

RISING UP AND RISING DOWN  
WILLIAM T. VOLLMANN

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VOLUME IV

JUSTIFICATIONS

DETERRENCE, RETRIBUTION,  
AND REVENGE

PUNISHMENT

LOYALTY, COMPULSION, AND FEAR

SADISM AND EXPEDIENCY

SADISM, MASOCHISM, AND PLEASURE

MORAL YELLOWNESS

INEVITABILITY

EVALUATIONS

FOUR SAFEGUARDS

REMEMBER THE VICTIM



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AND  
RISING DOWN

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VOLUME FOUR

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VOLUME FOUR  
CONTENTS

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JUSTIFICATIONS, SECTION TWO:  
POLICY AND CHOICE

21. FROM *RAISON D'ETAT* TO REASONS OF SPLEEN 7  
*Introduction to violence as policy.*
22. DETERRENCE, RETRIBUTION AND REVENGE 11  
*Pancho Villas's exemplary assassinations compared with Stalin's; Molotov and the trial of the trade unionist Rudzutak; separability of deterrence and retribution; Lawrence of Arabia's massacre of Turks at Tafas, and his translation of Odysseus's massacre of the suitors in the Odyssey; retaliation in Egil's Saga; Peloponnesian expediencies; the Cuban missile crisis; required degree of retaliation; the Aztec flower wars; nuclear deterrence: mutually assured destruction; symmetry, ending the cycle.*
23. PUNISHMENT 73  
*Legal retaliation as moral expression; concentration camp punishments; Cicero vs. Robespierre; the necessity of degradation; a witch-burner's case-book; the FBI's rules of engagement at Ruby Ridge; why crimes became unmatched with punishments over the centuries; Plato's punishment of rocks; John Brown's celestial account-book of domestic punishment; the transferability of punishment to the innocent; the question of moral agreement between executioner and condemned; De Sade's prison revelations; Alexander Berkman's prison education.*
24. LOYALTY, COMPULSION AND FEAR 149  
*The good Nazis: Ohlendorff and Keitel; the Japanese feudal code; law and ethical commonality; the Jewish calculus at Kalish and the Warsaw Ghetto: sacrificing the innocent for the whole.*
25. SADISM AND EXPEDIENCY 191  
*Sadistic aesthetics; sadism as expediency's tool; sadistic spectacle as prop-*

*aganda; torture as truth-seeking, deterrence, retribution, revenge, and pleasure; De Sade's fantasies; pleasure in one's work.*

26. SADISM, MASOCHISM AND PLEASURE 215  
*Consensual S&M sex.*

JUSTIFICATIONS, SECTION THREE:  
FATE

27. MORAL YELLOWNESS 227  
*Precategorizing and stereotyping the objects of violence; the visibility of evil souls; the injustice of physically stereotyping the Nuremberg defendants; August Sander's photographs of persecuted Jews.*
28. INEVITABILITY 237  
*Inevitability as a ubiquitous (and ever unjustified) excuse for violence.*

EVALUATIONS

29. FOUR SAFEGUARDS 243  
*Increase the likelihood of ultimate legitimacy of your violence by: (1) making sure you are justified in as many of the above categories as possible; (2) rendering your cause attractive to as many diverse participants as possible; (3) combining experience and theory; (4) acknowledging context carefully.*
30. REMEMBER THE VICTIM! 255  
*Since this book has dealt so extensively with violent moral actors and their justifications, this chapter pays brief homage to the objects of their violence.*

JUSTIFICATIONS  
POLICY AND CHOICE

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CHAPTER 21

FROM RAISON D'ETAT TO  
REASONS OF SPLEEN

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*If you hold an ax but do not attack, then bandits will come.*

T'AI KUNG, *SIX SECRET TEACHINGS*  
(ELEVENTH CENTURY B.C.?)<sup>1</sup>

*This woman said to me, "Give me your son, that we may eat him today, and we will eat my son tomorrow." So we boiled my son and ate him. And on the next day I said to her, "Give your son, that we may eat him;" but she has hidden her son.*

KINGS 2:6.28-29

**I**n previous chapters we considered various cases of violence which might or might not be justifiable—namely, invocations of self-defense. We now move to the edge of that category, and soon will pass beyond it into a descriptive catalogue of violent actions which can rarely, if ever, be justified.

When the Mytilenians revolted against Athens in 428 B.C., they explained to the Spartans, whom they hoped would accept them into their alliance: "As it is, they [the Athenians] are always in the position where they can take the initiative in



*This memory-drawing by my Vietnamese friend Huy depicts how he and other punks beat up a racist skinhead who had attacked them.*

aggression; we should be allowed the initiative in self-defense."<sup>2</sup> —There is a one-word definition of proactive self-defense: aggression. Sometimes, to be sure, such acts are justified. If I am being held hostage and one day manage to kill my guard and escape, then I have simply made fair use of my right to dispose of my own person as I see fit, no matter whether the guard was or was not menacing me at that particular moment—in fact, if he was, I probably would be unable to slay him; hence the self-aggrandizing Mytilene position. Legitimate war aims<sup>3</sup> are customarily executed proactively; indeed, proportionality and discrimination<sup>4</sup> may be best served by preemptive measures.<sup>5</sup> If I can attack first, before the enemy has built a bridgehead, the fighting will be less protracted and severe. Defense of earth against a scientifically imminent emergency may also require what most people would interpret as a first strike.

But Machiavellians may be counted on to broaden the definition, pointing out that actual menace on the part of our enemy need not be necessary, only behavior that we find disagreeable. Moreover, we may find it proactive to punish an act already committed, if by so doing we can deter its recurrence. As always with human behavior, what might have seemed at first to be two mutually exclusive choices are in fact quite difficult to dissect away from one another.

Once the Mytilenians had set the tone, the city-state of Scione invoked a similar proposition during her own revolt against Athens. The Athenians were scarcely persuaded. "On the motion of Cleon, a decree was passed immediately to recapture

Scione and to put its inhabitants to death.”<sup>6</sup>

From proactive self-defense as deterrence, retribution and revenge, we shall move next to an examination of punishment as an act of justice or balance almost severed from self-defense, then to the final categories of sadism, expediency, “moral yellowness,” inevitability and utility—which is say, violence by deliberate policy.





CHAPTER 22

# DETERRENCE, RETRIBUTION, AND REVENGE

---

*On the orders of an officer with the powers of at least a battalion commander, collective drastic measures will be taken against localities from which cunning or malicious attacks are made on the Armed Forces, if circumstances do not permit of a quick identification of individual offenders.*

FIELD MARSHAL WILHELM KEITEL (1941)<sup>1</sup>

*I think that the American Army as a unit will handle the 12th S.S., every unit they can get a hold of. They are the men that killed our people in cold blood... We hate everybody that ever wore a 12th S.S. uniform.*

GENERAL DWIGHT D. EISENHOWER (1945)<sup>2</sup>

**W**hen Pancho Villa, that wide-sombrero'd, double-bandoliero'd, squinting, mustached swaggerer, resolved to shoot Señor Claro Reza in revenge for the latter's attack upon his hideout, it had to be done where all the people could see, "even in front of Government Palace—do you agree, *compadre?*" Reza was police, and Villa that transitional life-form, a highwayman with an ideology. Having crawled out of the primeval sea of manifest self-interest, he could now evolve successively

into each of the following creatures: guerrilla leader, general, statesman, underdog, martyr.<sup>3</sup> No matter that self-interest nourished these incarnations, too: authority needs to act a rarefied part in order to legitimize itself. Reza's murder, then, would enact revolutionary justice.<sup>4</sup> *Deterrence, retribution and revenge must all be didactic to accomplish their ends.*<sup>5</sup> Somebody shoots Reza somewhere, and who cares? Villistas



Pancho Villa

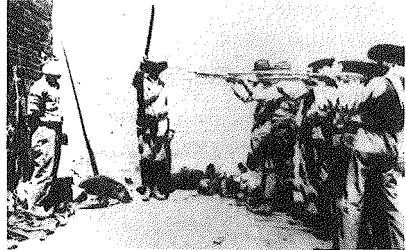
shoot him to teach a lesson; other Rezas might take fearful heed. So they riddled him in the marketplace—more dangerous for the killers than any ambush. Crowds witnessed this reduction of a human being into a bleeding corpse. Then the Villistas galloped away in broad daylight, pursued by cavalry, but not too zealously, because local authority was already getting frightened of them.<sup>6</sup> They'd made their point, putting symbolic politics ahead of "pure" expediency—and thereby furthering long-term expediency, since they could count on more impunity on subsequent occasions.

When Stalin signed the death sentence of the trade unionist Rudzutak, the result must have been as routine as it was secret. Rifles<sup>7</sup> boomed out, but not in any marketplace; their after-rings died muffled by stone walls. Rudzutak's corpse probably got heaved into a windowless lorry that night, landing on a bed of companion pale and bleeding limbs; then a couple of secret policemen climbed into the cab, lit cigarettes and drove off toward the newest pit. No witnesses—Moscow slept. Yet this execution was, if anything, even more symbolic than the murder of Reza, for *Rudzutak had committed no actionable behavior to speak of.* Expressing a doubt or two about policy, as most sincere moral actors do, he'd remained more than loyal to his Party. The silence of deterrence crashed down upon him. It reverberated not among "the masses," but among the people who counted, the ones who dictated in the masses' name. Along the darkened corridors of officialdom, Rudzutak's steps sounded no more: ominous echoes of his absence goaded survivors into the outer marches of enthusiastic abasement.

Is a public slaying any "better"—more honest, more subject to accountability—than a private one? In this book I have made the argument that it is. The Maxims for Murderers posted warningly in our moral calculus<sup>8</sup> share the dangerous trait of *unaccountability*. Needless to say, if the slaying wasn't right in the first place, then making it public merely magnifies its effects without justifying it. The theatrical liquidations accomplished by Robespierre's guillotine or Mao's village hangmen sicken me no less than shootings under carefully controlled conditions in the Lubyanka cellars; the spontaneity of the lyncher or the opportunistic sex-murderer has its counterpole in the seemingly passionless foresightedness of an Eichmann.

Stalin, for all his private rages,<sup>9</sup> took Eichmann's course, proceeding by means of the NKVD, with malice aforethought. As for Pancho Villa, he was one of those individuals called "mercurial." How many times would he greet a man affectionately, then become convinced of treachery and order him up against the wall? Even

then the story might not be over. Somebody might plead the laws of hospitality, appealing to Villa's outer and inner honor:<sup>10</sup> a great brave commander such as he had no need to execute people! Then Villa dismissed the firing squad, and weepingly threw his arms around the condemned man now brought back to life, in tribute to his own potency to make and unmake other human beings. The unkilld man was Villa's own monument! Was that the end, then? Sometimes his mind might change yet again; and the resurrected found himself re-condemned.<sup>11</sup> Here the goal of violence comprised but a will-o'-the-wisp, a fitfully shining ball of nothingness. The same can be said of the characters in Sade's books: After the orgasm, what remained but the vile puppet within whose orifices the protagonist of the moment, solitary human in a world of puppets, had masturbated?<sup>12</sup> Like any violent act, deterrence, retribution and revenge must follow a consistent moral goal.



*Villista firing squad*

## DEFINITIONS, LESSONS, PERFORMANCES

To cast them in their respective variants of the Golden Rule, deterrence is “do unto others to discourage them from doing unto you,”<sup>13</sup> and retribution is “do unto others as they have done unto you—or else do worse.”<sup>14</sup> Deterrence is expedient, although it may act in the service of ethical ends; retribution may have expedient deterrent effects, or not, but it is moral or bureaucratic; it operates within a larger system of means and ends.

Lenin writes a telegram to Frunze in 1919, during the Russian Civil War: “Use both bribery and threats to exterminate every Cossack to a man if they set fire to the oil in Guriev.”<sup>15</sup> Had this telegram been posted on the walls of Guriev, it would have comprised deterrence; its violence was certainly planned. In the absence of any warning to potential arsonists, it would have comprised retribution or revenge.

Consistent deterrers and retributors must *reward* after the same fashion. Thus, we are told, Syloson the Greek gives a flame-colored cloak to Darius the Persian, gratis. Darius becomes King of Persia, requites Syloson with an entire island, while requiting traitors and shirkers with death.<sup>16</sup>

*Retaliation* contains within it both deterrence and retribution. The latter subcategory may be similarly divided into *revenge* and *punishment*. Punishment will be considered in the next chapter; revenge is retaliation or retribution carried out for

the satisfaction of the revenger, or for the benefit of a victim or offended party.<sup>17</sup>

It all blends, as exemplified by the following newspaper clipping:

WIFE FORCED TO SLEEP WITH DEAD HUSBAND

BEIJING — A young farm woman in southern China was forced to kiss her dead husband and sleep with his body by her in-laws, who blamed her for his suicide, a newspaper said yesterday. The incident occurred in the Xinhua district of Hunan province, the *Legal Daily* said. Luo Xianglan had only been married four months when her husband, Xie Zhanbei, committed suicide by swallowing insecticide after a fight with his father. The father then beat the wife, blaming her for neglecting his son and causing him to commit suicide. The dead man's elder sister and her husband told several members of the family to strip the woman and display her in front of the village. The young woman was struck with hands and feet in the back, chest and sexual organs. She was forced to kiss her dead husband and then lay beside him for several hours.<sup>18</sup>

*Act of retribution.*

*Incident which triggered retribution (no indication as to whether wife was responsible).*

*Father's defense of honor, defense of authority, or simple revenge for daughter-in-law's perceived responsibility.*

*Retribution continues. Degree of family participation in the act implies either that the family shares the father's conviction of her guilt, or else that it bows to his authority.*

This is retribution for a deed which the wife is charged with having instigated—and suddenly it seems to me that by the same logic the assassination of Señor Reza was also retribution as much as it was deterrence. Retribution is Pancho Villa killing Claro Reza—but deterrence infiltrates into the *planned and public* aspect of the killing. By the same token, the humiliation of the wife might well comprise deterrence: perhaps the family plans to keep her dowry, exploit her labor or otherwise cow her into some action disadvantageous to her. But the primary impression conveyed by this article is of an eruption of ungovernable ugly feelings. As I've said, to be *revenge*, violent retaliation must be carried out to satisfy the revenger, or for the benefit of a victim or offended party; whereas revengeless retribution seeks merely to impersonally checkmate an undesirable act. The actions of the dead husband's family were very personal. I imagine shrill outbursts, glares, curses, while the widow cowers, with nowhere to go.

