



# REVENGE VERSUS LEGALITY

WILD JUSTICE FROM BALZAC TO  
CLINT EASTWOOD AND  
ABU GHRAIB



KATHERINE MAYNARD, JAROD KEARNEY  
AND JAMES GUIMOND

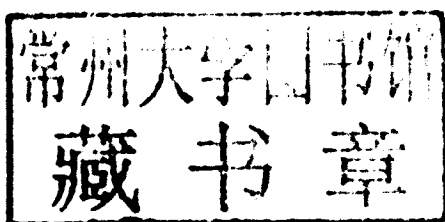
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First published 2010  
by Birkbeck Law Press  
2 Park Square, Milton Park, Abingdon, Oxon, OX14 4RN

Simultaneously published in the USA and Canada  
by Birkbeck Law Press  
270 Madison Avenue, New York, NY 10016

*Birkbeck Law Press is an imprint of the Taylor & Francis Group, an informa business*

© 2010 Katherine Maynard, Jarod Kearney and James Guimond

Typeset in Garamond by  
Taylor & Francis Books

Printed and bound in Great Britain by  
CPI Antony Rowe, Chippenham, Wiltshire

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*British Library Cataloguing in Publication Data*

A catalogue record for this book is available from the British Library

*Library of Congress Cataloguing in Publication Data*

Maynard, Katherine.

Revenge versus legality : wild justice from Balzac to Clint Eastwood and Abu Ghraib / Katherine Maynard, Jarod Kearney, and James Guimond.

p. cm.

ISBN 978-0-415-56016-0

I. Criminal justice, Administration of. 2. Vigilantes. 3. Rule of law.

4. Terrorism—Prevention. 5. Revenge. I. Kearney, Jarod. II. Guimond, James.

III. Title.

K5001.M39 2010

809.3'93556—dc22

2009044981

ISBN13: 978-0-415-56016-0 (hbk)

ISBN13: 978-0-203-85437-2 (ebk)

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# Acknowledgments

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We would like to thank Mike Britton for his drawings that capture the allure and danger of revenge. We are grateful for financial assistance from Rider University and for our supportive colleagues at Rider and at the Woodrow Wilson Presidential Library and Museum. Most of all, we would like to thank Michael, Heather, Arnold, Sophia, Katy, Laura, Pete, Gee (and Hoppy and Bob whose love of narratives remains an inspiration), and our extended families who supported our endeavor with thoughtful ideas and good humor.

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## Preface

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“Revenge! Revenge for Wanda!” rages Michael Palin in the film *A Fish Called Wanda* (1988). Mounted on a steamroller at an airport construction site, Palin confronts the film’s villain, Kevin Kline, who had earlier sadistically swallowed alive Palin’s prized pet fish, Wanda, for lunch. Now is it Palin’s turn for payback? The villain gloats; surely he will be able to outrun an avenger on a steamroller, but he’s wrong. His feet are caught in the hardening cement of the construction site’s tarmac. It’s a perfect example of poetic justice and revenge, and a relatively rare instance of a comic version of a serious theme.

Revenge is a powerful and attractive emotion. From revenge in Sherlock Holmes’ *Study in Scarlet* (Doyle 1930: 31) where “RACHE” (“revenge” in German) is scrawled in blood on the wall above a corpse, to revenge against races, Imperialist revenge, and revenge for the toppling of the Twin Towers, revenge takes many forms and shapes. Lynch mobs embrace it, ghosts do it, rogue cops enjoy it, and governments can authorize it. The rule of law is supposed to control it. The law is supposed to channel anger, hatred, and rage into legally sanctioned punishments.

