will ponder the way in which that ‘justice’ attempts to resolve matters of pain, cruelty, and death – how it has become a thing of nearly religious significance that functions (in Weber’s sense of the term) as a theodicy of good and evil.

The problem will be illuminated (Chapter 3) as we consider the nature of the vengeful impulse as it has been addressed in other times and places. We will weigh the dramatic (or for that matter theatrical) and deceitful means by which it claims to be righteous and just; as in certain tragedies in which, as Aristotle reminds us, it achieves a distinctive catharsis. Here too, vengeance will present itself as an inexorable need to alter time and painful memory. It will appear as a personal imperative with public implications, which, like the hope of “redemption” for Nietzsche, seeks to “... recreate all ‘it was’ into ‘thus I willed it’.”<sup>6</sup>

We will conclude (Chapter 4) by noticing how that troubling impulse informs the move to the right in American politics; how it finds expression in the law, and in irrevocable punishments like the death penalty. We will see how the legal insistence on the finality of verdicts in such cases amounts to a claim for the infallibility of judgment, and how this is at once vengeful and dangerously authoritarian. We will consider how that attitude bears on the outcome of notorious capital cases, leading to factual and other distortions.

We will contemplate, as we look to our democratic origins, how a less vengeful sort of legal authority might leave room for doubt (an awareness of its own complexity and imperfection), and how this bears on our thinking about mercy and forgiveness. Throughout, we will confront the difficulty of a system of laws that attempts to manage the demands of the same vengeful impulse, and does so rather poorly. We will notice, with Camus, that when “the law ventures into the blind realms of being, it runs a terrible risk of being impotent to control the very complexity it attempts to set to order.”<sup>7</sup>

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What are the blind realms of being that liberal law cannot fathom? The question might best be answered from the vantage point of those who have lived their lives in accordance with the law and rational principles, but find that such things fail them in the face of pain or mortal loss. In *Culture and Truth*, the noted anthropologist Renato Rosaldo discusses the effects of personal trauma on his life and work in a way that is especially revealing in this regard. He begins with a scholarly reassessment of his efforts over many years to make sense of the practice of headhunting among the Ilongot tribesmen of the Philippines. He then ponders the difficulties of maintaining objectivity for an observer of culture in a moment when it has been punctured by a devastating experience.

In an earlier account of the practice, Rosaldo had dutifully recorded the great apprehension of the tribesmen at the prospect of the legal prohibition of their headhunting ritual: The song of the celebration “pulls at us,” says one in defending it; it “drags our hearts, it makes us think of our dead uncle.”<sup>8</sup> Yet for all of the care and calculated detachment of Rosaldo’s inquiry, the allure of hunting strangers’ heads by those in mourning had remained a mystery to him. He could not see, he now tells us, how his own intellectual commitments, his method, his science, the very rationality that made the question seem pressing to him, had also made the headhunter’s longing quite impenetrable. Only in the course of enduring his own grief over the loss of a loved one would he come to see the force behind the Ilongots’ words fully, and permit himself a different understanding.

His wife Michelle had fallen to her death during one of their research trips. A tragic loss, one might say, a terrible thing, which, however, should have no bearing on the scholarship or methodological commitments of the anthropologist. Ordinarily the occasion might be addressed in a dedication at the beginning of his next book – a private matter sadly laid to rest, a tribute, perhaps, to his partner’s own academic achievement noted in passing. But for Rosaldo the experience could not be captured or set aside just so. It would invade every aspect of his awareness, forcing a different perception of his life and work and of the headhunters themselves. It would require the rethinking of his approach to everything.

Only now could he see more clearly how the illusive practice of the Ilongot had itself been a response to such a loss, a highly ritualized and urgent undertaking essential to the spiritual well-being of the people. In struggling with his own inability to comprehend this, disrupted as it was now by personal torment, he was at last able to see the decapitation of strangers and the discarding of their heads as a means of purging grief and expressing an otherwise inexpressible bereavement. The discovery of the Ilongot's pain through his own would not only test the methodological limits of his objectivity; it had forced an encounter with his own undetected affective screen, and with that of his culture as well.