(Perhaps no one, including her tormentors, anticipated this scene; perhaps it "just happened." How could we be surprised that retribution enjoys greater spontaneity than deterrence, which aims at a goal and hence must be plotted?)

And so deterrence and retribution very frequently overlap, as in the case of a family friend who wrote a letter of advice to a young girl: "Now, I don't believe in much whipping, but children should be taught to mind, even if it is necessary to whip a little."<sup>19</sup> In other words, children ought to be whipped when they have committed some fault. Whipping will *requite* them (punish them) for the fault, and thereby hypothetically teach them "morals," more practically, it will deter them from (make them fear the consequences of) committing it again.

From this aphorism from a probably honorable and well-meaning man, violence slides all too easily down the continuum to the couple who beat their six-year-old niece with spike heels (the child's hands tied to a pipe), burn her vulva and buttocks with a hot iron, command her into a bathtub filled with ice, and so on until death. "These cruel and crude punishments had been utilized to discipline the child for real and fancied breaches of good behavior."<sup>20</sup>

Both retribution and deterrence are about "teaching a lesson." Hence this admonition from *Small Wars*:

The mere expulsion of the opponent from ground where he has thought fit to accept battle is of small account; what is wanted is a big casualty list in the hostile ranks—they have been brought up to the scratch of accepting battle, they must feel what battle against a disciplined army means.<sup>21</sup>

## DEFINITIONS

*Deterrence* I now define more precisely as the infliction of terror for the purpose of disheartening the victim or his people from acting in a way which the deterrers have proscribed,<sup>22</sup> an example being the letter received by Dr. George Woodward, abortionist: "If I hear you are still killing when I get to town, I will haunt you and your wife day and night and give you no peace. If you continue, I will hunt you down and kill you. You have until the 16th."<sup>23</sup> This cowardly, hateful document set out to deter by generating terror without accountability. Robespierre at least sat in his office and met with whomever wanted to talk with him; Marat received Charlotte Corday while writing in his bath, and got stabbed for his pains. But the woman who wrote to Dr. Woodward gave him no chance to debate her or defend himself against hovering retribution for a medical practice whose legitimacy had been confirmed by the highest court in the land. (At this letter writer's trial she whined and wept, but I am glad to say that she went to prison just the same.) Deterrence is what Martin Luther King had in mind when he wrote: "Since man is so often sinful, there must be some coercion to keep one man from injuring his fellows."<sup>24</sup> In this sense, deterrence is a necessary capability of legitimate authority.<sup>25</sup> *Deterrence is justified when it enforces a legitimate social contract.*<sup>26</sup>

In a very similar sense, deterrence was what Hobbes was thinking of, when he

so wisely said that the worthy aim of punishment (as opposed to revenge or liquidation) is not to dwell upon the evil already committed, but to approach the good we hope for in the future<sup>27</sup>—in other words, either to improve the transgressor, or else to discourage transgressions on the part of the public.

Machiavellians can make any retaliation fit Hobbes's criterion: Reza's colleagues, perhaps, witnessed his end, and decided not to molest Pancho Villa's hide-out anymore; Rudzutak's colleagues prudently sang Stalin's praises even louder than before. Since both moral authorities were by their own lights justified, weren't their acts all to the future good?

I repeat: the deterrent lesson must be plain. Thus we find in history an Aztec emperor who names himself, or is named, *He-has-bled-people*.<sup>28</sup> Amidst the mercantile cruelties of Russian America, we read this equally explicit seventeenth-century sentence, handed down in Siberia:

The wives and children of the dead outlaws Filip Shcherbakov, and those of Mikhail Ontipin and Ivan Palomoshnoi were exiled to Nerchinsk *ostrog* [town] *in order to teach them not to steal in the future or plot rebellion or kill townsmen or rob anyone else*.<sup>29</sup>

That measure can be easily distinguished from the next, which was not intended to teach the offenders anything, they having been labeled unteachable:

The *piatidesiatnik* [Cossack leader] Filip Scherbakov and Ivan Palamoshnoi, in accordance with the ukaz [edict] of the Great Sovereigns, died under torture in prison.<sup>30</sup>

Thus *retribution*—that is, is vengeful or revengeless violence inflicted in retaliation for a proscribed act already committed.

### CLEON'S MAXIM

Thus not all deterrence makes for retribution, nor is all retribution deterrence—at least not in regard to the same targets. Filip Scherbakov's sentence cannot deter him from anything; on the other hand, maybe other outlaws will learn the lesson. A wife who murders her husband for adultery is unlikely to feel interested in frightening other husbands into remaining faithful; her motives are purely personal. Likewise, deterrence, rising up before us like a grim beacon of warning, may be purely proactive, as in the case of Stalin's policy of frequently liquidating relatives of people he'd already "repressed," on the theory that their bitterness might cause him problems later; such sternness also dissuaded others from dissent—no retribution involved there.<sup>31</sup> A broad statement of the Stalinist position is attributed to Cleon the Athenian, who insisted (at least as quoted by the unsympathetic Thucydides) that "it is a general rule of human nature that people despise those who treat them well and look up to those who make

no concessions."<sup>32</sup> Add this to our maxims for murderers.<sup>33</sup>

The execution of Rudzutak, then, comprises almost unalloyed deterrence: deterrence of truth, courage, integrity, intellect; deterrence crafted to break the public spirit.

## MOLOTOV AND RUDZUTAK

“**H**e couldn’t be acquitted.” That was Molotov speaking again, Molotov the survivor (by the end of World War II the size of his portrait was second only to Stalin’s;<sup>34</sup> and only he got addressed by Stalin with the familiar pronoun),<sup>35</sup> Molotov our schoolmaster in the doctrine of preemptive violence, always foxy about self-defense; even when visiting his British allies during World War II he kept a revolver laid out beside his dressing gown and dispatch case, because you never knew where and who the enemies might be.<sup>36</sup> —“Now Rudzutak—he never confessed to anything about himself,” says this soul of prudence. “He was executed by firing squad. A Politburo member. I don’t think he was a conscious member of any faction, but he was too easygoing about the opposition and considered it all nonsense, just about trifles. That was unforgivable. He didn’t realize the danger of his attitude. Up to a certain point he was a good comrade. He was unquestionably a very intelligent man.”



*Yan Ernestovich  
Rudzutak*

Rudzutak was one of the chief trade unionists. By virtue of being a chief anything in that time and place, he was also, in the words of Isaac Deutscher, a member of Stalin’s praetorian guard.<sup>37</sup> We find him remembered by Trotsky as a yes man (which perhaps correlates with Molotov’s high estimate of his intelligence). In an anecdote highly characteristic of the teller, that icepicked defender of terror’s razor describes how in the last throes of his public struggle with Stalin he once attended a Politburo session armed with “the latest issue of the central organ of the French Communist Party,” and, translating it with his accustomed smug and pedantic fluency, proved once again (to his own satisfaction, at least) that the French were deviating from Leninism, and that Stalin and his appointees were such boors that they neither knew nor cared. He goes on:

These excerpts were so expressive of their [authors’] ignorance and opportunism that for a minute there was confusion in the Politburo. But of course they could not let their “boys” down. The only member of that Stalinist Politburo who thought he knew a little French, a wistful echo of adolescent school days, was Rudzutak. He asked me for the newspaper clipping and began to translate it at sight, omitting unfamiliar words and phrases, distorting the meaning of others and supplementing

them with his own fantastic comments. At once everybody supported him in chorus. It is hard to convey the feeling of pain, of indignation.<sup>38</sup>

In other words, as Deutscher writes, "the devotion of all these men to Stalin was beyond doubt."<sup>39</sup>

But Rudzutak stood soft on the opposition. He wanted to ease up on collectivization a little, de-emphasize the secret police and God knows what else. Yes, unforgivable! Perhaps it was retribution after all. When the show trials began,

Postyshev, Rudzutak, Kossior, and others dared to express their remorse or doubts and to question [the prosecutor] Vyshinsky's procedures.<sup>40</sup> In doing so they at once incurred Stalin's suspicion of disloyalty; and, in truth, they were becoming 'disloyal' to him. Questioning the need for the extermination of the Trotskyists and Bukharinists, ... they were impugning his moral character and suggesting that he was guilty of an unpardonable enormity.<sup>41</sup>

Rudzutak's trial lasted twenty minutes.<sup>42</sup> His name was on a list of 138 people forwarded to Stalin and Molotov for review. That pair did review it, then signed it off with the notation: "Shoot all 138."<sup>43</sup>

"Couldn't you have protected him since you had known him for so long?" asks the interviewer, who worships Molotov.

"But one must not act just on personal impressions!" replies his idol indignantly (the very opposite of what a Roman statesman would have said).<sup>44</sup> "After all, we had materials incriminating him."

We can see the interviewer gathering his forces. He desires neither to antagonize Molotov nor to wound his own belief. But the case of Rudzutak bothers him a little, just as the cases of some of Vyshinsky's previous victims bothered Rudzutak himself. Anyhow, our interviewer's not asking about state secrets—all this happened half a century ago! Stalin is dead, Molotov, now out of power, must die soon, and Rudzutak has been posthumously rehabilitated.<sup>45</sup> Surely the issue can be answered. Swallowing, he whispers: "If you were confident..."

Molotov checkmates him: "I was not 100 percent confident."

Molotov is correct, as always. How can one be a hundred percent confident of anything? There was always one chance in a million that Rudzutak might have been guilty, as capitalists measure guilt. Anyhow, Rudzutak was "objectively" guilty: he had questioned Stalin.<sup>46</sup> Thus Stalin wanted him out of the way. Therefore it was moral to liquidate him—how simple ethics is! This we can truly call deterrence: Rudzutak would be deterred from ever acting against Stalin, by virtue of being a corpse, and surviving comrades would also be discouraged from becoming enemies of the people—another victory for Party unity.



## JUSTICE AS TRADITION

The moral calculus of Edmund Burke (1790)<sup>47</sup>

“Justice is grave and decorous, and in its punishments rather seems to submit to a necessity, than to make a choice.”

“We know that we have made no discoveries; and we think no discoveries are to be made, in morality.... We fear God; we look up with awe to kings; with affection to parliaments; with duty to magistrates; with reverence to priests; and with respect to nobility.”

“The science of jurisprudence, the pride of the human intellect ... is the collected reason of the ages.”

## JUSTICE AS TERROR

The moral calculus of Pavel Postyshev, candidate member of the Politburo (February 1934)<sup>48</sup>

“Justice is a power by which to suppress class enemies and a forceful weapon of education towards the new discipline and self-discipline of the workers.”

*On February 26, 1939, Postyshev, having confessed to counterrevolutionary activity, was shot. His wife and eldest son were also shot. His remaining children were placed in labor camps.*

## SENECA'S MAXIM

As we already saw in our study of Trotsky's razor of terror, when authority's self-defense becomes defined only in relation to itself, as opposed to being a general defense of *all* goodness under its sway,<sup>49</sup> then paranoia transforms itself into procedure, and what might have remained justifiable, if craven and ignoble, for an individual self—the bolting of every door, day and night, the seizing upon of all available proactive measures against treachery—becomes a crime on authority's part, because the proactive measures at its disposal are irresistible: its name is legion. Unfortunately, paranoia works; it's expedient. In our study of that first Caesar, “the deified Julius,”<sup>50</sup> we met a ruler who refused to acknowledge that fact and died at knifepoint. Stalin died in bed.

Among the satellites of the Twelve Caesars we find an analogue to Rudzutak: Seneca, more gentle and possibly more noble than he,<sup>51</sup> remained like Rudzutak a loyal courtier who would not encourage his sovereign's cruelty. When Nero passed his twelfth birthday, Seneca was appointed to be his tutor. In time he also became Nero's speechwriter and counselor,<sup>52</sup> hence necessarily his flatterer. Into his heart

Seneca anxiously and futilely struggled to instill clement justice. A prominent equation in the old Stoic's moral calculus (which he was the first to admit stood more admirable than his own deeds) was that *too much repression (too much deterrence, we might say) will corrode loyalty and fear into desperation; the tortured slave becomes a regicide although he knows that the consequence must be his own crucifixion.*<sup>53</sup> We'll name this Seneca's Maxim.<sup>54</sup> For a dozen years, Nero more or less held that line. Then he took Stalin's path.<sup>55</sup> As for Seneca, his doom was measurably preferable to Rudzutak's: not only did he escape any trial, interrogation or suchlike ceremony of public degradation, he was permitted to open his own veins.

Both monsters owned captive senates; both ruled in an age of private armies who could turn upon their Caesars. (That prospect was Stalin's nightmare; it proved to be Nero's reality.) The consensualism with which Nero sought to glue his authority to legitimacy<sup>56</sup> was, in keeping with the fashion of those times, his own person, with a few easy bribes thrown in: he is credited with the slogan of "bread and circuses" as a means to satisfy the masses (in other words, of nonviolently deterring them from rising up against him). As for Stalin, he called upon *the unity of a beleaguered idea*, the socialist idea.<sup>57</sup>

Nero, declared a public enemy by the Senate, was compelled to slay himself.<sup>58</sup> It would seem that he deterred, avenged, etcetera, until his violence became unbearable. Because violence must achieve its stated end to be justifiable,<sup>59</sup> *violent deterrence is not justified when its effects are not foreseeable and controllable.*<sup>60</sup> Nero's violence is all the more seen as wrong because it overreached itself to the tyrant's own undoing.<sup>61</sup>

But Stalin, as we know, managed to forestall the operation of Seneca's Maxim, thanks in part to his century's superior apparatus of deterrence: the machine-guns, telephones, resources of detention and investigation. It was to save himself from the remotest hypothetical reach of Seneca's Maxim that Stalin eliminated Rudzutak.