Faded but still legible, a bumper sticker on a pick-up truck orders, “Never Forget 9/11.” This message, with its implied demand for some type of revenge, is obviously not a new sentiment, nor one that is uniquely American. Before 9/11 there was “Remember Pearl Harbor” and “Remember the Alamo.” The Serbs and the inhabitants of Ulster, for example, presumably also had similar sayings about their past and recent battles and “times of troubles.” But these are nations or communities with long histories of ethnic or sectarian conflicts, and so we were not surprised when they seemed trapped in cyclical waves of revenge, repression, and retribution. It is more worrisome when one learns, first, that two prisons in Iraq built by Americans—Camp Bucca in the south and Camp Ganci (part of Abu Ghraib)—were named after firefighters who died because of the 9/11 terrorist attack, and, second, that there are disturbing revelations about prisoners having been tortured and abused at these prisons as well as at Guantanamo. Not only are the firefighters’ memories being dishonored, so is the United States’

credibility as a modern, civilized nation whose citizens are, in the words of former President George W. Bush, “a lawful people.” “Modern” countries are supposedly removed from the cyclical trap of vengeance, yet when circumstances elicit powerful emotions in their citizens, these countries can easily fall back into the blood-feud mentality of old, at least for a time. So, when more disturbing news arrived about “extraordinary renditions,” and secret torture centers in Eastern Europe and elsewhere, it seems appropriate and timely to reconsider the subject of revenge and its relationship to topics such as justice, rationality, and modernity.

In 1983, Susan Jacoby wrote an excellent book whose title—*Wild Justice*—was taken from Francis Bacon’s essay, “On Revenge.” (We have used the same Bacon passage for our epigraph for Chapter 1.) As her choice of subtitle, *The Evolution of Revenge*, suggests, she presumed that the justice process was evolving to become “tamer” and less vindictive as many nations were abolishing the death penalty and public opinion disapproved of victims who insisted on dwelling on their injuries. “Justice is a legitimate concept in the modern code of civilized behavior,” Jacoby wrote; “Vengeance is not” (Jacoby 1983: 1). And she ascribed major exceptions to this rule—such as the American enthusiasm for capital punishment and vigilante films such as *Death Wish*—as motivated by frustration caused by the ineptitude or indifference of conventional justice systems. Nevertheless, she believed that such systems serve to remove private animus from the justice process and replace it with public retribution and punishments.

Our presumption is quite different. We emphasize that justice and revenge are coded discourses whose keys and patterns may be discerned particularly well by narratives—since revenge is inseparable from narrative. Analyzing such narratives, mainly stories, novels and films, we find much evidence of wildness, and we believe that the boundaries between public retribution and private animus are often porous. Like some of the characters portrayed by actors such as Clint Eastwood and Gene Hackman, the wilder elements in modern societies may wear suits and ties and occupy positions of power and authority, but they barely conceal their contempt for civilization and legality, their preference for violent reprisals, and the difficulty they have in controlling that violence. Add the element of emotion aroused by particularly large-scale or heinous acts, and the line between civilized retribution and barbaric vengeance becomes as blurred as the distinctions of civilization and modernity.

This dispute between legality and wild or vigilante justice, between the state’s power to enforce retributions and individuals’ desires to revenge themselves for injuries they have suffered, is the main theme of this book. The conflicts that result can be complex and involve serious ethical and legal concerns. Moreover, the desire for revenge can be a powerful communal passion as well as an individual one. Tribes, communities, nations, and even empires want to “strike back” when injured or insulted, and sometimes they

do this by violating their own laws or international ones. A secondary and often related theme deals with the causes and consequences of injustice. Legal justice is a delicate and vulnerable process. It can be disrupted or subverted by hatred and fear, and by factors such as racism, ethnic and class prejudice, and also by incompetence or corruption by participants. When such factors discredit legal justice, groups or individuals may be motivated to “take matters into their own hands” and consider vigilante or extralegal justice an attractive alternative.

