

The
Culture
of Vengeance
and the Fate
of American
Justice

Terry K. Aladjem



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Harvard University



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The Culture of Vengeance and the Fate of American Justice

America is driven by vengeance in Terry K. Aladjem's provocative account – a reactive, public anger that now threatens democratic justice itself. From the return of the death penalty to the wars on terror and in Iraq, Americans demand retribution and moral certainty; they assert the “rights of victims” and make pronouncements against “evil.” Yet for Aladjem this dangerously authoritarian turn has its origins in the tradition of liberal justice itself – in theories of punishment that justify inflicting pain and in the punitive practices that result. Exploring vengeance as the defining problem of our time, Aladjem returns to the theories of Locke, Hegel, and Mill. He engages the ancient Greeks, Nietzsche, Paine, and Foucault to challenge liberal assumptions about punishment. He interrogates American law, capital punishment, and images of justice in the media. He envisions a democratic justice that is better able to contain its vengeance.

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I therefore left the problem of the basis of the right to punish to the side, in order to make another problem appear, which was I believe more often neglected by historians: the means of punishment and their rationality. But that does not mean that the question of the basis of punishment is not important. On this point I believe that one must be radical and moderate at the same time, and recall what Nietzsche said over a century ago, to wit, that in our contemporary societies we no longer know what we are doing when we punish and what at bottom, in principle, can justify punishment.

– Michel Foucault, *Interviews*, 1966–1984

That man be delivered from revenge, that is for me the bridge to the highest hope, and a rainbow after long storms.

– Friedrich Nietzsche, *Zarathustra* II “On the Tarantulas”

Hardening them to disgrace, to corporal punishments, and servile humiliation cannot be the best process for producing erect character.

– Thomas Jefferson, August 4, 1818

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Preface

When I began this project I had no idea how colossal it would become or that it would so completely change my view of America. For nearly a decade it has made me rethink our foundations and reassess our driving passions, and it has been something of a personal odyssey as well. Some time ago, in my second or third year of teaching a course called "Prisons and Punishment" at the University of Massachusetts, Boston, my colleague Jennifer Radin and I arranged what we thought would be an instructive and highly civil debate about the death penalty. This being Boston, I expected the class to be roughly divided on the topic, if anything fewer for than against, and that arguments on both sides would emerge quite naturally.

To my surprise, the class irrupted. Those who supported the death penalty vastly outnumbered their opponents. At first I was prepared to write this off as a matter of campus demographics, but it struck me that something was terribly wrong. The arguments on the one side were not so much arguments as they were expressions of outrage. The students on the other side cowered, and as I tried to fill in and help them make their case, to venture the usual concerns about human dignity or compassion, my arguments seemed hollow and fell completely flat.

In that moment I had made a discovery. America was not what I thought it was. The debates that had traditionally divided it were no longer made of the same stuff. Suddenly it was clear that something frightful was moving beneath the surface. Human rights, the rule of law, the Constitution, had almost nothing to do with what these kids thought about "justice." Instead it seemed that they had all been victims, or knew victims of violent crime, or were wholly identified in this way even if they didn't. Not only did they lack compassion or any concern for the rights or person of the offender, but their unseemly outbursts were openly, and almost entirely, about revenge.

This, of course, would hardly seem shocking in the years to follow, and that early encounter proved to be an indication of things to come. Soon there were "victims' rights" advocates everywhere. The polls told us

that nearly 80% of Americans supported the death penalty. The law itself became increasingly open to expressions of vengeful sentiment, from the Omnibus Crime Bill and the War on Drugs and Megan's Law, to victim impact statements and mandatory sentences. "TV justice," as I had begun to chart it, was concerned with little else. On shows like *COPS*, on Court TV, and in virtually every crime drama, a fictive, compensatory American sense of justice had made its way into the public consciousness – it would soon find a corollary on millions of "true crime" Web sites. At least since the beating of Rodney King, the agents of law enforcement had internalized that justice to such a degree that *real* justice, like the Miranda warning, seemed only to be an annoyance. It was this same shadow justice, it appeared, that set the stage for the Bush administration's tactics after 9/11 – to get the terrorists "dead or alive," with contempt (as at Guantánamo or Abu Ghraib) for the rights of anyone who got in the way.

But where had this vengefulness come from? How had we gotten this divided sense of justice? Why were we now so comfortable with the apparent contradiction?

To answer these questions about America, it was clear that I would have to go head to head with the tradition. I would need to examine those liberal theories of justice, punishment, and law that had gotten nowhere with my students, to see why they were deficient. This would mean examining the very idea that "rational justice" like ours arises with the taming or transformation of revenge, since that now seemed to be in question. This was the problem that I first presented to Harvard Law School for the Liberal Arts Fellowship that would launch my inquiry. I proposed to look at the practice of the death penalty and the deep controversy surrounding it in the context of that tradition. As a political theorist interested in the founding of our laws, my search for the roots of the problem would lead initially to Locke.