## CRIMINAL DETERRENCE, POLITICAL DETERRENCE

The germ of proactive self-defense, as spelled out in the KGB manual, possesses its kernel of reason; indeed, police and intelligence agencies around the world believe in it, whether or not they admit to doing so:

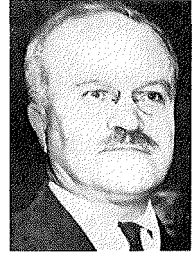
### DIFFERENCE BETWEEN CRIMINAL AND POLITICAL INVESTIGATION

Criminal investigation is conducted by virtue of crimes committed; it does not anticipate crimes. Political investigation is conducted before the crime is committed and thus has as its aim prevention, to know not only the actual but the contemplated.<sup>62</sup>

There is absolutely nothing wrong with this philosophy. We'd not only applaud the FBI for unmasking a terrorist conspiracy in the USA before any bomb had gone off; we'd *expect* them to do it. Should you entertain any residual worries, the KGB

assures us that "the correctness of an investigation is conditioned by," among other things, "expedient morally pure investigatory principles."<sup>63</sup> Conveniently, every human being is a more or less dubious character, hence of inherent inferiority to his morally pure investigator: in the trial of a wife-beater we do not worry about whether the judge also beats his wife.<sup>64</sup> Hence Molotov's judgment as to Rudzutak's moral purity: "I was not 100 percent confident." How could he be?

Well, how low *should* his confidence have been, for the deterrence of Rudzutakian activities to be justified? From the normal, domestic peacetime standard of incumbent bourgeois democratic authority, which has in most cases (I now reveal my class origins) informed the calculus of *Rising Up and Rising Down*, one would simply ask: Is this individual named Rudzutak innocent or guilty? After all, "criminal investigation is conducted by virtue of crimes committed; it does not anticipate crimes."



Molotov

Molotov's justice, on the other hand, is monstrous. It is monstrous because it seems *needless* to us; Rudzutak posed no imminent threat to anyone.

In our moral calculus we've adopted the following definition:

"IMMINENCE" will often be asserted by someone who wants to justify violence. It applies to a threat of violence so immediate and so dangerous that a reasonable person would agree that violent defense, resistance, or even proactive action would be justified. Imminence extenuates many errors of perception and judgment. Imminence is the rule on the battlefield, and excuses conscripts from killing enemy combatants even if the war aim for which they fight is evil. Imminence is often confused with, or pretended to be, other quantities which may be debatable or outright wrong, for instance, the consolidation of legitimate or illegitimate revolutionary authority, the despairing zeal of John Brown, the urgent expedient need for Cortés to complete his wicked conquest.<sup>65</sup>

By this definition of imminence, any juridical violence against Rudzutak cannot be justified. Accordingly, Stalin and Molotov changed the definition.

Violence tends to necessitate itself: the more people I kill, the more I need to kill, in order to deter or prevent others from killing me. Let's name this excuse for violence *proactive imminence*. It need not be unjustified if the original violence which brought it into being was justified; still, it is obviously of a lower, more contingent order of justifiability than simple imminence.

The underlying justification for Stalin's brutally proactive defense of his own power was defense of the revolution<sup>66</sup> and of revolutionary authority,<sup>67</sup> whose sweeping arrogation of violent power beyond all limit<sup>68</sup> was in turn excused as a means to accomplish violent defense of class.<sup>69</sup> Unfortunately, as we saw, defense of class in the

Soviet Union was unjustified for a variety of reasons. This leaves any Stalinist appeal to proactive imminence in a decidedly poor position. In such a case, *violent deterrence is unjustified when directed against persons who have broken no code and are actively or passively loyal to the deterrer's authority.*<sup>70</sup>

Under circumstances of ordinary imminence, the following expedient calculus advises inflicting the maximum penalty: The robber is in the house. If I shoot merely to wound him, he may still be able to shoot back. Therefore, I'd better kill him. This may or may not be justice, but it is certainly survival. When the imminence happens to be proactive, similar logic comes into operation. That is why in the Stalin years it could be a capital crime simply to be the spouse of someone convicted of a capital crime<sup>71</sup>—Rudzutak's wife might want revenge!<sup>72</sup> As it happened, Rudzutak's wife merely went to the Gulag. His brother, however, got shot; so did his brother's wife; their daughter was sentenced to death but survived to be sent to a labor camp.<sup>73</sup>

"What was he accused of?" asks the disciple.

"I can't remember now," answers Molotov (and, after all, it has been a long time). "He said, 'No! That's all wrong! I absolutely reject it. I have been tortured here. They are using force. I will sign nothing.'"

"Was that reported to Stalin?"

"It was," responds "this urbane, rigid diplomatist."<sup>74</sup> (In a photograph, we see him sitting at Stalin's left hand, wearing a dark suit, a little plump, a little round-faced, gazing calmly at something we'll never see.)<sup>75</sup> "He couldn't be acquitted. 'Do as you have to with him,' Stalin concluded. And Stalin had always had good relations with Rudzutak."

"And then he had him shot?"

"Shot."

"He might never have been guilty of anything?"

"Well, I can't vouch for his absolute integrity."<sup>76</sup>

We will take our leave of Molotov now, having studied him quite enough in these pages. But before laying him back in his red coffin laid out with red carnations ("the identification mark of the Bolsheviks")<sup>77</sup> we ought to ponder over what his epitaph should be—something that bears on deterrence, surely. Doing so is far from easy. In the words of one eyewitness, the somberly observant Djilas,

with Molotov not only his thoughts but also the process of their generation was impenetrable. Similarly his mentality remained sealed and inscrutable.... The impression was gained that Molotov looked upon everything—even upon Communism and its final aims—as relative, as something to which he had to, rather than ought to, subordinate his own fate. It was as though for him there was nothing permanent, as though there was only a transitory and unideal reality which presented itself differently every day and to which he had to offer himself and his whole life.<sup>78</sup>

Deutscher was another who mused upon the secrets of this deterrentist's gun-metal soul. He wrote:

Did men like Molotov [and Deutscher lists a number of others] not mind the execution of Rudzutak, Kossior, Postyshev, and Eikhe, who had been their closest comrades in the Stalinist Old Guard? If they did not mind it, they were scoundrels without a shred of conscience—how, then, could Stalin count on their loyalty? If they did mind, then, no matter how carefully they concealed their feelings, they could not but nurture a deep resentment and a hatred of their heartless master.<sup>79</sup>

This may well be an accurate summation of Stalin's calculus regarding these ciphers, and helps explain why even Molotov's wife would in due time be gathered in by the secret police. Stalin had never liked Polina Molotov.<sup>80</sup> She'd been the best friend of the dictator's second and final spouse, Nadezhda, and after Nadezhda's suicide did many kindnesses to her half-orphaned daughter, Svetlana. Perhaps he feared that she knew too much about the motivations both personal and political which compelled Nadezhda to bring that little pistol to bed with her. Time for more deterrence against proactive imminence! With clever cynicism, he retained the husband in uneasy and attenuated power. Polina Molotov remained in a Gulag camp for years; and the never-one-hundred-percent-confident Vyacheslav Molotov continued to obey the man who degraded him yet further, and might well have liquidated him had a stroke not carried him off (for once, death triumphed over malignancy). Molotov must have comprehended what was happening to him. And yet he did not hate Stalin. This I feel certain of, because in his conversations with the disciple, Felix Chuev, from which these reminiscences of Rudzutak have been extracted, he could have said practically whatever he liked. "History" had denounced the "cult of personality," and even cast Stalin's bones out of Lenin's mausoleum; how could Molotov fear the discredited ghost?<sup>81</sup> As it was, "history," personified by Chuev, cherished the following pearls of wisdom: Politicians were too liberal now, too humanitarian, the old murderer said; everything was going to the dogs. At least Stalin had toed the right line, Stalin had been "moderate." The very inexpediency of these remarks makes me believe in their sincerity.

In short, he was typical of every would-be surgeon who snatches up Trotsky's razor of terror in order to perform his own creative surgery upon the body politic—or should we call him the surgeon's faithful assistant? He gazes upon the bloody incisions, and finds them necessary if not beautiful. Authority has been defended, class revolution advanced. The affair of Rudzutak strikes me as, in a way, even more grim than that of the innocent victims of the French Revolution, as characterized by Lewes's sarcastic description of fanaticism: "What is the agony of a few thousands, compared with the triumph of an opinion?"<sup>82</sup> The French Revolution's condemned died, however, uselessly and cruelly, to advance an ideology, however corrupted. The

liquidations of Rudzutak and his comrade millions, on the other hand, were simply expedient business—the easy payment made by despotism for the latest installment of its life insurance policy. *Deterrence is unjustified when its main purpose is to overawe people into routine or perpetual compliance with authority.*<sup>83</sup>

After all, nonconsensual authority *must* worry about life insurance. (Except in exceptional cases, what does consensual authority need deterrence for?) The main sense we gain from Molotov's remarks about Rudzutak (and about any other subject) is of a cautious, conservative watchfulness. We will not demean his steely convictions by calling him nervous. But that is the connotation: *What if* Rudzutak had done something? *What if* his stated concerns had already done something? Quick—shoot him, stop him before it goes any farther! And even if he's harmless, his death might deter others! (We don't even know the exact date of his death. His trial was secret.) This is deterrence at its outermost evil limit. This is the scorched earth of the soul.

## THE TURK WHO WEPT

**I**n September of 1918, T. E. Lawrence and his Arab forces, being advised by the British that a column of Mezerib Turks two thousand in number was approaching, set out to meet it. By the time they did so, the Turks had already taken Tafas, where, Lawrence writes with dryly restrained anger in the *Arab Bulletin*, "they... allowed themselves to rape all the women they could catch." Upon perceiving the Arab attack, the Turks murdered every inhabitant, including "some twenty small children (killed with lances and rifles), and about forty women. I noticed particularly one pregnant woman, who had been forced down on a saw-bayonet." Because of these atrocities, his order was, for the first and only time in the campaign: No prisoners.



*Lawrence of Arabia*

The second and leading portions [of the enemy], after a bitter struggle, we wiped out completely. We ordered 'no prisoners' and the men obeyed, except that the reserve company took two hundred and fifty men (including many German A.S.C.) alive. Later, however, they found one of our men with a fractured thigh who had been afterwards pinned to the ground by two mortal thrusts with German bayonets. Then we turned our Hotchkiss on the prisoners and made an end of them, they saying nothing. The common delusion that the Turk is a clean and merciful fighter led some of the British troops to criticize Arab methods a little later—but they had not entered Turaa or Tafas.<sup>84</sup>

In *Seven Pillars of Wisdom* Lawrence adds other details, regarding both what the Turks did in Tafas, which I gladly omit, and what he and the Arabs did in return. For the latter, this elaboration of Lawrence's order and its results will suffice:

I said, 'The best of you brings me the most Turkish dead,' and we turned after the fading enemy, on the way shooting down those who had fallen out by the wayside and came imploring our pity. One wounded Turk, half naked, not able to stand, sat and wept to us. Abdulla turned away his camel's head, but the Zaagi, with curses, crossed his track and whipped three bullets from his automatic into the man's bare chest. The blood came out with his heart beats, throb, throb, throb, slower and slower.<sup>85</sup>

### REVENGE AT TAFAS

What we have here is a form of capital punishment: a combination of revenge and deterrence which the Turks' atrocity called into operation. Of course, this is *collective* capital punishment, and knowing only as much about the weeping Turk as Lawrence told us—which is to say, only as much as he knew—we cannot determine the man's guilt or innocence vis-à-vis atrocities at Tafas. Nor did his guilt appear to be an issue for Lawrence.<sup>86</sup> The military historian John Keegan insists: "There are no circumstances, in any code of justice which the British army recognizes, that justify the shooting of unarmed men, not convicted of capital crimes by a court of law, who have fallen into one's power."<sup>87</sup> Of course the Turk who wept probably failed to qualify as unarmed; he hadn't surrendered his weapon—Lawrence and the Arabs would not let him. Was he then convicted of a capital crime? —Lawrence defined it so.

In war, definers abound. Pancho Villa regularly shot his prisoners if they fell into particular categories: (i) officers of the *federales* (if they were members of the lower ranks their fate was at the discretion of the individual *Villista* commander); (ii) followers of his ex-ally Orozco, who'd turned on him; (iii) Americans, in arms or not, after the Americans began to support his enemies (at Santa Isabel the *Villistas* killed sixteen American miners and engineers; then they rode across the border and murdered twenty-six Americans in Columbus, New Mexico, most of them civilians);<sup>88</sup> (iv) Chinese (when they captured Parral in 1916, they were shouting, "We are going to kill gringos!" but there were none, so they hung the Chinese instead).<sup>89</sup> What the *Villistas* did, since they did it so often, was policy, however slapdash and unjustified according to other moral criteria such as discrimination<sup>90</sup> and defense of race.<sup>91</sup> At least they followed Walzer's Axiom: It is less important for the justice of a war that any particular item be on the list of limitations than that there *be* a list.

What Lawrence and the Arabs did might have been policy, since they usually did discriminate between armed combatants and unarmed prisoners. It might also have been sheer rage.

Unlike Villa and Stalin, Lawrence was not ordinarily a cruel man; indeed, at the

successful conclusion of the Arab Revolt at Damascus he worked hard to remove decomposing corpses and sick-filth from an improvised hospital for Turkish prisoners.<sup>92</sup> We ought not to forget his statement, already quoted, that the Turks were not clean fighters. He made this assertion more than once, repeating that Turks never took Arab prisoners, and that their methods of withholding quarter were less than humane.<sup>93</sup> Tafas made his blood boil, and it should have. But should he have responded as he did?