What is striking in this account for the student of American society is not the problem of method, or the veracity of the insight it provides into head-hunting, exactly. It is the particular bewilderment of the liberal, western anthropologist. He had taken little notice here of the peculiarity of purging grief by disposing of the heads of strangers, or of the striking absence of accountability, blame, or retribution in the act. What concerns him, he admits, is his own "inability to conceive the force of anger in grief."<sup>9</sup> Yet in this remarkably honest reckoning, Rosaldo presents himself as the perfect reflexive artifact of a distinct incapacity in our own culture. He had been unable to grasp the *rage* in grief until the sudden death of his wife had shocked him into a different awareness. In the wake of inexpressible tragedy, he tells us, he is able to see his own "heaving sobs without tears as a form of anger,"<sup>10</sup> and it is only then, he believes, that he can understand the headhunter's quest. In grief, the missing piece is sighted, the sake for which the violent deed is done, the cause or reason for wanting to express it.

In the same unwelcome epiphany one can see that the moral lapse, loss of community or "heart" that so concerns the critics of liberalism, must involve something similar – a disturbing lack, one might say, in our own collective means of addressing unendurable memories of loss – or that register of intensely painful emotions.<sup>11</sup>

Of course, the headhunter offends other things in liberalism besides the predilections of the dispassionate observer – its prohibition against such hurtful expressions of faith (that would make the former a criminal in spite of his right to believe in them); its insistence on restricting punishment to rational agents who are directly at fault; its sense of the rights of those punished, so clearly at odds with the headhunter's militant notion of 'the good.' But here the noteworthy offense is the Ilongot's unabashed linkage of grief and rage and its purgation by violence, that coincidence of emotional and symbolic expression that is wholly lost to our own legal and funereal practices. Now, it seems, this conjunction of things is implausible, quite insupportable within the confines of a liberal culture that no longer understands, but must nevertheless endure something very like the headhunters' rage.

So it is that Rosaldo's insight captures an almost unbearable duality within our own identity. It is quite the same mix of emotions that the

presidential candidate Dukakis evoked when he could not seem to feel or express his outrage when confronted with the prospect of the rape and murder of his own wife during a televised presidential debate.<sup>12</sup> It appeared, on that occasion, that this reasonable and decent modern man had wholly internalized the legalistic imperative in the management of his own affects. He seemed to exemplify a distinctly liberal (and masculine) ordering of despair, muted anger and moral restraint that is starkly at odds with the anguish that other men at other times might have expressed at such a thought – so much at odds, these days, with public feelings about justice.<sup>13</sup> The fact that the candidate's reluctance received more criticism than praise, or that the self-control that would have seemed admirable at one time should now seem cold and contemptible, is at once highly suggestive. It is quite the same quandary that burdens the American debate over the death penalty, and troubles the soul of any one of us contemplating it. Grief, rage, and violent purgation are here, but not at home here, and if it seems that liberalism has lost its heart, it may truly be that motivational conjunction at the heart of vengeance that has been so painfully cut out.

It had eluded Rosaldo. It could not be spoken by Dukakis. Such feelings must be bracketed and kept apart from such considerations of justice, and of course they have no place there.<sup>14</sup> But on this occasion, and if it should for a moment seem that those limits have been instilled in the man who would lead the nation, or might somehow impinge upon a threatened world of moral feeling, he cannot be permitted to win. The candidate was *right* to hesitate. Vengeful rage does not belong in the office of the Chief Executive of a democracy, and how impertinent the moderator's question would have seemed at any other time. But it is now equally clear that Americans want something more from their leaders. They must exemplify moral self-certainty. They must be passionate defenders of the home, family, and nation, like those men of aristocratic pretensions in the old (if still electable) South. They must seem to unite public justice and private morality, to identify and denounce "evil," as every successful candidate since has learned to do. They must express indignation – as Americans wish *they* could all the time – and it is far less important that they grasp the proper limits of a neutral state, or of a rational, dispassionate law.<sup>15</sup>