To deal with these issues in a broad but in-depth way we have selected a range of nineteenth- through twenty-first-century narratives. We have included representative texts from four cultural eras: Romanticism (Balzac and Le Fanu), Realism (Twain and detective stories), Modernism (Forster and Wright), and contemporary literature and films as well as political issues (Brink, *Mystic River* (2003), *Unforgiven* (1992), Iraq War, etc.). We give each text social and historical antecedents, particularly any factors that involve revenge and make it seem difficult to attain a just outcome according to the rule of law and its normative standards. As our table of contents suggests, the texts we have selected have an ascending degree of difficulty in this regard. Our Romantic and Realist works deal with relatively simple revenge and justice problems such as homicides (all three detective texts), judicial corruption (Le Fanu), criminal masterminds (Balzac), and slavery, racism and the science of fingerprinting (Twain). Our Modernist texts are more complex and involve issues such as racism and the power of the media (Wright), and imperialism and the power of colonial discourse (Forster) that make justice problematical. This pattern culminates in our final chapters on state (i.e., government-instigated) terrorism in Brink’s *A Dry White Season* (1984) and governmental lawlessness in post-9/11 America since we consider that form of crime or lawlessness the most serious and insidious threat to the rule of law: vigilante justice masquerading as legality.

In the final chapters on Brink’s novel about apartheid South Africa and America’s twenty-first-century policies we analyze how revenge and the violence it encourages can be a seductive but ultimately self-destructive political force. As part of this analysis we discuss opposition to the redemptive lawlessness itself, and why it has taken different forms in the two countries. In South Africa this lawlessness was chiefly associated with the National Party’s vision of Afrikaner history, and Brink and other dissident Afrikaner intellectuals opposed it by creating an alternative history and national identity that denied the legitimacy of apartheid. In the United States, we employ theologian Walter Wink’s concept of the myth of redemptive violence to analyze how this myth, that originated mainly in the popular mass media, has furnished America with a vision of itself as a nation of vigilante superheroes, many of whom believe they can transform chaos into order by becoming as violent as the evildoers they are attacking. Rather ironically, since he was a major example of this myth in his spaghetti westerns and Dirty Harry roles,

Clint Eastwood has emerged as one of its chief critics by making films such as *Unforgiven* and *Mystic River* that deny the efficacy of violence. Vigilante violence in particular is portrayed in both films as being deeply flawed, and torture is depicted in *Unforgiven* as being unequivocally evil.

In contrast, although understandable to many, the US government resorted to redemptive violence after 9/11. In both Afghanistan and Iraq it was a kind of payback that occurred either as public, military violence or as the more secretive, clandestine violence of torturing prisoners, “extraordinary renditions,” “extrajudicial executions,” and other practices that violate US and international laws and treaties and the Geneva Conventions. Among the negative outcomes of these practices occurring at Abu Ghraib, Guantanamo and elsewhere that we analyze in this chapter, the one that is perhaps most notable is the way in which they have inverted the justice process. Instead of putting captured terrorists on public trial and revealing their guilt to the world, the American government has itself become a kind of defendant or prime suspect being investigated by a global coalition of lawyers, journalists, and human rights activists. For many Americans this was a new and disturbing development. In the legal courts of the nineteenth and twentieth centuries there were hard fought battles to dismantle institutional vengeance. For many decades Americans took it for granted that their nation was a liberating, civilizing, humanitarian force in the world. Now Americans have to find solutions to regain that vision of America.



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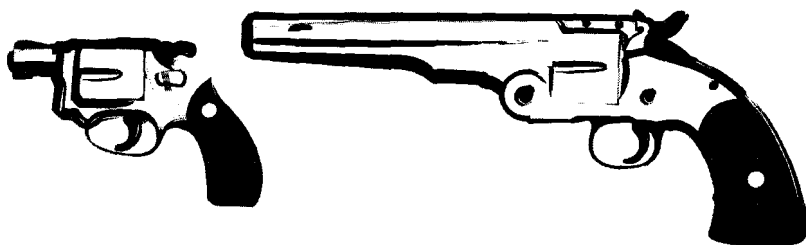
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## Chapter I

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# Introduction

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Revenge is a kind of wild justice, which the more man's nature runs to the more ought law to weed it out.

(Sir Francis Bacon, "On Revenge," 1625: 15)

It certainly may be argued, with some force, that it has never ceased to be one object of punishment to satisfy the desire for vengeance. The argument will be made plain by considering those instances in which, for one reason or another, compensation for a wrong is out of the question. ... In all these cases punishment remains as an alternative. A pain can be inflicted upon the wrong-doer, of a sort which does not restore the injured party to his former situation, or to another equally good, but which is inflicted for the very purpose of causing pain. ... The statement may be made stronger still, and it may be said, not only that the law does, but that it ought to, make the gratification of revenge an object. ... If people would gratify the passion of revenge outside of the law, if the law did not help them, the law has no choice but to satisfy the craving itself, and thus avoid the greater evil of private retribution.