### AN EXECUTIONER'S DROLLERIES

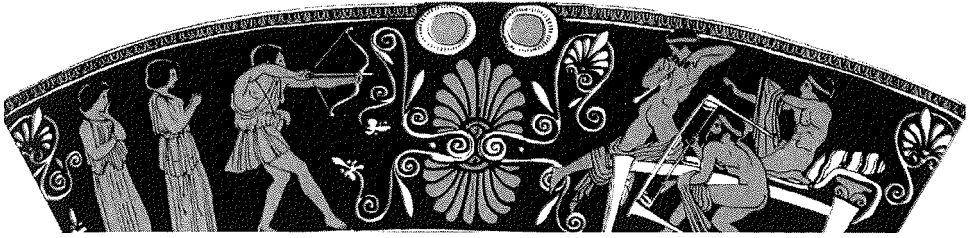
Years after that war had been won, the acclaimed book designer Bruce Rogers asked Lawrence to translate Homer's *Odyssey*. Lawrence was willing. He had often mused over the poem, which he read in Greek: "It goes with me, always, to every camp, for I love it."<sup>94</sup> He felt himself specially prepared to do the job. For one thing, he had done archaeological excavations in the Middle East. Nor was that all. The Turk who wept would help him achieve verisimilitude! As he wrote to Rogers:

I have handled the weapons, armour, utensils of those times, explored their homes, planned their cities. I have hunted wild boars and watched wild lions, sailed the Aegean (and sailed ships), bent bows, lived with pastoral peoples, woven textiles, built boats, and killed many men. So I have odd knowledges that qualify me to understand The Odyssey.<sup>95</sup>

Does the resulting translation give us any clues to his state of mind, or soul, when he killed his Turkish and German prisoners? The task finally done, in a dismissive note to the printer he says of the poem: "Gay, fine and vivid it is: never huge or terrible."<sup>96</sup> Compared to the *Iliad* with its myriad ghastly battle-scenes this may be true, but parts of the *Odyssey* are terrible enough. In Book XXII, the revenge taken by Odysseus against the suitors who despoiled and tyrannized his household<sup>97</sup> is described with unforgettably gruesome naturalism. Could it be that Lawrence ridiculed Homer as a mere bookish stay-at-home, "all adrift when it comes to fighting," who had never seen a single battle-death<sup>98</sup> because he, a self-proclaimed killer, found the destruction of the suitors to be physiologically or strategically implausible?

To me, at least, this book of the poem glows and glares with horrific power. Halfway through its retributory executions, while from the rafters Pallas Athene smites the suitors with supernatural fright, and our returned householder with his few companions drives them all back and back, crunching their skulls, shooting them in throat or liver, one named Leodes (who'd tried and failed to string the master's bow) seizes the knees of his enemy—or, as Lawrence renders it in his translation, in terms not dissimilar to the ones in his account of the Turk who wept: "By your clasped knees, O Odysseus, pity me and show mercy."<sup>99</sup> Since he is gripping





*Odysseus killing the suitors*

those knees, one must imagine that, like the wounded Turk, he was “sitting and weeping” to Odysseus—who heeds him not.<sup>100</sup> Just as the Turk’s dying heart beats out a tattoo of blood, like the neck of a decapitated chicken (I have killed those), so Leodes also meets death with the sad incongruousness of vain movement. Samuel Butler in his version has it: “Then he struck Leiodes on the back of his neck, so that his head fell rolling in the dust while he was yet speaking.”<sup>101</sup> Lattimore uses almost the same words: “And the head of Leodes fell in the dust while he was still speaking.”<sup>102</sup> The more recent translation of Robert Fagles puts it, slightly more inventively: “And the praying head went tumbling in the dust.”<sup>103</sup> In Lawrence’s version, however, the matter goes beyond incongruity to approach the comic: “His head, yet praying for mercy, was confounded in the dust.”<sup>104</sup> We ought not to read too much into what might be something other than callous trivialization—after all, as his note to the printer makes clear, Lawrence had tired of the whole poem by now—as tired of “that cold-blooded egotist Odysseus”<sup>105</sup> as of Leodes—probably more so, since Odysseus appears on practically every page. In Lawrence’s life, everything had a tendency to turn to ashes. He had loved the *Odyssey* once; he’d loved war, and the Arab Revolt; but now it all sickened him, and he importuned his commander, Allenby, to be discharged, “pointing out how much easier the New Law would be if my spur were absent from the people. In the end he agreed; and then at once I knew how much I was sorry.”<sup>106</sup> Thus ends his famous *Seven Pillars of Wisdom*.

Lawrence was cracking up, his own mental instability now often betrayed by laughter, as when the sick and dying Turks in that hospital had begged him for pity. Did he recollect the begging of the Turk who wept? It has been said that the laugh-reflex derives from consciousness of some logical or emotional disjunction—often a disjunction between persons, as when somebody is degraded in the laugher’s eyes.<sup>107</sup> I think of Caesar after his victory over Pompey, flittering all over the Roman world, conquering and pardoning, ascending rapidly now into his sterile godhead. Everyone is beneath him. In his revealing words, “I myself am never happier than when pardoning suppliants.”<sup>108</sup> He sees King Pharnaces charging toward him at the head of a hostile army and is “amused at his vainglorious display.”<sup>109</sup> Lawrence’s translation of the *Odyssey* passage, and likewise his account of the Turk who wept, both echo with such pathetic chuckles of would-be omnipotence. When he saw the Turks in the hospital, his anxious superiority must have cracked in two: he was living, they were per-

ishing; he was victorious, clean, successful, and they vanquished and physically loathsome; they had fought in a bad cause, for bad war aims—and now, as it appeared, so had he. “There was something which made me laugh at their whispering in unison, as if by command,” he writes.<sup>110</sup> He laughed—but he helped them, and later suffered nightmares about the jellied cadavers he’d found there and con-



Lawrence with Emir Feisal at peace conference (1919)

veyed to a mass grave. A British medical major arrived the next day and, not knowing how much worse the hospital had been, called Lawrence a “bloody brute.” Again Lawrence laughed, and the major slugged him.<sup>111</sup> Earlier on, “a Turkish colonel from the window fired at me with a Mauser pistol, cutting the flesh of my hip. I laughed at his too-great energy, which thought, like a regular officer, to promote the war by the killing of an individual.”<sup>112</sup> How then could he have promoted justice by sparing one from retribution?

### THE TORMENT OF EXPEDIENCY

This brilliant and sensitive man—both more literary and more solitary than Trotsky<sup>113</sup> (more akin to Caesar in both regards); capable, unlike Stalin, of admiring others, but almost as merciless as Stalin on the occasions (rare in Lawrence’s case) that he undertook some retributory resolution; sardonically tormented; illegitimate; perhaps homosexual; guilty over everything—knew that his countrymen had lied to the Arabs, promising them independence if they fought for it; meanwhile, they’d secretly partitioned Arabia between themselves and the French. (Stalin, taking such maneuvers as matters of course, would have grinned, puffed his pipe and derived whatever advantage he could.) “In this hope” of self-sovereignty, Lawrence later wrote, his irregulars “performed some fine things, but, of course, instead of being proud of what we did together, I was continually and bitterly ashamed.”<sup>114</sup> (Stalin was never ashamed, as far as we know. Maybe shame is in inverse proportion to murderousness.) Meanwhile, Lawrence promoted British interests so well that he was decorated with medals he refused to wear; for as he wrote at the beginning of *Seven Pillars*, in a passage which Villa, Caesar, Trotsky and Stalin would never have penned, “the only thing remaining was to refuse rewards for being a successful trickster.”<sup>115</sup> He took his job description to an almost parodic extreme of blatantly cynical manipulation in the “twenty-seven articles” he composed for “handling Arabs:”

4. Win and keep the confidence of your leader. Strengthen his prestige at your expense before others when you can. Never refuse or quash schemes he may put forward: but ensure that they are put forward in the first instance privately to you. Always approve them, and after praise modify them insensibly, causing the sugges-

tions to come from him, until they are in accord with your own opinion. When you attain this point, hold him to it, keep a tight grip of his ideas, and push him forward as firmly as possible, but secretly so that no one but himself (and he not too clearly) is aware of your pressure.<sup>116</sup>

This is politics. This is what politicians do, but the lesson which Lawrence left unlearned is that the politician himself is supposed to be unaware of, or at least companionable with, the pressure he puts. Pancho Villa was all grandiosity, and Stalin knew that everything he did was right; but Lawrence despised himself. That is why he had a growing death-wish. In one of his war notebooks he'd written: "I've decided to go alone to Damascus, hoping to get killed on the way... We are calling them to fight for us on a lie, and I can't stand it."<sup>117</sup> In 1918, surrounded, as he thought, by the enemy, he rode straight toward them "to end the business, in all the exhilaration of that last and terrific and most glad pain of death," because "when combats came to the physical, bare hand against hand, I used to turn myself in. The disgust of being touched revolted me more than the thought of death and defeat."<sup>118</sup> (His aversion to flesh had metastasized within him after his capture and rape by Turkish soldiers in 1917.) But once again he won neither death nor defeat. The supposed enemy were friends.

The war over, and the Arabs more or less sold down the river, Lawrence, now famous, was invited to meet King George. The good soldier said to the King: "Your Cabinet are an awful set of crooks."<sup>119</sup>

He did what he could to help Prince Feisal get the sovereignty that he deserved, and was rewarded with the following compliment from the Foreign Office: "We and the War Office feel strongly that he is to a large extent responsible for our troubles with the French over Syria... the India Office hope that Lawrence will never be employed in the Middle East again in any capacity."<sup>120</sup> I am sure that the India Office's assessment was correct: Lawrence remained incapable of becoming a professional employed in the calculus of expediency and loyalty. His loyalties were of the personal kind. He worshipped Allenby, his former commanding officer. Feisal liked and appreciated him for his efforts. But they drifted apart: Feisal was a king, and Lawrence, who in terms of his power over government resources (as opposed to his reputation) was now a postwar nobody, further degraded himself to become "Private Shaw." He continually wrote and spoke of being filthy inside, of longing to commit some hideous act which would make people feel the contempt for him that he deserved. I presume that this means he'd already committed it—perhaps by being "touched" by his Turkish rapists, perhaps also by being touched a little by the death of the Turk who wept—he was no Eichmann; in that passage don't you also find a secret spring of pity? Or is it all stone sadism to you? "The blood came out with his heart beats, throb, throb, throb, slower and slower." Is this merely clinical? Why did he watch—why write it? What was he thinking? How many other men did he kill

directly and indirectly? I have never met a witness to violent death who hasn't been corroded by it.

Surely he thought to put the episode out of his mind. In the article on guerrilla warfare which he had been asked to write for the fourteenth edition of the *Britannica*, Lawrence proved himself to be capable of disavowals after all, assuring students of the Arab Revolt that "the members had to keep always cool, for the excitement of a blood-lust would impair their science, and their victory depended on a just use of speed, concealment, accuracy of fire. Guerrilla war is far more intellectual than a bayonet charge."<sup>121</sup>

Between 1923 and 1935, John Bruce, his mate in the Tank Corps, is said to have flogged Lawrence nine times at the latter's request.<sup>122</sup> Very probably he rediscovered what he had already learned in Arabia when a scorpion stung him, that "pain of this quality never endured long enough really to cure mind-sickness."<sup>123</sup>

In his uniform and in his Arab dress there is little of him to see, except that like Napoleon he was short. Later portrait photographs show him to have been quite handsome, with a smooth face and rather hypnotic eyes. Peter O'Toole did a good job playing him in *Lawrence of Arabia*.

## DETERRENCE AT TAFAS

If we set aside the unjustifiability of the act as retribution, and consider its expediency as deterrence, we cannot forget the significant possibility that other Turks, hearing how and why their fellow column had been wiped out, were in fact deterred from committing further atrocities—or, perhaps, simply deterred from engaging Arabs where possible (this being the classical sense of military deterrence, as when the Moghul dynast Babur put to death "several" of his prisoners, "to strike terror into the enemy").<sup>124</sup>

We agreed that a good end cannot be validated by a bad means. But if the end of deterrence is good—to *prevent unjustified violence*<sup>125</sup>—and if its means follows the proportionality principle; that is, if the number of people harmed by the act is less than the number saved<sup>126</sup>—then we must suspend our condemnation until we have finished considering the moral utility of the act.

My first thought on the matter is that perhaps Lawrence could have deterred the Mezerib Turks in a less sanguinary way. During the American Civil War, President Lincoln was very careful to distinguish deterrence from revenge. In his order of retaliation against Confederate troops who were dispatching unarmed colored Union soldiers, he invoked, as Nuremberg would eighty-two years later, international law and custom as sufficient warrant to denounce that practice. *Violent deterrence is justified when it enforces a legitimate social contract—in short, when it is an instrument of legitimate authority.*<sup>127</sup> "It is therefore ordered that for every soldier of the United States killed in violation of the laws of war, a rebel soldier shall be execut-

ed."<sup>128</sup> In short, if the thing must be done, it would be done judiciously and judicially, without malice or excess; the retaliation would be one to one, not ten to one or a hundred to one. [See following pages.]