It is an indication of the times that Americans could not resist speculating about how the candidate could have responded differently – that he would 'track down his wife's murderer,' that he would 'deplore the evil deed and want to kill the perpetrator,' and only 'reluctantly obey the law.' Yet in that moment, one can see something still more disturbing at work. An *imaginary* justice has sprung up in opposition to legal and rational restraint and to all that was once sacred in justice. It strains for recognition within the media, it unites those conservative 'NASCAR moms and dads' and the Christian right in their thinking about pedophiles or Al-Qaeda; it operates in fiction, in fantasy, and every medium beyond the law to challenge all

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that is staid, ponderous, or properly hesitant about liberal justice and its entirely unsatisfactory punishments.

Consider this fictional account of the loss of another wife, and the central place it seems to occupy in this culture:

I was monstrous with the grief of it, homicidal for revenge. Of course I'd believed that this was the kind of thing that happened to *other people*: gang members, crack heads, the foolish, the unworthy. And now it seemed that any ten coked-out dudes lounging around the street corners abusing the English language or begging change in the subway station were not worth the life of my lovely, blue-eyed Liz. I looked at every teenager with a gold chain around his neck as if he were the one who had killed my wife. *That guy could be the guy*. I thought about buying a gun and just driving up to Harlem and picking off someone, some poor bastard as retribution. Why the fuck not? In the great balance sheets of justice, it seemed reasonable. . . .<sup>16</sup>

There is clearly no room on the balance sheets of *this* justice for any restrained liberal sentiment, for the rule of law or the concern for rights or equity. This man, at this moment, could not be further from the dispassionate observer interested in truth. He is hardly prepared to recognize the rational principles of law. As he contemplates an indiscriminate retaliation, it is not at all clear that reason will prevail as it did for Dukakis, or that the balance of justice really matters at all to the disturbed mentality in which one life equals ten.

What is compelling in this character, the narrator, our 'hero,' however, is not that his passions are those of a traumatized and *exceptional* man who must be reined in by reason and justice. It is that he is so ordinary and that it has become so unsurprising to hear him and others validate the theme of white, middle-class revenge. What is compelling, quite beyond the implication of racial backlash (more of this in Chapter 2), is that his predicament and his fantasy so precisely mirror the common ones. In America, his grief and this perverse sense of justice insist on being heard, and it is only by joining him (or the likes of him) over and over again in fantasy that we keep from acting it out. The distinctive longing of this poor man, and his frustration with liberal justice, must seem strangely comforting, even affirming to the American at rest with the novel, caught up in the ambivalence of the moment, ready to discard the restraint of the law, and yet paralyzingly aware of the consequences of doing so.

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Of course, this man's dilemma reminds us that even as liberalism once based its claim for punitive justice on a 'right of self-protection,' the 'sanctity of property,' 'public safety,' and 'security,' it has always been deeply afraid of revenge. Liberal thinking, so to speak, has always shrunken from the anger of the one vengeful individual. The dangerous fury of the renegade,

or solitary “natural man,” is what first strikes its theoretical imagination. For Hobbes, the man without laws faces “continual fear and danger of violent death . . .” and is quick to “revenge all injuries. . . .” Yet even those who are disposed to act *rationally* for Locke, like the “Indian in the woods of America,” do so for fear of being like these others – the “savage” who threatened civilization for Mill,<sup>17</sup> the headhunter, coked-out dudes. Nothing is more frightening to the inhabitants of this culture than the “keening cry” of anguish from the wilderness, in Rosaldo’s phrase,<sup>18</sup> the person who lashes out and is scarcely ruled by reason. No system of thought is more aware that the man who takes the law into his own hands becomes an enemy, or that his vengeful anger is anathema to its governance. Everywhere such desperate individuals remain the objects of fear in America – the drive-by shooter who avenges a gang killing, the Unabomber, Timothy McVeigh, the disgruntled employee who shoots his co-workers, terrorists who must themselves seem vengeful and irrational.