(Oliver Wendell Holmes, Jr., *The Common Law*, Holmes 1992: 247)

"I'm going to kill him, Katie. Somehow, I'm going to find him before the police do, and I'm going to kill him. ... And don't you worry whether I'm up to it, baby. Daddy is up to it."

(Jimmy Marcus speaking to his daughter's corpse in *Mystic River*.)

Lehane *Mystic River* 2000: 289)

## Revenge, retribution, payback

As even a brief excursion into Google will illustrate, revenge is a subject that is both extensive and debatable. In response to a recent inquiry, “revenge quotes,” the search engine claimed to have millions of entries available. BrainyQuote, CoolQuote, and their competitors offer opinions and definitions by the dozens or the hundreds from a plethora of sources. Moralists, celebrities, religious leaders and sacred texts, philosophers, social scientists, and humorists, all have their contributions—many of which are wise and few surprising. Mahatma Gandhi and Martin Luther King, Jr. did not approve of it, which is to be expected, whereas Joseph Stalin enjoyed it immensely, also not a surprise.<sup>1</sup> The Bible famously gives us a choice: “Eye for an eye, tooth for a tooth” (Deuteronomy xix: 21) versus “Love your enemies, do good to those who hate you” (Luke 6: 27–28).

Luke 6 may seem ethically superior by modern standards, but Deuteronomy xix may be a better plan for evolutionary survival. According to Animal Behavior scientists, some species are so adept at attacking their enemies that they are called “punishers,” a varied group that includes blue-footed boobies, moorhens, elephant seals, and side-striped jackals. Primates, such as chimpanzees, have larger brains and use them to plan their punishments (surprise attacks) and carry on what might be called feuds or vendettas (attacking an attacker’s relatives) (“Revenge Motivates”). Anthropologists study how “blood revenge” is an impetus for feuds, violence, and wars in exotic past and present “tribal societies” in places such as medieval Iceland, the Balkans, New Guinea, and the Middle East. Instead of being an arcane and rather old-fashioned academic specialty, this subject began to seem surprisingly timely when troops from the United States, Great Britain, and other nations were sent to impose peace and/or democracy on nations where tribal loyalties and concepts of blood revenge still seemed powerful or capable of being revitalized despite the veneer of modernity that had been imposed by rulers such as Tito or Saddam Hussein. Hollywood and popular culture publishers have given us hundreds or perhaps thousands of pulp fictions and films whose heroes, more inspired by Deuteronomy than by Christ, return from the dead or escape from unjust imprisonments, like the Count of Monte Cristo, to avenge the injuries they have suffered. Major characters in many canonical, high-culture operas, dramas, and novels are just as concerned with avenging wrongs suffered by themselves or by others: Verdi’s *Rigoletto*, the Greeks’ Orestes cycle, the Elizabethans’ revenge tragedies, most notably Shakespeare’s *Hamlet*, and of course Cervantes’s Don Quixote who believes his “profession is none other than that of helping those who cannot help themselves, avenging those who have been wronged,” especially ones wronged by “haughty foes” (Cervantes 1951: 179).

Near the end of *Mystic River* there is a scene in which Jimmy Marcus confronts his erstwhile friend, Trooper Sean Devine of the Massachusetts