Numerically equitable though it might have been (Lawrence did not bother to establish any preconceived ratio between his victims and their own civilian victims at Tafas, but it would have been on the order of ten to one),<sup>129</sup> Lincoln's retaliation order would still have failed to dispense fair justice to the Turk who wept, either. I imagine that doomed soul as a conscript, a weak, hangdog fellow who could barely lift his own rifle, who hadn't been paid in months, or issued rations, perhaps, since before Tafas; whose training was poor and whose morale was worse; who pillaged when he could, in order to get a good meal once in awhile. The habit of pillage might have insensibly guided him into the habit of rape. Perhaps his colleagues, like Lawrence's, were afraid of keeping prisoners on the march. Surely he'd looked into the villagers' eyes when he was chicken-stealing, and saw their hatred. When his column began spearing children to death, could that have been intended as retribution and deterrence for something, too? Could an old man have refused to give up his gold? Had some raped girl bitten off a man's ear? We don't know, nor can we know; nor can it matter; nothing excuses what the Mezerib Turks did at Tafas. Lawrence, with perhaps too glib explicitness, writes that the massacre took place by order of Sherif Bey, the commander of the lancer rear-guard, upon perceiving that the Turkish forces were being pushed back by the Arab irregulars.<sup>130</sup> Were this the case, shouldn't the retaliation have been limited to executing Sherif Bey once they caught him? And if the atrocity had been a popular measure carried out with relish by the Turkish column, as Lawrence seems to imply in another place,<sup>131</sup> we are still left to wonder whether the Turk who wept was one of the men who forced the pregnant woman down on the saw-bayonet, or whether he had stood aside, weeping even then, unavailingly invoking the Qur'-An's strictures of mercy, or whether he'd been sick with dysentery? Until we know that, how can we determine whether he got justice?

The sad law of collective violence: Collective justice (or not) sometimes disburses individual injustice. Imminence, ignorance of actual circumstances, miscellaneous collective necessities, especially in war and revolution, bring about this result. All we can really say is that misfortunes do fall upon the undeserving, and that human justice, like Fortune herself, cuts corners. When, like Stalin, we contentedly aim at committing worse unfairness than fortune, we're unjustified. In the meantime, expediency reassures us that we'll never know who's undeserving in cases such as Tafas, that deterrence must be exercised, that our first duty is to our victims and our own side, that the debased version of the Golden Rule, *Do as you are done by*, is the only plausible strategy for changing the enemy's policy. Maybe the next Sherif Bey will think twice.

Having reflected thus, we can go on with pleasure to remark upon Lincoln's humanity in the American Civil War: *He never had his retaliation order carried out.* The

## CALCULUS OF RETALIATION: HISTORICAL EXAMPLES

*For every person of ours whom the other side harms,  
how many persons of theirs should we harm?*

RETALIATOR	CAUSE OF RETALIATION	RATIO OF RETALIATION (OURS:THEIRS)		REMARKS
			KILLED	
1. Julius Caesar, in the Roman Civil War, 48 B.C. <sup>A</sup>	The Pompeian commander, Marcus Petreius, kills Caesarian troops caught fraternizing with his own.	?:0		Refusing to retaliate, Caesar sends the Pompeian fraternizers back.
2. John Brown at Pottawatomie, Kansas, 1856. <sup>B</sup>	Pro-slave men kill 6 free-state men in separate incidents, and threaten further violence.	6:5		Total executed: 5, by Brown and his raiders.
3. President Lincoln in the American Civil War. (Deterrent threat only). <sup>C</sup>	Confederates kill disarmed colored soldiers at Fort Pillow.	1:1		Total executed: none. Order suspended. Persons executed would have been POWs.
4. Cherokee war-raiders, 17th-19th centuries. <sup>D</sup>	Enemy raid. War was revenge-motivated, hence perpetual.	1:1		Total killed: perhaps hundreds.
5. Nissar, an Indian Muslim "soldier" in communal riots against Hindus, 1990s. <sup>E</sup>	Hindu violence against Muslims, same riots.	1:2+		"If I hear that two of our people have been attacked and killed at the wooden bridge it takes me just five minutes to knife five of them." <sup>F</sup>
6. Jehovah (alleged). <sup>G</sup>	Deterrent threat, to protect the fugitive manslayer Cain.	1:7		"Then the Lord said to him: 'Not so! If any one slays Cain, vengeance shall be taken on him sevenfold.'"

RETIALIATOR	CAUSE OF RETALIATION	RATIO OF RETALIATION (OURS:THEIRS)		REMARKS
			KILLED	
7. The Persian king Cambyses in Egypt, 525 B.C. (alleged). <sup>l</sup>	Persians invade and conquer Egypt. Egyptians tear to pieces a Persian herald calling for their surrender, along with the crew of the herald's ship.	1:10		Total executed: 2,000, all nobles.
8. The black American militant H. Rap Brown, late 1960s. <sup>j</sup>	Following Martin Luther King's assassination, black-white race riots continue.	1:10		Total executed: unknown; few if any. Brown was an orator, not a military leader.
9. T. E. Lawrence at Tafas.	Murder of 60+ civilians (women and children) at Tafas.	1:10+		Total executed: probably 600+ (including those killed in battle).
10. The Germans in Yugoslavia, World War II. <sup>k</sup>	Resistance and Partisan activity.	1:100		Total executed: thousands, men, women and children. In one occurrence for which Field Marshal Keitel was later held responsible, 7,000 were shot, including school-boys.
11. Ahuitzotl, Aztec emperor, ca. 1497, in Tecuantepec area of Mexico. <sup>l</sup>	Aztec merchants (who also serve as heralds and spies) are murdered in this half-conquered region.	1:2,000??		Total executed: probably thousands. 1,200 captives taken for sacrifice.
12. Otanes deputy of the Persian King Darius, on the isle of Samos, ca. 521 B.C. (alleged). <sup>m</sup>	After agreeing to restore a Persian favorite, one faction suddenly turns upon the Persian delegation and murders some of them.	1:∞		Total executed: unknown. Persians massacre all the males they can catch. <sup>n</sup>

following year, being informed that Confederates had murdered a number of colored prisoners of war at Fort Pillow, he delayed putting the order into effect, on the commendable grounds that "blood cannot restore blood, and government should not act for revenge."<sup>132</sup> He then gave the Confederates six weeks to promise that no other such massacres would occur, in which case he was willing to suspend the retaliation order. Otherwise he would "take such action as may then appear expedient and just." In short, his statement of impending retaliation was a restrained (and very decent and principled) employment of deterrence.<sup>133</sup> *Deterrence approaches justification (or at least mercifulness) when it forbears to execute retribution.*

Instead of killing every man, Lawrence, like Trotsky, could have shot every tenth man—and for better cause. (This still would not have safeguarded any innocent Turks.) He could have turned them over to the surviving villagers (in which case the results would have been the same). He could have sent them to the rear with instructions that they be tried. As we've said, he could have shot Sherif Bey alone (had the latter been taken alive). In Lawrence's case, it is true, expediency raises its formidable head: he possessed neither Lincoln's authority, nor his fortresses, safe cities, guards and prisons.<sup>134</sup> His nomadic camel-cavalry could not have conveniently sent two thousand captives to the rear, nor could they have traveled with so many prisoners. Still, he had taken prisoners before.

I cannot condemn him completely. The self-control of his guerrillas had been tested. Natural, then—however unjustified—for that self-control to give way. In *Seven Pillars*, when Lawrence recalls seeing one three-year-old girl in Tafas die from a Turkish neck-wound, trying unavailingly to scream,<sup>135</sup> his grief infects the reader, as does his horror, pity and rage. I would not raise a finger to save the Turk who did that, although I would hardly gun down his brothers. Lawrence, of course, calls *the Arabs* his brothers. Some of them hailed from Tafas; and one, Talal, the Shiekh of Tafas, went mad and galloped into the machine guns of the enemy. Lawrence did the brotherly thing, by their standards and (he being a self-described chameleon) by his: he took revenge for them. Remember: Arabia's social contract is maintained in part even nowadays by the blood-feud and vigilant defense of honor.<sup>136</sup> How much more must this have been the case in wartime? Expediency again: by so doing, he must have furthered his bond with the Arabs, and thereby augmented his powers as a commander.

Nor can whatever blame there was be exclusively assigned to Lawrence. He says that he ordered the massacre, and perhaps he did, but it would be in keeping with his masochism to take all the defilement upon himself. By his "twenty-seven articles," and the realities of his situation, he actually controlled less by discipline than by exhortation. On many an occasion—this might have been one of them—the Arabs did as they listed. *Surely this was no unpopular order.* Two days later, in Deraa, some had not tired of vengeance. We read (but not in *Seven Pillars*) that they boarded a trapped Turkish hospital train, ripped off the patients' clothes and slit their throats.<sup>137</sup> Lawrence, ice-cool or crazed, struggled (unavailingly) to *prevent* British



troops from stopping the carnage; but one hesitates to hold him responsible: nobody was in charge at that moment, and he, having already taken his retribution and probably giving little thought to deterrence, was quite simply an incompetent moral agent.

## “THE GENEROUS PRINCE WAGES WAR”

**Y**ea, vengeance is mine, sayeth the Lord—not to mention that suicided husband’s father in China (strip and beat his widow!), the affronted and endangered Pancho Villa, the contradicted Stalin, the outraged Arabs, the horror-struck Lawrence. Vengeance is natural, I said. Expediency whispers dryly that even a one-to-one ratio between my victims and yours, which is not Golden Rule-like but businesslike, may set too high a tone for practicality. Consider the slaughter of the entire Shekler hussar regiment in Napoleonic times, in retaliation for their murder of two French plenipotentiaries (who should indeed have been granted diplomatic immunity). It is difficult not to compute that ratio of victims to the moral disadvantage of the avengers. How many battalions died? How many men in each battalion? That ornament to martial nobility the Duchesse d’Abrantes, presuming to believe that she can see into the doomed Sheklers’ souls, writes at a safe remove that “their conscience told them ... that they ought not to expect quarter.”<sup>138</sup> Whatever the case, they received none. When the ratio grows still more disproportionate, revenge becomes not justice (if it ever was) but catharsis. In 1967, a young man from Hanoi whose fiancée died in an American airstrike reasons: “If I didn’t join up right away I’d miss my chance to take revenge.”<sup>139</sup> In her grim novel about the Vietnam War, Duong Thu Huong, who herself barely survived a stint at the front on the NVA side, writes: “Survivors of a horrible massacre, crushed by our own pain and hatred, we all felt a yearning for revenge... We shot like madmen, to cleanse ourselves of the pain, the despair.”<sup>140</sup> (I suppose that any Turkish survivors of Lawrence’s punishment might have felt that way—not *innerly* deterred at all.) And the Yugoslav Partisan, Milovan Djilas, whom I have frequently quoted in this book, tells how during a visit to the Soviet Union not long before the end of World War II, he was regaled by atrocity stories (their flavor all too familiar to him from events he had witnessed and caused in his own country). One of them you may find not dissimilar to the tale of the Turk who wept, except that the link between cause and effect is more tenuous, and the very notion of a ratio of punishment more irrelevant. In the midst of battle-muck and destroyed villages, Djilas, whose ideology had led him to expect rainbows, sat brooding and drinking with the Russians. But there was light after all! “Not without exultation,” the Soviet commander, Marshal Konev:

sketched a picture of Germany's final catastrophe [at Korsun'-Shevchenkovsky]: refusing to surrender, some eighty, if not even one hundred, thousand Germans were forced into a narrow space, then tanks shattered their heavy equipment and machine-gun nests, while the Cossack cavalry finally finished them off. "We let the Cossacks cut up as long as they wished. They even hacked off the hands of those who raised them to surrender!" the Marshal recounted with a smile. I cannot say that at that moment [recalls Djilas] I did not feel joy as well.<sup>141</sup>

### AS COMMON AS BREATHING

We have seen revenge play a leading part in John Brown's Pottawatomie Massacre (and the pro-slave reactions to it),<sup>142</sup> in the racial self-defense of the Ku Klux Klan;<sup>143</sup> in Dwight Edgar Abbot's premeditated self-defense against Blinky in juvenile hall;<sup>144</sup> in Afghan self-defense against rape-dishonor.<sup>145</sup> Herodotus informs us that when in ancient times two Magi ruled over the Persians as impostors, the Persians when they found out murdered "every Magus they could find" in retaliation.<sup>146</sup> My own experience convinces me that revenge constitutes a cultural imperative for most inhabitants of this earth.

In 1992 I remember in a refugee camp in Croatia meeting numberless Bosnian Muslim children of seven or ten years of age who, after explaining that Serbs had burned their houses, said that when they grew up they hoped to do the same thing to some Serb, and their parents nodded approvingly. The Serbs for their part, ironically in this context, called those families "Turks," which was their own way of memorializing ancient cruelties committed by the Ottoman Empire against Serbs: that categorization helped them hatch their own serpent-eggs of vindictiveness against any future Turk who wept.<sup>147</sup>

Or turn, if you will, to the age-spotted texts of French Revolutionary denunciations, where you'll find continual references to "the vengeance that national justice reclaims for herself,"<sup>148</sup> "the need to see ... assassins punished,"<sup>149</sup> and so forth, all linking justice, nature, bloodthirstiness and public interest with a radically facile sincerity capable of grazing over all complex ambiguities. Go back further, to Roman criminal law: it was the legal duty of a son to avenge his murdered father; otherwise he could not inherit.<sup>150</sup> That this indeed corresponds to human nature is documented in any number of curse-chants, from the pre-Biblical code of "an eye for an eye" to the UN questionnaire which finds (surprise!) that inhabitants of countries with higher burglary rates prefer more punitive punishments for burglary.<sup>151</sup> In America, when a child molester-murderer was sentenced to death, one taxpayer wrote to the editor of my city's newspaper: "Good. But not good enough. ... of course my tax dollars will eventually be funneled to whatever low-life snake of an attorney will defend this demon's right to live."<sup>152</sup> A commissioner of the Spanish judicial police listed "desire for revenge" first in his catalogue of the reasons why crime vic-

tims cooperate with the legal system.<sup>153</sup> "I think that for those who have suffered unjustly, justice alone is not enough," writes a concentration camp survivor. "They want the guilty to suffer unjustly too. Only this will they understand as justice."<sup>154</sup>

## JUSTICE AS THEATRICALITY

In my moral calculus I've placed on the list of various possible justifications for violent legal retribution—which is to say, punishment—"When it is proportionate to the original injury, and when it helps heal the victim or those who care for him. Robespierre and Cicero, among many others, assert the balmlike power of justified revenge."<sup>155</sup> Professor Trigger comments: "This may be a welcome consequence of legal action but I think it is a goal that is extremely dangerous to incorporate... The idea of damage-statements by victims and their families as part of sentencing seems to me to hold the dangers of theatricality and consequent injustice."<sup>156</sup> I for my part would assert, *the more theatrical, the better, provided that some compromise between the law and the Golden Rule can be followed.* What is justice, if not the restoration of a sense of balance? To me one of the many depressing aspects of criminal justice in my own country is the mumbling bureaucracy of the courtroom, the negotiations between public defender and district attorney over whether the convicted rapist will serve thirty years or seven, all of this occurring in a dreary emptiness; no one but the criminal cares, and he's allowed to say nothing; justice bears no significance. Which is more proportionate to the original injury, seven years or thirty? Who decides? Wouldn't it be better for everyone, especially including the criminal, if justice felt more like a morality play? In the chapter about punishment I will conclude about the Marquis de Sade: "Without his punishment, without his dreary, meaningless suffering, he might never have made meaning for himself. This fact cannot even begin to justify it."<sup>157</sup> *Revenge, deterrence, retaliation and punishment can only be justified by the meaning they express. Otherwise they become unmeaning violence.*<sup>158</sup> Revenge brings a meaning that everyone can understand. Of course, this hardly means that revenge is always justified.