Historically, this society has been equally afraid of its own collective vengeance – as much afraid of the vigilante as the outlaw, wary of lynching (though not enough) and of the retribution of the people assembled.<sup>19</sup> The “mob,” wrote Gouverneur Morris, “begin to think and reason. Poor reptiles! . . . [T]hey bask in the sunshine, and ere noon they will bite. . . .”<sup>20</sup> In the background, there has always been Hobbes’ fear of the “seditious roaring of a troubled nation,”<sup>21</sup> the threatening crowd or angry mob that must be kept at bay. And where the natural state in which men find themselves does provide a happier context for Locke and his American followers,<sup>22</sup> even he confesses his fear that here, “self-love will make men partial to themselves and their friends, and . . . that ill-nature, passion, and revenge will carry them too far in punishing others. . . .”<sup>23</sup>

Now, the rage in grief, the keening cry, and the angry mob together comprise the dread of liberal culture, and are at once its most basic ingredient. It is this above all that must be subordinated to rational principles of justice, transformed or bound in cautious legalism.<sup>24</sup> The mythical and philosophical ground of our liberal origins is rife with such accounts. The imperative of suppressing vengeful impulses, one might say, is so insistent that it is axiomatic, and it has come to be taken for what is natural, universal, and true.

If vengeance had been given over to the Lord in the Christian tradition, it would be left behind in a state of nature for Locke and supplanted by the rights of self-preservation and punishment. These ‘rights’ in turn are happily conferred upon the state by the ‘consent of the governed.’ In the broader tradition, vengeance would variously be set apart from reason and “judicial” punishment (Kant); dismissed as a matter of particular or merely ‘subjective will,’ and distinct from the retributive right of the state (Hegel); or transformed as by a “common consciousness” into a useful principle of collective authority (Durkheim).<sup>25</sup> While it is sometimes credited as a

source of self-respect, bravery, or public virtue in that tradition, it is always something lowly, merely personal or animal in us as well. In every liberal variation, there is the same supposition: Vengeance, that knot of grief and rage that demands a remedy and will not let go, can somehow be divided from its better aspect, detached, converted, or transposed into legitimate punishments, so that the rational law may proceed free from the taint of its pernicious effects. Precisely as Clytemnestra's Furies were compelled by the Goddess to accept a home in Athens,<sup>26</sup> the anger of vengeance is tamed in the philosophical expressions of our justice. But in the same breath it has been distorted, miscast, and almost certainly underestimated.

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Suppose, then, that we do not accept this characterization or the assumptions that inform it – that we do not imagine that vengeance is so brutish and irrational, or that it can be so easily tamed or kept out. Suppose that it is rather more insistent, intractable and clever – a devious agency capable of insinuating itself where it is least expected. This vengeance would make its way within the most rational constructs of justice, even or especially where the latter contrives to punish with precision and detachment. Then, the mythical idea that vengeance can be converted or set aside might seem suspicious. The liberal philosophy, and the justifications and practices of punishment that follow from it, would be open to a different scrutiny.

On this account, vengeance must seem less like the wild beast that has been barred from entry, and more like the uninvited guest at a masquerade. It appears among us in judicious disguise,<sup>27</sup> and while everyone wants to know who or what is hidden behind the mask, they can know it only by its representations. 'Blood,' 'honor,' 'God's justice,' even 'the rights of victims,' then, would appear as the valid traces of its public presentation. And if its true or universal nature could not be readily perceived, it would be recognized by its legitimating symbols – the sword in the lower hand of the figure of Justice; the apparatus of 'painless' execution; or in most every claim to have found the 'just measure' of punishment. In the effort of concealment, therefore, vengeance might appear as many things – the venting of righteous anger, the vindication of good, the condemnation of evil, the administration of just deserts, of right over wrong, getting even, a restoration of balance. Surely as it takes up residence within the rational terms of punitive justice themselves, its involvement with them would seem more intimate and complicated than before.

If it is in the nature of the liberal justifications of punishment to disavow vengeance, that is, it is in the nature of *vengeance* to *claim to be justified*, respectable, a thing of value. The very attempt to legitimate itself – its claim to reverse injury, or to 'right the balance sheets of justice' – is thus an