State Police, at dawn on a deserted street. This scene dramatizes the theme implied by our choice of the Francis Bacon “wild justice” quote for our title and epigraph and the quotes from Holmes and *Mystic River* we have selected for this chapter. For what this scene reveals are the conflicts between the extralegal, vigilante, or “wild justice” based upon revenge and driven by passion and grief, represented by Jimmy Marcus versus the tamer, cooler, more rational and institutional legal justice practiced by Trooper Devine. As our table of contents suggests our book does not deal with wrongs or injuries inflicted by kings, queens, windmills, or amorous dukes. Instead, it is focused on nineteenth-, twentieth-, and twentieth-first-century narratives involving modern societies with competent police—such as Balzac’s Detective Gondureau, and Lehane’s Sean Devine. These narratives are located in nations and empires that have courts, judges, and legal systems that can supposedly avenge wrongs and thus make what Holmes called “private retribution” unnecessary. Yet in every narrative there is some flaw in the justice system that is either criticized or must be corrected by some form of extralegal justice. But extralegal justice also can have flaws, and “private” revenges or retributions can be as disastrous as those imposed by corrupt judges or biased courts. Judge Richard Posner has summarized these flaws in his comments on revenge as a motive for seeking justice:

As soon as centralized institutions for the enforcement of law emerge, vengeance ... comes to be regarded as an archaic and destructive passion. This is partly because exact retaliation does not work well. It is not feasible for all wrongs. ... It is not adequate in situations where the aggressor can count on avoiding retaliation much of the time. ... And a commitment to limited retaliation is hard to stick by in the highly emotional circumstances in which revenge is administered. So vengeance falls out of favor, not only in ethics but in law, where taking the law into your own hands becomes a crime.

(Posner, *Law and Literature: A Misunderstood Relation*, 1988: 31–32)

However, another plausible reason for this insistence that retribution and revenge is the state’s prerogative (exercised through its governmental agencies) can be related to Weber’s claim that “legal coercion by violence is the monopoly of the state” (Weber 1954: 14), and that nation states are unwilling to share this monopoly with mere citizens, no matter how much they may have been wronged or treated unjustly.

In the confrontation between Jimmy and Sean in *Mystic River*, on a street in Somerville, Massachusetts, both men have done what they sought desperately to achieve, and both have failed. Jimmy has kept his vow to kill the man he thought was his daughter’s murderer, but it was the wrong man. Sean has arrested the actual murderers, but he was a few hours too late to prevent the death of Dave Boyle. There was no middle ground or

compromise that could have saved Boyle from the lethal chain of coincidences, mistakes, and circumstantial evidence that destroyed him as Marcus and Devine each followed their own ideas of justice to their bitter and logical conclusions.

One such compromise was suggested a century earlier by another Bostonian, Judge Oliver Wendell Holmes, Jr. As our quote indicates, he was willing to sacrifice some of the law's rationality and logic so that it could accommodate individual and communal passions like Jimmy Marcus's—the kind of judgment that has caused Holmes to be praised as America's greatest “realist” jurist by his admirers and condemned as its worst “cynic” by his critics. For despite the hundred years in time and the differences in class that separate them, Holmes, the Cambridge Brahmin, and Marcus, the Boston Southie, might understand one another. Though Holmes the jurist would condemn Marcus's course of action in *Mystic River*, his murder of Dave Boyle to avenge the death of his daughter, Katie, he might have understood Marcus's “craving” for revenge. Hence, Holmes' insistence that the legal justice system, what he calls the “law,” must act as the agent for the passions of persons needing revenge. In addition, both Holmes and Marcus would almost certainly have agreed that Bacon's prescription was not a realistic one, that the desire for revenge is often so powerful that it is naïve to believe it can be uprooted by the law as if it were a weed.

The scene from *Mystic River* can be considered an emblem of the relationship that exists between revenge and legality. By bringing Jimmy Marcus and Sean Devine together at the moment of their estrangement, when Devine realizes Marcus has murdered Boyle, it eloquently symbolizes not only the conflict between Marcus's extralegal or vigilante justice and the kind of lawful procedure that Sean Devine has used to discover who really killed Marcus's daughter, but signals also how the two men are inextricably linked by their shared past and their future hostility with one another. For the street where they are standing, the place where both have instinctively returned at this moment of crisis, called Gannon Street in the novel, is the street where Dave Boyle was abducted by two pedophiles when they were all eleven years old—an event that, as Marcus realizes, both changed and inextricably intertwined their lives. Moreover, behind the two men, linking them visually, is a bridge, the US1-Tobin Bridge over the Mystic River where Jimmy “buried” Dave. Analogously, as this book will show, there often are inescapable patterns, linkages, and connections—as well as conflicts—between the legal and extralegal paths to justice that the authors we have selected describe.