## PUNITIVE JOYS

Even when the primary motive for revenge is expediency—that is, fashioning some well-worked artifact of intimidation—we may yet get a whiff of personal feeling, as when Fulvia, wife of the new tyrant Marcus Antonius and, in Plutarch's words, "a woman not born for spinning or housewifery,"<sup>159</sup> had the head of the assassinated Cicero brought into her presence, and with her hairpin pierced his dissenter's tongue.<sup>160</sup> (Her own son would himself be beheaded at the orders of Mark Antony's enemy.)<sup>161</sup> Hitler had his would-be assassins hanged with piano wire, to make them strangle more slowly. Later he watched a film of their performance. To the extent

that Fulvia and Hitler took pleasure in viewing their victims, this was retribution (which is to say, by their definitions, satisfaction-justice; by ours, sadism); to the extent that mutilation and cruelty were calculated to appall, and intimidate others, it was deterrence.

Officially, it rarely gets personal. In one chapter from *Star of Ashes*, perhaps the most terrifying work of literature on the Holocaust which I have ever read, one Pole, physically unable to dig his own grave fast enough, gets his head smashed in with a shovel. Then the superior officer arrives, and the murderer's face slams shut, its sadism retreating like disturbed maggots burrowing back inside a dead man's eyes. "Heil Hitler!" the taut face of the young teacher reports: "Fifteen shot, one punished!"<sup>162</sup> To be sure, such foulness lurks in any advocacy for justice based on an appeal to crime victims' feelings: when Cicero and Robespierre argue at the bar, invoking the "need" to witness punishment in order to obtain "satisfaction," the satisfaction must be kin to the young teacher's, which would still sicken us even had the Pole done something wrong. When we speak of "satisfaction" in this context, we dissect away the application of punitive force from its ethical connotations. This satisfaction is beastly—no, it's a veritable beast most precariously engaged. The cage is *moral commonality*.<sup>163</sup> Due process allows or forbids the executioner to express that beast's rage. When there's no due process, then it comes out, as in the Icelandic saga of Viga Glum ("Killer-Glum"), whose face, we are told, paled, "and from his eyes burst tears as big as hailstones. And he was often transformed in this manner when the killing mood was on him."<sup>164</sup>

What could be less likely to obey the moral controls of the social contract than a "killing mood"? There is always perceived cause for retaliation, but we had better not leave that perception solely up to our satisfaction, which might have been felt equally by Robespierre when his victims perished, and by the cabal of Thermidorians who put Robespierre to death. The beast eats, and is not satisfied. In this regard I recall the NPA song that goes:

Comrade, don't let the gun tremble in your hands,  
Don't let this remain silent, if I die.<sup>165</sup>

That gun speaks but one word from its round dark mouth, the word of terror. Blood revenge refurbishes the honor of the fallen cadres' comrades; it also gives sadistic satisfaction; it rights a balance, consoles a victim, perhaps because one of the most unbearable parts of being wronged is the oppressor's gloating triumph, and revenge takes that triumph away. "So the Jews smote all their enemies with the sword, slaughtering, and destroying them, and did as they pleased to those who hated them."<sup>166</sup>

## THE HABIT OF RETALIATION

Somber as it is to acknowledge the prevalence of such feelings, the human case grows yet worse when we acknowledge what Rudzutak had to learn through torture and death—that retaliation may become a mechanical act, a mere reaction to the enemy's equally inevitable atrocity.<sup>167</sup> And here I don't mean "mechanical" in the merely institutional sense which applies for despots such as Stalin, the "mechanical" sense of Hitler's "factories of death," which grind—smoothly or not, but *automatically*—according to the terror-capitalist's expediently logical agenda—no, I'm talking about something like instinct, which works to no moral actor's advantage except by accident. Sullen human mysteries! "Fifteen shot, one punished!" What can this mean? How can it mean anything? Where lies the calculus?

Lawrence's troops slew Turks whose victims' blood had scarcely yet called the flies. The Cossacks at Korsun'-Shevchenkovsky could see on every side a smashed, burned vista which their enemies had helped to create. They spared no thought to deterrence, only to retribution, which could be satisfied only by liquidation. To an ant queen among weaker rivals, as to a Molotov, liquidation is a matter of expedient course; the rivals of course have done nothing "wrong," but (so the liquidator assumes, if she makes any assumptions at all) they would have proceeded likewise had they been able: natural selection presupposes competition. Certain apes will kill the prior offspring of females they've wrenched away from other males, thereby protecting their own bloodlines.<sup>168</sup> We explain these events in terms of sociobiology, not ethics, because the perpetrators are not human. Call it ape-ethics.<sup>169</sup> Call it Hitlerism: The Jews were not human to him; deterring them from any particular action never formed the basis of the Führer's policy. His purpose was to punish and above all to liquidate: the only proper retribution for the spiritual and biological pollution inflicted by the Jews over the ages ("was there any form of filth or profligacy, particularly in cultural life, without at least one Jew involved in it?")<sup>170</sup> was the elimination of all Jews. Correlation of forces, not ethical considerations, dissuaded the Nazis from their ends. Himmler vomited, Eichmann wept,<sup>171</sup> but they did what their positions required, following the example of Hitler himself, who had yielded to anti-Semitism sorrowfully, but with "cold reason."<sup>172</sup> Here defense of race, ground, authority and all their kindred categories fade into defense of retaliation itself—an enviable state for the executioner, since then no justification is needed: this is simply *comme il faut*, how life has to be. Despite his cold reason, Hitler cannot refrain from lapsing into rages, but do the victims care? They lie dead, while habit treads upon their graves. Obedience can forget them,<sup>173</sup> but this book's meditation is trapped by them.

## “I CAN ONLY HOPE IT’LL MAKE MY ENEMIES SUFFER”

For less unencumbered anti-logic, we’re better off reading the medieval Icelandic sagas, which tell the tales of blood-feuds which continued for generations. There are advantages to feuds: they build honor and sometimes prevent wars. More support for the “hydraulic theory of violence:”<sup>174</sup> Over the three centuries of its free dominion, medieval Iceland avoids the massive battle casualties of feudal Europe.<sup>175</sup> Instead, neighbors kill neighbors, their hostility rarely gushing, but trickling continuously between the isolated turf-roofed farmsteads. “Better for us,” says the brother of a king-murdered man to the grief-stricken father, “to seek our revenge for Thorolf’s killing” instead of “making a fool of oneself by lying in bed like an invalid.” He continues with true “cold logic”: “It may be we’ll get our chance with some of those who had a hand in it, but even if that fails there are still others we can reach whose deaths won’t please the King.”<sup>176</sup>

As records of actual events we needn’t take the sagas literally; as moral paradigms, we can accept them, as we did that Stalinist novel *How the Steel Was Tempered*,<sup>177</sup> as expressions of a consistent ethos. And the ethos is this: Whether or not revenge produces pleasure—and it usually does—until its enactment, it remains a burden, a duty. It must be fulfilled—by near kinsmen if possible, by sworn friends and their followers if not. That is the Norse way. Violence itself, untrammelled by any cause, appears in their ancient *Poetic Edda* as a virtue: “The generous prince wages war,”<sup>178</sup> or “The wise prince makes the battle-adders [swords] creep the scabbard-path,”<sup>179</sup> or “The eagle is able to tread underfoot the completely dead skull... The she-wolf is often able to drink blood; the good prince wishes it so.”<sup>180</sup> Why is he good? Because for the Norse as for the ancient Greeks, force shines with expedient and ritual excellence; likewise revenge: the rewards are the same, whether or not they’ve been earned according to any scheme of justice; and the honor is the same no matter what.

But while merely evening some score may wrest short-term gains from fate’s mouth (the loot from a pillaged farmstead, the rape of an enemy’s wife, the satisfaction of crowing over a dead or humiliated foe), the ultimate results could be highly inexpedient: outlawry, confiscation of goods and above all, by the enemy’s mirror-calculus, *retaliation*. “Time will tell,” says one enemy to another, with understated contempt, “which of us will survive to build the other’s cairn.”<sup>181</sup> He speaks more profoundly than he knows. The retaliator-protagonist (or, as the *Edda* would call him, the stainer of wolf’s teeth) in these sagas often comprises an almost pitiable figure, enslaved by circumstances—no moral actor he, only a reactor, helpless to follow the benevolent advice of restrained men.<sup>182</sup>

In the strange old *Eyrbyggja Saga*, this unfreedom reaches almost parodic extremes. Steinthor Thorlaksson, drawn half reluctantly into battle against his enemies’ kinsman and advocate, Snorri the Priest, is himself supported by his relation,

Styr Thorgrimsson—for how else may Styr comport himself? Blood calls to blood, as they say; and should he fail to help Steinthor, then Steinthor will not help *him* in his future need. Here is the practical underpinning of violent honor.<sup>183</sup> “Intelligent and ruthless”—moreover, he’s learned the habit of killing people without paying compensation—“Styr lorded it over his neighbours and had plenty of men with him.”<sup>184</sup> When we look in on him, he’s loyally hacking and hewing; and before long he sends one of Snorri’s followers to the wolf—the first casualty of the battle. But Snorri, we now learn, is Styr’s son-in-law. Seeing his retainer fall, he cries out: “Is this how you avenge your grandson Thorodd when he’s dying of the wound Steinthor gave him? You’re no better than a traitor!” —Damned whatever he does, Styr replies, “I can soon make it up to you.” “He joined Snorri with all his followers, and the next man he killed was one of Steinthor’s.”<sup>185</sup> This bleak exposition of the old sagaman reveals Steinthor and all his men to be but murder-pawns, random stainers of wolves’ teeth.

Defense of honor and bloodline, blood-lust—these are likewise chess-pieces, which cold reason deploys as needed to arrange the next retaliatory move. Personified retaliation insists: “You surely cannot want to refuse people help; surely you will want to support your kinsmen by blood and marriage.”<sup>186</sup> Retaliation teaches a little boy, recipient of a king’s generosity, to thank him by saying: “I solemnly vow to be the death of that man who becomes your slayer.”<sup>187</sup> Retaliation calculates even as it incites, like cunning Snorri the Priest instructing a plaintiff that should the legal action turn sour, violence may begin, but “as soon as I estimate that you have killed off as many of them as you can afford to pay compensation for without exile or loss of your chieftaincies, I shall intervene with all my men to stop the fighting.”<sup>188</sup> Oh, cold logic, sauce upon hot rage! One woman’s advocate, finding her other kinsmen unwilling to support her, instructs her to dig up her murdered husband’s body, cut off his head and show it to the principal waverer, with the remark that the owner of the head wouldn’t have let *him* down.<sup>189</sup> “I’ll do as you suggest,” she replies. “I can only hope it’ll make my enemies suffer.” Horrified, sickened, enraged, the waverer pushes the grimly determined widow away—but he also agrees to take on the matter, never to let it drop.<sup>190</sup> He’s thus become another Styr, trapped into action—so, too, the man who’d killed her husband in the first place; likewise the widow herself, who, like the heroine of another saga, proves “harsh-natured and ruthless; but when courage was called for, she never flinched.”<sup>191</sup>

RETALIATION AS AUTOMATISM IN EGIL'S SAGA  
(ca. A.D. 1230)

(Several feuds are detailed in this saga. Here I have followed only the main thread.)

Bjorgolf of Torg Island, an elderly widower, feels attracted to young Hildirid Hognisdottir. "Hogni realized there was nothing he could do but let Bjorgolf have his way. Bjorgolf bought the girl for an ounce of gold and off they went to bed."<sup>A</sup> After he dies of old age, his son by a previous marriage, Brynjolf, expels Hildirid and her two sons, no doubt to defend what he considers to be his rightful inheritance. Brynjolf dies, and his son Bard falls in battle, leaving the family property, and Bard's wife Sigrid, to his sworn friend Thorolf Kvedulfsson. Hildirid's sons, now grown, approach Thorolf to request the portion legally due them. Defending his own interests, Thorolf replies that they have no right: "The way I heard it, your mother was taken by force and carried off like a captive.' And with that their conversation came to an end."<sup>B</sup>

RETALIATOR(S)	CATEGORY OF RETALIATION <i>Defense of... (+ self-interest)</i>	VICTIM(S)	ACT	RESULT
1. Hildirid's sons	Honor, bloodline [+ property]	Thorolf	Slander T. to King Harald Fairhair.	T. loses the King's trust. T.'s richest longship confiscated.