Are people naturally endowed with a "right of punishment" as Locke surmised, I wondered? Is that right truly derived from reason and not to revenge? As members of society, do we consent to give that right over to the state, and is the state then the bearer of a right of punishment that is free of revenge? Can vengeance and justice be so easily set apart? Is vengeance left behind in a "state of nature," or is there something amiss in this accepted formulation? That nice, reasonable argument seemed to account for much in our approach to punishment and the constitutional thinking of our founders, but it could hardly explain or accommodate the anger of my students. The rational calculus that leaves vengeance to the side now seemed unsupportable in light of what they had taught me about the deeper motive and how it animates thinking about justice. This presented a paradox at least, or perhaps a fatal flaw at the foundation of democratic thought. I would raise this question in several papers on "Revenge and Consent," and formidable scholars, like the late Judith Shklar, encouraged me to pursue it.

It was soon apparent, however, that this inquiry only scratched the surface. I left the Law School still wondering what it was that had been left out of the account, what indeed was seething underneath. The trouble with vengeance clearly concerned a great deal more, and if it was not something rational that explained the way we punish, then what, exactly, was the nature of the irrational demand it had placed on justice?

In pondering this, I was reminded that the problem, at least as it surfaced in America, always seemed to concern murder – the punishment of death for the loss of a life. Did that mean that the burden of assigning our “right of punishment” to the state had, in some sense, meant suppressing or giving up our grief? Is that what so troubled my students, that the legal process of judgment and punishment failed them at this level, or that the society had lost the means or its ability to mourn? And if there was anger, indignation, and grief in their reaction, did I not owe it to them, and to the victims they championed, to address the question on the terms of those emotions themselves?

The problem clearly concerned something about emotion and the rational structures of the law. There were plenty of theories about “emotion” impinging on rational thought in psychology and philosophy. But there was a more particular problem here, an *affective reaction* to collective loss that was operating throughout the culture. It seemed to me that feelings of loss, or “affects of broken attachment” as I came to call them, were making specific demands on justice. It now appeared that vengeance, as a societal mechanism, must be a powerful and psychologically necessary means of binding unendurable memories of loss – the loss of loved ones, or of victims more broadly. It appeared that all the language of redress, recompense, or rectification on behalf of victims, had this at its core. I now suspected that the “retrospective interest” that is usually associated with “retribution” by philosophers contained a more complicated and more pressing need to effect time and memory in the face of grief. Upon reflection, it seemed that virtually every society had some way, either by ritual or religion, to resolve the “rage in grief” (Rosaldo) that is fueled by such powerful memories. Each had a way to inscribe the painful past within a moralizing scheme of explanation. It appeared that this, or rather the lack of it, must be the source of the difficulty in ours.

I then read all I could about this phenomenon in other cultures. René Girard had noticed something similar to this in *Violence and the Sacred*, but the specific problem of memory and grief, as I now understood it, introduced something new. Those grief-driven memories would need to be resolved here, as they have elsewhere, in terms that make *moral* sense of the loss. If violence had been bound in rituals of sacrifice for Girard, and we have none to speak of here, then vengeance of this order would have to be resolved in punishments that “make a memory” (in Nietzsche’s phrase) but also offer vindication. The aim of punishment that had motivated my

students was driven by a kind of self-deception, a wish to make it fulfill this function, and to remake the past as something justified. In the vast majority of American movies, on television, and in almost every novel (since they all seemed to involve a death) I noticed that the culture was replaying this theme over and over again – denouncing, displaying, and punishing the latest horror, and trying to reconcile mortal loss within a framework of good and evil.

The problem of revenge had thus led back to the problem of “theodicy” as Leibniz had first understood it, and as Weber adapted it for a secular world. This, in Weber’s view, is the social and psychological need to rationalize reward and suffering. It is what religion has always done in binding vengeance and, it seemed to me, what our secular society and its justice now fail entirely to do. This must be why so many have returned to religion in America, and why religion (at least on the Christian right) has taken such a punitive turn. It must be why people look to punishments like the death penalty with so much zeal and so much talk of hell and damnation. In considering this, then, an extraordinary hypothesis presented itself: If our world is such a world, and it has lost its capacity for this sort of explanation, could we have reverted to the vengeful prototype? If American justice and other such modern things fail to rationalize suffering or to account for good and evil, has vengeance, in some sense, come to take its place?