## **Special crimes and wild justice**

One such pattern is the way in which certain kinds of crimes, mysteries, injuries, and transgressions seem to incite extralegal responses particularly

strongly. Whether they occur in historical or fictional circumstances, these are the crimes or injuries that appear so mystifying or disturbing that ordinary, conventional legality—the usual, normative police procedures, judges’ rulings, lawyers’ motions, and jury verdicts—seems inadequate. A Sherlock Holmes or a Dirty Harry is needed to solve or avenge such a crime; cruel or unusual procedures or punishments are called for; the law must be bent, broken or at least supplemented to achieve a just revenge. In *The Secret Agent*, Conrad describes Scotland Yard as having a “Special Crimes Department” (Conrad 1924: 83), a fictional version of the actual C.I.D. (Criminal Investigation Department). Borrowing Conrad’s terminology, and excluding cases in which it is the injured party that seeks the revenge, we have focused on four categories of Special Crimes.

### ***Special crimes: locked rooms and magic bullets***

First, there are crimes that confound our conventional sense of space, time, and/or agency. Though the examples we have selected and analyze in Chapter 2 are fictional—detective narratives by Doyle, Christie, and Glaspell, all involving revenge as a motive—there are enough unsolved, or semi-solved, actual crimes in this category to make it significant. The assassinations of Martin Luther King, Jr., President John F. Kennedy, and Prime Minister Olof Palme of Sweden, to name only three prominent examples, all contain enough mysterious details and inexplicable facts—such as the notorious “magic bullet” in the Kennedy case—to keep conspiracy theorists busy for decades. The arrests, convictions, and even the confessions in the three cases only served to undermine the credibility of the legal systems that produced them. In contrast, our fictional detectives solve their cases with exemplary certainty, and this certitude contributes to the moral authority they exercise by deciding that the homicides that occurred were justified and the victims deserved to die.

### ***Special crimes: crimes against kin***

Second, there are the crimes against kinship, especially children or parents, as in *Mystic River*, but sometimes against extended family members or close friends; for example, William Munny’s ferocious revenge on the town of Big Whiskey in Clint Eastwood’s *Unforgiven*, after its sadistic sheriff kills his friend, Ned Logan. Or it may even—in the case of Glaspell’s “A Jury of Her Peers”—be an attack on a pet. Like Munny or Jimmy Markus, persons seeking blood revenge for these crimes are not much interested in legal rules or niceties such as evidence, fairness, or extenuating circumstances. Impelled by grief and anger, they want revenge, and they want it to be deadly. A student in a class, who had discussed *Mystic River* and Harper Lee’s *To Kill a Mockingbird* (1960), was asked what she would do if someone harmed a “dear

family member.” Would she hire Jimmy Markus or Lee’s idealistic lawyer, Atticus Finch, to remedy the situation? If the family member were a distant cousin, she’d hire Finch because he “knew the law,” she said, but if someone harmed her seven-year-old son, then she would hire Jimmy. “He’s the kind of man who’d get the job done,” she said, implying that homicide was exactly the kind of “job” she had in mind. Nor are some persons seeking this kind of revenge influenced by concerns for their own rational self-interest or even their own survival. Thus Ben Du Toit, speaking of the South African police who killed his friend, Gordon Ngubene, in Brink’s *A Dry White Season*, tells his daughter that someday, “we’ll have all of Gordon’s murderers lined up against a wall” (Brink 1984: 202, 208), a judgment that, in apartheid South Africa, leads to Ben’s own death.