*FIRST GENERATION: Thorolf Kvedulfsson vs. King Harald Fairhair (Halfdan'sson)*

2. Thorolf	Honor [+ property]	Norwegian merchants, and through them the king.	Raids ships.	T. and King Harald now open enemies.
3. Thorolf	Honor [+ property]	Hallvard & Sigtrygg, the king's men who confiscated T.'s ship.	Burns and loots their farmstead.	Ditto.

RETALIATOR(S)	CATEGORY OF RETALIATION <i>Defense of... (+ self-interest)</i>	VICTIM(S)	ACT	RESULT
4. King Harald	Authority, honor [+ property]	Thorolf and his followers	Burns T.'s farm and kills T. and others in battle.	King takes possession of T.'s properties, marries off Sigrid to T.'s kinsman Eyvind Lambi.
5. Ketil Trout, Thorolf's kinsman and friend	Honor, bloodline [+ property]	Hildirid's sons	K. kills them and pillages their farm.	K. moves to Iceland.

Through mutual acquaintances, Thorolf's family makes one half-hearted attempt to end the violence by requesting compensation from the king for Thorolf's slaying. In reply, the king requests that Thorolf's brother Skallagrim join his retinue so that his loyalty can be watched. Skallagrim refuses this humiliating provision.

*SECOND GENERATION: Skallagrim Kvedulfsson...*

6. King Harald	Authority, honor	Skallagrim Kvedulfsson	K.H. sends retainers to pursue and kill S.K.	Attempt fails. King and S.K. now open enemies.
7. Skallagrim + Thorolf's father Kvedulf	Honor [+ property]	Halvard + Sigtrygg + their followers	S.K. & K. kill them & their crews (50+ men), recover Thorolf's longship and gain booty.	King Harald's young cousins drown during battle, which deepens the king's hatred for Thorolf's kin.
8. King Harald	Authority, honor, bloodline [+ property]	Thorolf's kin + followers	K.H. confiscates property, declares outlawry.	Emnity reinforced. More families move to Iceland.

A second opportunity to end the feud occurs when through a mutual relation Skallagrim's son Thorolf meets King Harald's young son Eirik Bloody-Axe and gives him a ship. In return, the boy promises his friendship. He even intercedes with his father, who grudgingly agrees to leave the Skallagrimssons alone.



RETALIATOR(S)	CATEGORY OF RETALIATION <i>Defense of... {+ self-interest}</i>	VICTIM(S)	ACT	RESULT
		<i>... vs. King Eirik Blood-Axe (Haraldsson)</i>		
9. Skallagrim Kvedulfsson	Honor, bloodline	Eirik Bloody-Axe	S. ruins a beautiful axe sent him by E.B.-A. and tells Thorolf to return it.	None. Thorolf assures E.B.-A. that his father admires the gift.
<i>THIRD GENERATION: Egil Skallagrimsson</i>				
10. Egil Skallagrimsson, Thorolf's brother	Honor	Atley-Isle Bard, E.B.-A.'s man	Bard withholds ale from Egil, because he needs it to feast E.B.-A. Even though Egil gets invited to the feast, he cannot forgive the perceived insult and kills Bard.	E.B.-A. feels affronted and challenged.
11. Eirik Bloody-Axe	Authority, honor, justice	Egil	E.B.-A. sends his retainers to find + kill Egil.	Egil escapes, killing 2 more men and maiming one more.
<p>A third attempt to derail what now looks to be an almost inevitable chain of events. Thorir Hroaldsson, who had been Kvedulf's foster-son, pleads with Bloody-Axe (who is now the king) to be reconciled with Egil. "King Eirik was in such a rage, it was very difficult to come to terms with him. He said that his father's prediction would turn out to be true and that this was a family that it would be hard to trust."<sup>c</sup> In other words, Egil's proud, intemperate and vicious act will not be laid at his own door, but at his family's. Still, the king awards himself (and accepts) compensation. Eirik's wife, Queen Gunnhild, responds in keeping with her character in other sagas: "You've got a short memory for an insult."<sup>d</sup></p>				
12. Queen Gunnhild	Honor, authority	Thorvald the Overbearing (and, indirectly, Egil and his brother Thorolf)	G. tells her brothers to kill E., or, failing that, one of his men.	Thorvald, one of Egil's brother's retainers, killed by Gunnhild's brother Eyvind Shabby.

RETALIATOR(S)	CATEGORY OF RETALIATION <i>Defense of... {+ self-interest}</i>	VICTIM(S)	ACT	RESULT
<p>Eirik offers to pay blood-money, which would be fair, since he has just accepted compensation for Egil's murder of Bard, "but Thorolf and [Thorvald's brother] Thorfinn said that they had never taken money in compensation for a killing, and didn't mean to start doing so now."<sup>e</sup></p>				
13. Egil	Honor [+ property]	Eyvind Shabby and his crew (hence, indirectly, Gunnhild + Eirik)	Egil attacks their two skiffs.	Eyvind escapes, but Egil and his men kill many crewmen and loot the skiffs.
14. Queen Gunnhild	Honor, authority	Egil	Sends her thugs to break up a court in which E. seeks to collect his wife's inheritance.	E. defies anyone to settle on his wife's land.
15. King Eirik Bloody-Axe	Honor, authority [+ property]	Egil	Outlaws Egil and tries to kill him.	Egil escapes, killing a royal retainer. 10 of Egil's men slain, + his ship looted.
16. Egil	Honor [+ property]	Berg-Onund, who claims his wife's land (hence Gunnhild + E.B.-A.)	Kills B.-O. + 2 others, incl. E.B.-A.'s foster-son.	Deepened mutual enmity. (B.-O. was one of G.'s favorites.)
17. Egil	Honor [no property motive recorded]	E.B.-A.'s son Rognvald (hence G. + E.B.-A.)	Raids ship, kills R. + 12 companions.	Ditto. Egil boasts: "I dabbled my blade in B.A.'s boy." <sup>f</sup>
18. Egil	Honor	E.B.-A. + G.	Egil sets up official pole of insult against them, topped with a horse's head.	Ditto.

RETALIATOR(S)	CATEGORY OF RETALIATION <i>Defense of... {+ self-interest}</i>	VICTIM(S)	ACT	RESULT
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Later, falling into Bloody-Axe's power in England, Egil just manages to save his head, in spite of Gunnhild's importunities, by composing and reciting a hypocritical poem which praises the king. As soon as he has gained safe conduct and quitted Eirik's sphere of influence, he recites another poem calling him "gift-lord of jackals."<sup>6</sup>

... vs. King Hakon the Good (Haraldsson)<sup>11</sup>

19. King Hakon	Honor, authority, bloodline [+ self-preservation]	Egil	H. refuses to let E. become one of his retainers or grant him residence in Norway since his family has caused such trouble, but allows his land-claim (see 14, 16).	E. accepts this judgment. He challenges Berg-Onund's brother to a duel and kills him.
20. King Hakon	Authority	Egil	H. refuses to allow E.'s claim to the property of a berserker he's killed, because E. is an untrustworthy foreigner.	E. becomes bitter against H. His kinsman Arinbjorn compensates for the loss.

In part because Hakon comes out so harshly against Arinbjorn, who had pled for Egil's property rights, Arinbjorn leaves Norway to join his kinsman Eirik Bloody-Axe. Hakon therefore outlawed some of Arinbjorn's kinsmen, and sends the latter's nephew, Thorstein Thoruson, on a degrading and dangerous mission to collect tribute. Egil offers to go in his stead. Hakon's messengers are overjoyed, hoping to kill Egil on the trip and thereby please Hakon.

RETALIATOR(S)	CATEGORY OF RETALIATION <i>Defense of... {+ self-interest}</i>	VICTIM(S)	ACT	RESULT
21. King Hakon	[Hope of royal favor]	Egil	Messengers try to kill Egil by getting him lost in a snowy forest. Then Armod tries to get him drunk in order to murder him.	E. vomits ale in Armod's face, cuts his beard off, and gouges out one eye.

Egil gathers the tribute, murderously triumphs over the tribute-payers' ambush, and delivers the valuables to Thorstein Thoruson. Hakon announces that he is reconciled with Thorstein. Egil leaves Norway for good. "People say that Egil did not leave Iceland after the events which have been recorded here, the main reason being that he could not stay in Norway owing to the offences already described which the Kings of Norway could charge him with."<sup>11</sup>

How could it be otherwise, when a Norseman's identity is bound up with his potency as a killer? We can't say that the Norse ethos is unjustified,<sup>192</sup> or that a mechanically predictable system of retaliation is wrong, either. We can still condemn the aggression of the strong upon the weak, but a medieval Icelander would have tempered condemnation and even outright hatred with a certain matter-of-fact respect for prowess. Quote the *Prose Edda* once more, this time from the chapter on how everything of importance should be named:

How shall a man be referred to? He shall be referred to by his actions, what he gives or receives or does. He can also be referred by his property ... also by the family lines he is descended from... How shall he be referred to by these things? By calling him achiever or performer of his expeditions or activities, of killings or voyages or huntings, or with weapons or ships.<sup>193</sup>

### PELOPONNESIAN EXPEDIENCIES

How shall a man be referred to? Ask Thucydides—who, it's true, sometimes makes vague reference to the laws of humanity; but those laws fall impotent in any contest against the forces of habit. We find him laying out the cold logic of 430 B.C., when, with the Peloponnesian War barely begun, the Athenians, having gotten some Spartan and Corinthian prisoners into their power,

without giving them a trial or allowing them to say what they wished to say in their defence, put them all to death and threw their bodies into a pit. They regarded this action as legitimate retaliation for the way in which the Spartans had been behaving, since they also had killed and thrown into pits all Athenian and allied traders whom they had caught sailing in merchant ships round the Peloponnese. Indeed, at the beginning of the war the Spartans killed as enemies all whom they captured on the sea, whether allies of Athens or neutrals.<sup>194</sup>

Retaliation reproduces itself, benefiting careerists, honor addicts, demagogues, profiteers, torturers and paranoid despots. The old cliché that "blood calls to blood," though more appropriate for the Norse, remains legible shorthand for this process, by which violence's hydra-heads bud ferociously on severed necks. Thucydides actually understands this, being an exiled intelligence, not a moral actor anymore; whereas Hitler<sup>195</sup> and Napoleon are but hydra-stalks.

### STACKS OF STONES

Why go on about it? How shall a habit be referred to? For the leaders, retaliation comprises a necessary strategy; for the followers, it becomes a way of life. Hence the

plot of a typical Hindu-Muslim riot: The other side sends away its women and belongings. Our side then begins stacking stones into convenient piles for the men to use in defense. The other side, no doubt invoking proactive imminence, throws stones at us, so we throw our stones. (If we throw them first, it's to retaliate for last time.) The police impose a curfew, whose intent succeeds only until our houses are empty of food. When our babies cry, we go out to the market, where the stabbings begin. In the night time, the other side forces itself into our houses, calling on us by name<sup>196</sup> before it cuts us down. (We who die thus are mainly women and children, because our men will be outside doing the same to them.) When it's over, our side and their side will each need revenge. Lubrication by blood will forestall any possible effects of that restraining friction we mistakenly call "humanity," allowing war to operate as a perpetual motion machine.<sup>197</sup>

## WHEN ARE DETERRENCE AND RETRIBUTION EXPEDIENT?

**W**hat then may we conclude about the *utility* of deterrence and retribution? How effective are they?

Always, says the nineteenth-century Zulu despot, Shaka: "Terror is the only thing they understand, and you can only rule the Zulus by killing them."<sup>198</sup> (A distinguished historian explains why, in his view, assassination plots against Napoleon came to an abrupt end in 1804: "The terror and the perfection of police surveillance.")<sup>199</sup>

Never, insists Clarence Darrow, citing the case that the death penalty as employed against smugglers and larcenists never succeeded in diminishing either crime.<sup>200</sup> And a scholar of twentieth-century police violence in the Americas believes that when the gendarmerie abandons deterrence through violence, the arrest rate fails to fall, and the crime rate fails to rise.<sup>201</sup>

## A LESSON FROM THE DEIFIED JULIUS

Caesar thought violent deterrence to work quite well on occasion. His Gallic arch-enemy, Vercingetorix, lopped ears, gouged eyes and burned alive. "By enforcing punishments of this sort he speedily raised an army."<sup>202</sup> Caesar vanquished that man, however. When the Gauls continued to rise up against him year after year, he lost patience and decided to employ Vercingetorix's methods. In 51 B.C., he besieged the town of Uxellodunum, and cut off the water supply. "And so necessity forced them to surrender." What next? He began, as always, by thinking of his own reputation: "Caesar's clemency, as he knew, was familiar to all, and he did not fear that severer action on his part might seem due to natural cruelty." What a self-adoring hypocrite! Still, Trotsky and Cortes would not have even made that fraudulent con-

cession to gentleness. Now for expediency: "At the same time he could not see any successful issue to his plans if more of the enemy in different districts engaged in designs of this sort." Here that Caesar joined Trotsky and Cortes. "He therefore considered that the rest must be deterred by an exemplary punishment; and so, while granting them their lives, he cut off the hands of all who had borne arms, to testify the more openly the penalty of evildoers."<sup>203</sup>

Could this ever have been better than wrong? Conceivably, had Caesar's conquests been utterly justified in the first place. They were not. Was it expedient? Very possibly. We recall that during the Roman Civil War, when the Thessalian town of Gomphi, once an obedient satellite, refused to admit his starving troops in their hour of desperation, he sacked it, after which "there was none except Larissa, which was in the hands of large forces of Scipio's, which did not obey Caesar and carry out his orders."<sup>204</sup> In other words, deterrence achieved its object at Gomphi.

And yet when his men fail him at Dyrrachium, he punishes only a few; "so great was the zeal excited among all by his moderation that they demanded to be led against the enemy immediately."<sup>205</sup>

Caesar's calculus: *Retribution is useful as deterrence's last resort*. What mildness cannot wheedle out of them, violence may seize. He respects limits, of a sort; he's neither Greek nor Norse, to let retaliation be his habit; unlike Machiavelli's, his own cold logic advises him to be liked. I have to applaud this; the threat of inescapable punitive violence must always remain better than its infliction.