In the course of my inquiries, I had puzzled over an American impulse to “restore morality” through punishment, as it is called for by certain retributivists and so-called revenge utilitarians. There are many who want to bring back the anger or “disgust” of punishment to that end – my students had been nothing if not *morally* indignant. Might this now impose religious demands, or rather, the demands of a proto-religious and vengeful theodicy upon our system of justice? Is this why our presidents – Reagan, Clinton, and notably George W. Bush – now speak so openly of evil? And if vengeance, with its need for self-justification and vindication, is also full of deception, can it truly be *moral*? Indeed, where it is driven to alter the past, or insists on the righteousness of punishment or victory at any cost, is it not remarkably *amoral*, authoritarian, and substantially at odds with the democratic interest in “truth and justice”?

This, then, was the argument that I had failed to make to my students, the intuition that must have been palpable for Locke and our founders: Vengeance insists on its own righteousness – no matter what. Fine retributive arguments (Kant, Hegel, etc.) could scarcely mask the vengeful sentiment that secretly animated their aims. To accept its claim of moral or factual certainty, and to give it expression within punishment, is to permit something absolutist, something profoundly undemocratic, to become dominant within our justice – as it has clearly begun to do. The trade-off in imposing capital punishments, mandatory sentences with their facile denunciation of “evil” today, is thus not between “concern for the victims”

and some misplaced “compassion for their tormentors,” as my students would have it, but between *vengeance* and *democracy itself*. This is the choice that our society now must make, and that it has so far made rather badly.

Now it was clear that I could not address this argument only at the level of the theories of punishment (retributive and utilitarian), though I would certainly have to engage them. It would not do to rehash the history of American vengeance, from the revolution to frontier justice, to lynching, vigilantism, the displacement of native peoples, and the Civil War; to racial backlash and so many military encounters, although this is relevant background that others have covered. It would not be enough to trace the punitive practices of the law or the resurgence of capital punishment and now of torture, though these things clearly inform my inquiry. It could not just be about the petty revenge that seems so commonplace in America – from the vindictiveness of reality TV, to soap operas, gangsta rap, and road rage, though this is part of the phenomenon in question. It would be too much to present the evolution of revenge, from its biblical to its modern variations as Susan Jacoby has done, though it is important to frame the question here too as a matter of Western experience. It would have to be an argument made with all of this in mind, a retracing of the problem that both demonstrates how vengeance has become a distinctive force in America and why it is so troubling for our democracy in particular. This is how I make the case:

In the first chapter, I take issue with those who claim that we are suffering from a moral crisis *as such* in America. I suggest that our crisis is rather more about vengeance, the wish to rectify harm, and the particular want of meaning that accompanies it. I suggest that widespread dissatisfaction with liberal democratic justice intensifies this impulse, and that it is expressed in increasingly punitive terms. This is evident in the anger of American politics (particularly of the right toward so-called liberals), in the response to the attacks of 9/11, as in the depictions of “justice” broadly in the media. I trace this contemporary problem to a failure within the liberal tradition to resolve the problem of revenge, suggesting that Locke and the American founders had swept it under the rug. They, in turn, had relied on an old assumption that vengeance can be tamed by reason or transformed into justice. I explore this in several iterations, from Aeschylus to the Christian proposition that vengeance belongs only to God (Romans 12), in the “myth of enlightenment” (Adorno and Horkheimer), and in the philosophies that seek to justify punishment as a matter of reason. I engage Nietzsche to suggest that the rage in grief and the need to rectify memories of horror were not then, and are certainly not now, readily contained by these more rational resolutions of punitive justice. On the contrary, because these rational formulations have failed, vengeance reasserts itself in a way that now fuels a dangerous political reaction and threatens to remake justice itself.

In the second chapter I demonstrate how America has been reinventing its justice in just this way, on TV and radio talks shows, and in reaction to crime and terrorism. Conservative intellectuals (Stanley Brubaker, George Will and Dan Kahan, James Q. Wilson) call for a return to harsh or shaming punishments and the reinvigoration of moral disgust. Yet in this, I argue, the culture precipitously reconstitutes persons as objects of blame. In the courtroom, and in virtual simulations of crime and justice, the public reads in what it wishes, obsesses over bloody details, and interjects a vengeful story line replete with victims and villains and satisfying conclusions. This cultural obsession is no simple intrigue with crime and violence, I insist, but an expressly American need to generate moral meaning – to rationalize matters of pain, death, and cruelty within a moral scheme that is fundamentally religious. It is, I argue, an attempt to produce a secular theodicy of good and evil within a democratic society where such things are highly problematic. In America, revenge against “evil” people (sociopaths or terrorists) thus becomes the hallmark of a dangerous proto-religious impulse. It may look like a more benign return to religion or “moral values,” but it now stands in for both with potentially disastrous consequences.