### **Special crimes: crimes against symbolic places and persons**

Third, there are what we call symbolic crimes. These are attacks on persons, places, or objects that are considered so significant a part of a community’s identity that an attack on them is considered an assault on the entire community itself. The community in question may be a nation, a religion, a political party, or even an empire. What matters is that the attack is seen as injury to something that is—to use religious terminology—“sacred,” and, therefore, it must be avenged—either by legal or extralegal means—or else the community will be irreparably weakened. A major recent example of this kind of attack would be the explosion that wrecked the Shiite Golden Dome shrine in Samarra in February 2006, an event that led to dozens of Shiite attacks on Sunni mosques throughout Iraq and caused “a tragic escalation of sectarian rage and reprisal” (Worth 2006). The Al Qaeda attack on the World Trade Center and the Pentagon in September 2001 is an obvious equivalent for this type of attack but on a secular institution. So also is the fire that destroyed the Reichstag building in February 1933, a catastrophe that the Nazis (who may have started the fire) used as a pretext for attacking their enemies, destroying German democracy, and establishing Hitler’s dictatorship. An important fictional equivalent is Conrad’s *The Secret Agent*, and Mr. Vladimir’s plot to cause a “dynamite outrage” attacking the Greenwich Observatory, because he considers it a “sacrosanct” symbol of the British faith in science (Conrad 1924: 33, 36).

If this category is expanded to comprise attacks on persons who have a charismatic, symbolic importance—as well as a conventional political significance—to their followers, then the King, Kennedy, and Palme assassinations mentioned earlier might be included. So also might the murders of charismatic political activists and dissidents, such as Steve Biko and the Chilean folk singer, Victor Jara, though obviously achieving any form of retribution for their deaths was possible only after the apartheid and



Pinochet regimes, that were responsible for their deaths, had reluctantly relinquished power. In addition, if one adds race and sex as “sacrosanct” topics of discourse, then certain crimes against women, such as rape, take on a strongly symbolic significance. When such crimes violate “racial purity,” they are likely to be avenged by the harshest possible legal or extralegal means, and two of our chapters—those on E. M. Forster’s *A Passage to India* (1952) and Richard Wright’s *Native Son* (1940) deal with this issue in the context of the racial mores that prevailed in the British Empire and Jim Crow America.

### **Special crimes: the police as criminals**

The murders of Jara and Biko introduce us to our fourth category of “special” crimes, injustices, and injuries: ones that are committed by persons operating within—not outside of—an established legal system. In the cruder, simpler society of Big Whiskey, Wyoming, in 1881—depicted in Eastwood’s *Unforgiven*—injustices perpetrated by the town sheriff, a sadistic bully, are speedily revenged. William Munny, the film’s aging but still lethal gunman, rides into town with a shotgun in one hand and a Smith & Wesson .45 Schofield revolver in the other. Minutes later, the sheriff and his henchmen are dead or dying. In less primitive, more complex societies Munny’s kind of wild, extralegal justice is rarely possible. Corrupt, biased, unfair, and even criminal legal officials can be adept at hiding behind the skirts of the law, manipulating it, and using it to protect themselves as they subvert the justice process. News stories and the popular culture media are replete with examples of rogue cops, crooked judges, and shyster lawyers, and this book is equally well stocked with the mendacious, the prejudiced, and the malevolent. In our chapter on Sheridan Le Fanu’s “Mr. Justice Harbottle,” that novella’s title character, an unscrupulous hanging judge, uses his position and legal skills to make sure that his mistress’s husband is executed for forgery. Buckley, the ruthless State’s Attorney in Wright’s *Native Son*, is an ambitious politician who is running for re-election and uses inflammatory, racist rhetoric to guarantee that Bigger Thomas receives a death sentence. Forster’s Police Superintendent McBryde in *A Passage to India*, the best of a bad lot, is also a racist, but he is a thoughtful, “scientific” one. He bases his prejudices on a “theory about climatic zones,” according to which, “all unfortunate natives are criminals at heart, for the simple reason that they live south of latitude 30,” and therefore he assumes all the Indians he arrests are guilty (Forster 1952: 184). As for Captain Stolz and the Special Branch police Andre Brink describes in *A Dry White Season*, they are not only racists but also criminals as they torture and kill prisoners in their custody. Determined to protect South Africa’s apartheid regime at all costs, they maintain a façade of public legality while secretly resorting to blackmail, terrorism, and murder to silence anyone who dares to question them and their methods. But how, especially in cases like these, can revenge, retribution, or genuine