I have suggested that the vengeful effort to alter the past and “make memory” is a matter of self-deception – yet the danger this poses to truth and justice still needs to be established. In a third chapter, I demonstrate how this works and look beyond the American case to illuminate it. In many defining instances (Oedipus, Othello, Hamlet), vengeance has had the character of a performance driven by delusions of self-righteousness. I argue that Western notions of identity (a tradition of sovereignty) is both informed by and threatened by this. I take up the play of eyes that one finds everywhere in representations of revenge to explore the matter – “an eye for an eye,” making an offender “see.” I turn to Oedipus as an archetype of this problem of subjectivity, and to his own self-punishment as a paradigmatic instance of revenge. I take up the question of what “must be seen” in revenge (Othello) and the need to “make another see” (Kafka’s punitive device) with an eye to contemporary instances of the same thing. I consider why masks are so important to the self-deception of vengeance. I weigh the need for audiences, spectators, or legitimating publics in them. I expose the need to manipulate audiences to states of pity, as in the eighteenth-century executions at Tyburn, England, and how it relates to the wish to “excite pity” in tragedy for Aristotle. I consider the special nature of the “catharsis” in punishment, how it may come to supplant moral feeling, and how it is operative in the demand for “closure” that Americans seem so quick to place on punishment today.

Finally, in a fourth chapter, I show how this vengeance is essentially authoritarian and a threat to American law and to democratic justice as such. Democracy has at times indulged vengeful tendencies, yet its interest in rights, liberty, and the fallibility of the state stands opposed to them. Now,

however, when the Supreme Court asserts the state's "interest in the finality" of judgment, especially in the verdicts of capital cases, it affirms a vengeful, self-certain kind of authority with pretensions to infallibility. I weigh this by examining the successful 1997 death row appeal of one Roy Criner, and by reviewing the claims of his zealous prosecutors. I suggest that a certain skepticism or openness to doubt – beyond the legal test of "reasonable doubt" – is the best recourse against a vengeful authority in such cases. Even or especially a punitive apparatus that is armed with DNA testing and modern forensic techniques should recognize that it might fall prey to vengeful distortions.

In the end, I argue that holding the lawbreaker accountable, where such tensions prevail, requires something special. Its proof against him must be tempered by democratic doubt or skepticism toward state power of this kind. This accountability must have a special obligation to truth and understanding (recalling the South African experience of the TRC). Democratic punishments must thus do their best to foster responsibility or *democratic* accountability. Because they should not be the repository of a self-certain (vengeful) public morality, they can neither redress the public anger nor mollify private grief. The case against vengeance and irrevocable punishment therefore presents itself as a matter of democratic necessity. I maintain that if we are to rescue democratic justice from our culture of vengeance, the way that we punish and act toward others as a democracy must be substantially reconceived.

A Note on Liberalism

It is a difficulty that so much of this book is posited against the background of liberalism and that I aim only indirectly to make that complicated tradition clear. But nothing begins in a vacuum, questions of meaning arise in contexts of meaning, and liberalism, roughly speaking, is ours. Of course, to say that it is "ours" in a society that boasts of its diversity is also problematic. It can only mean that I refer to sensibilities recognizable to some, shared by many, or meaningful at moments to all.

When I refer to "our liberalism," then, or sometimes to the liberal tradition, liberal democracy, or secular society, I am referring to a distillate of three ingredients: The first is the familiar legacy of political theory from Hobbes to Locke; from Mill to Rawls, which sets out terms that encompass the debates between our own political liberals and conservatives – what should be public or private, the relationship of citizen and state, the idea of a rational subject or sovereign individual, the extent and limit of his or her freedoms in association with others. The second is that host of laws and institutional practices that comprise the constitutional system of American law and justice – terms of suffrage, representation, individual rights and liberties, and practices of punishment – that are much indebted to the first. The third is the effluence of norms, images, and assumptions that shadow, reproduce, and often distort those traditions in the broader culture and its media. "Liberalism," in these dimensions, is necessary to, if not identical with, "democratic" practices, or at least those of our particular democracy.

Admittedly this is no pure or philosophically precise definition, and it may frustrate the political theorist or legal scholar who aspires to such things. Exploring that frustration, however, is the point and it would beg a question I want to pose about theory and its relation to the social world to provide yet another theoretical exposition that reduces the muddle. Rather, I am writing in the troubled margins of that tradition to question their placement, and because it is necessary to do so if one is to discover its faults. To understand the problem of vengeance in America, that is, one must look

critically at its liberal resolutions, and with suspicion on the western myths and traditions that have long informed them.

If there is anyone to whom I address this inquiry, therefore, it is Americans who are aware of the worldly dilemmas posed by this tradition and who appreciate its ambiguities even as they value it, whose assumptions have been challenged, say, by Nietzsche, and who might have him in mind when they think about politics or watch TV. These are the good citizens, I suspect, who will help us to discover what sort of punishment is best suited to a pluralist democracy (and not just a liberal one), and who may rediscover, lest we forget, why it should not be vengeful.

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