### "I WAS ENTITLED TO STRIKE HEALTHY TERROR INTO THE REST OF THEM"

Napoleon, less sunnily or contemptuously self-confident than Caesar, invokes expedient deterrence by virtue of his own self-defense. His act: the kidnapping from foreign soil, secret midnight trial and immediate execution of the Duc d'Enghien (who might or might not have been, or aspired to be, a principal in an English plot to restore the old monarchy):<sup>206</sup>

I was threatened on all sides by enemies employed against me by the Bourbons; menaced by air-guns, infernal-machines and devices of every sort. There was no court I could petition for protection, so I had to protect myself. In putting to death one of the men whose followers were threatening my life I was entitled to strike healthy terror into the rest of them.<sup>207</sup>

Thus we see once again the spectacle of retribution joining hands with deterrence. Denied defense counsel (the brevity of his trial was comparable to Rudzutak's),<sup>208</sup> denied a priest, Enghien falls bleeding beside a pit which had been conveniently dug before his trial. He seems not to have apprehended any fate worse

than imprisonment; nor do I see why he couldn't have gotten that. Why not hold him hostage and issue a deterrent warning to other would-be assassins? Too late. What does his fixed stare see now? They shovel dirt over him, there in the dry prison moat, hours before dawn. Justice has been done—Napoleon's justice. (Does the Emperor gloat like Fulvia? Was it personal? We don't know.)<sup>209</sup>

Napoleon, elsewhere publicly denying his own act, in the time-tested tradition of mass politicians, nonetheless hints at his moral calculus when he writes for posterity: "The death of the Duke d'Enghien ought to be attributed to those persons at London who directed and ordered my assassination."<sup>210</sup> In other words, this is proactive imminence again: retaliation holds itself blameless, preferring to denounce its own cause, namely, the enemy's foiled deed. Napoleon's calculus: Deterrence and retribution are one. Crush defiance. Kill possibility. Be proactive. Be Stalin. *Deterrence is unjustified when it is executed proactively as both deterrence and retribution.*<sup>211</sup>

Alfred de Vigny, who after Napoleon's fall does garrison duty overlooking the turf-mound raised upon the murdered Duke, cannot forbear to visualize him, "his body shot through and his head crushed under a paving stone."<sup>212</sup>

## THE CUBAN MISSILE CRISIS

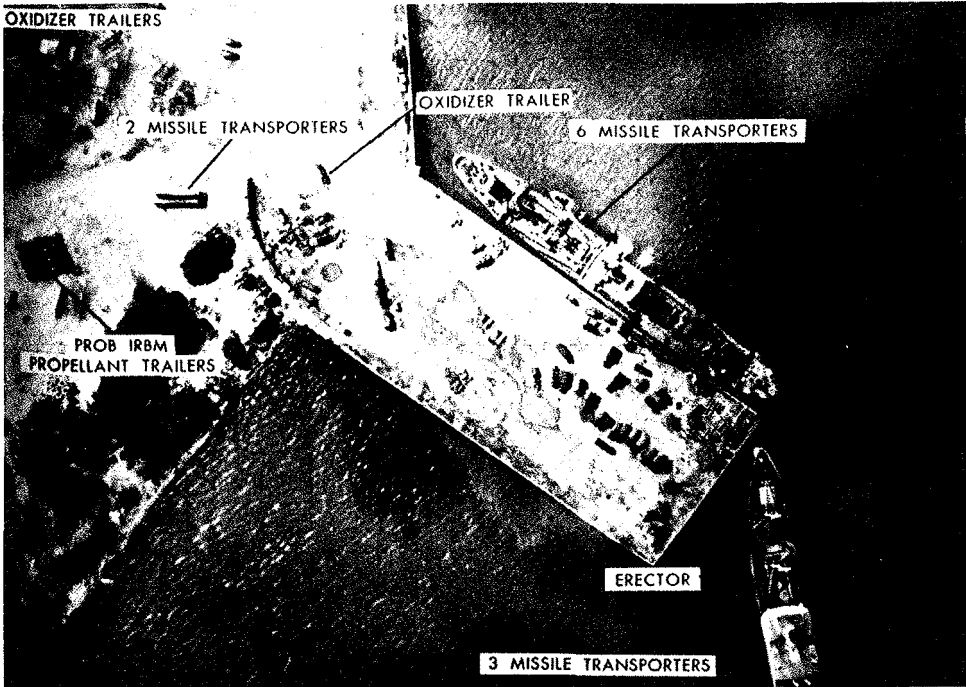
On November 12, 1962, President John F. Kennedy announces to the Yankees: "Within the past week unmistakable evidence has established the fact that a series of offensive missile sites is now in preparation on that imprisoned island" called Cuba. These sites possess nuclear capability. Kennedy defines this situation as an imminent threat.

Replies Khrushchev: "The Americans had surrounded our country with military bases and threatened us with nuclear weapons, and now they would learn just what it feels like to have enemy missiles pointing at you."<sup>213</sup> In other words, for the Soviets the garrisoning of Cuba will be presented as proactive imminent defense against the American missiles in Alaska and West Germany; the Cuban missiles may deter deployment of the American missiles.

In defense of homeland, creed, etcetera, Kennedy blockades the island, calls hypocritically for a "genuinely independent Cuba"—that is, for a pro-American Cuba—and announces (as I also would have in his place): "It shall be the policy of this nation to regard any nuclear missile launched from Cuba against any nation in the Western Hemisphere as an attack by the Soviet Union on the United States, requiring a full retaliatory response upon the Soviet Union."<sup>214</sup>

Violent deterrence is justified against the narrowly defined imminent threat of a specified foe, especially when the deterrence is itself specific and limited.<sup>215</sup> Krushchev may now make an informed choice.

So Krushchev "blinks," as the Americans say.<sup>216</sup> The missiles are withdrawn. American nuclear deterrence has triumphed.



*The port of Mariel, Cuba (1962)*

### THE NECESSITY FOR MODULATION

By Seneca's Maxim, deterrence operates better against acts of premeditation than acts of desperation. Napoleon and Kennedy were dealing with political game-players. Caesar was, too—but only in the Civil War. In his Gallic Wars he set himself up against the desperate. This is why we find his treatment of surrendered populations growing ever more brutal. The Gauls understood that once they gave in to him, their independence was gone. He could accomplish his war aims only through retribution. Starving masses cannot be deterred from rising up for bread; nor can Warsaw Ghetto Jews, upon all of whom sentence of doom has been pronounced, be deterred from lashing out against their murderers, because in such cases no deterrent violence (threatened retribution) can possibly be more fearsome than the pre-existing emergency. A resident of Kiev during the German occupation writes: "By now we were afraid to go out on the streets—you never knew where the next explosion was going to be and whether you'd be taken off and shot for it." At that time, four hundred civilian hostages, rounded up at random, faced the firing squad for each act of arson.<sup>217</sup> The natural result of such "deterrence": terrorized obedience—and partisan warfare against the Germans. Thus the pointed lesson of the Nuremberg trials. *Violent deterrence is most just, and most expedient, when its violence falls entirely upon those who made the choice to undertake the proscribed behavior.*<sup>218</sup> More generally: *Deterrence and retribution must be modulated.* When the Aztecs cruelly punished

their satellite cities for rising up against them, that deterrence etched away the resistance of many other cities facing the choice of rising up or not—because obedient tributary allies could expect not to be too badly treated; they retained their gods, magistrates and much of their wealth.

Corollary: To control the deterred, one must be able to neutralize the counter-deterriers. We find Che Guevara advising in his guerrilla manual against trusting the peasants' ability to keep secrets, on account of the deterrent effect which could be exercised by bloody enemy reprisals.<sup>219</sup> In other words, it does not suffice for us to refrain from extreme cruelty against the deterred. We must also prevent the enemy from exercising that cruelty. Yes, in the long run some will become partisan fighters on our side, but in the short run they'll obey the enemy.

## HOW MUCH RETALIATION IS ENOUGH?

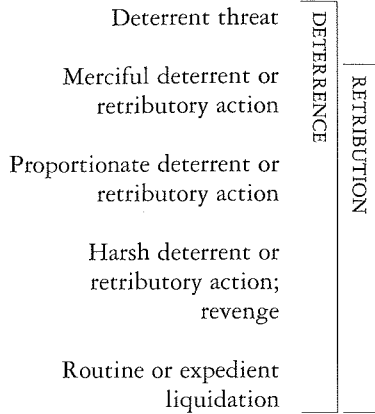
**F**or deterrence and retribution to accomplish their objective, they must reach a minimum level of severity, which can be quite justified morally in the capacity of self-defense. The Qur'-An states: "And there is life for you in retaliation, O men of understanding, that you may guard yourselves."<sup>220</sup> Violent acts can be quantified to some useful extent; hence the graduated scales of academics.<sup>221</sup> One criminal sociologist proposes that victims be compensated, but that the amount of restitution received be inversely proportional to their responsibility for their victimization. Thus someone assaulted by a burglar in his own home would be paid more than someone who went into a known dangerous neighborhood at night, alone, drunk and belligerent.<sup>222</sup> How exactly would this be calculated? Another sociologist, Wolfgang, having examined a picked group of jurists, police and students, has constructed a highly plausible table as a "point of departure" for victim compensation, in which the criminal acts themselves are fixed in order of seriousness on a twenty-six-point scale. A very minor injury, such as a shove, gets one point, a wound which requires hospital treatment and discharge is a seven, rape is a ten, an injury requiring actual hospitalization is a fourteen and death is a twenty-six. Plotting this scale against a monetary one, and going through various arithmetical operations, Wolfgang obtains the following compensation figures: \$1,000 for a seven-point injury, \$10,000 for a rape, \$1,000,000 for a murder, etcetera. The given amounts, he says, may be multiplied or divided by any constant, but the relationships between the amounts he believes to be reflective of a consensus—at least at the time and place of writing—as to the relative degrees of seriousness of the various criminally violent acts.<sup>223</sup>

Let us table Wolfgang's figures for a century or two. If a rape is still ten-twenty-sixths as severe as a murder in the year 2165, our descendants can adopt his compensation plan. Meanwhile, the following much vaguer continuum will have to do:<sup>224</sup>

I've said that deterrence and retribution must reach a minimum level of severi-



## RETALIATION: A CONTINUUM OF SEVERITY



ty in order to be effective. That minimum level is called by the nuclear strategist Herman Kahn the “deterrence threshold”<sup>225</sup>—the point at which the moral actor whom we want to control will alter his behavior as we direct. There must also be a maximum level, which I propose to call the counter-deterrence threshold. Above this value, violent deterrence defeats its own end.

Since the limitation of unnecessary violence is always a good, *violent deterrence is unjustified when the deterrent violence knowingly exceeds the deterrence threshold.*<sup>226</sup>

In that always interesting treatise *Small Wars: Their Principles and Practice*, we find this among other possible war aims: “campaigns to wipe out an insult or avenge a wrong.”<sup>227</sup> Here, interestingly enough, we are told that the war need not be as “crushing” as in the case of a war of annexation. A number of nineteenth-century examples are listed: the Abyssinian expedition of 1868, the French operations against Madagascar in 1883, etcetera. The purpose is merely to count coup, to overawe, to modestly avenge below the counter-deterrence threshold—totally the opposite of the reasoning behind Hitler’s despicable “Operation Punishment” which smashed Belgrade, the smashers being instructed that no negotiations were to be accepted, not even offers of unconditional surrender.<sup>228</sup> (This was the methodology which set the stage for hand-hacking retaliation at Korsun’-Shevchenkovsky.)<sup>229</sup>

Both Colonel Callwell, the author of *Small Wars*, and Hitler were, or claimed to be, Clausewitzians. Callwell admitted that ostensibly symbolic campaigns of revenge might have expedient motives, too: “Most of the punitive expeditions on the Indian frontier ... have resulted in annexation of the offending district.”<sup>230</sup> It is Clausewitzian to apply as much violent force toward the goal as is needed—and no more, because causing the vanquished to hate the victors as well as to fear them may embitter them to the point of rebellion. But Hitler, that man not only of expediency but also of principle, believed that he had sufficient force at his disposal to render the

acquiescence of the vanquished irrelevant. He would crush the enemy forever, or else die trying. He was cruel, arrogant and stupid—true nature in the Hobbesian sense. He went so far beyond the deterrence threshold as to counter-deter.

## FLOWER WARS

Provided that Clausewitz is correct, and that deterrence can be made believable, the deterrer would be well advised to remain at the extreme left of our continuum, threatening rather than bloodily exemplifying. When the Aztec envoys came for the first time, their request was mild: Please give us feathers for our temple, or wood for some new edifice, or stones. —Tell them no, and they'd go away. Having thus refused to accept vassalage, that city-state now became a dubious quantity. Perhaps (not being otherwise engaged) the Aztec emperor might send further heralds of reason. Exasperated, the city-state murdered them and threw their bodies on the road for dogs to eat—or maybe they'd merely demur again, or (wisdom lies within our reach) it's always possible that they rendered tribute at last. The Aztec calculus of deterrence and retribution was sensitive, capable of reaction along a wide and finely calibrated continuum more expedient than moral. Had the emperor just died, so that administration was momentarily confused? Was it now the harvest season? Had more serious rebellions broken out elsewhere? (As under the Spanish Inquisition, apostasy was considered a greater sin than mere resistance.) The Aztecs might bide their time. Or they might carry out successive campaigns to conquer the offender's allies, gradually isolating and encircling. Then again, a full frontal assault might be ordered, with instructions to accept a specified tribute upon surrender, or to kill everyone above a certain age, or to exterminate the population and raze the city.

One of their options, which could itself be scaled at any time from deterrent intimidation to heavy retributive pressure, was to launch a flower war, a *xochiyaoyotl*.

They sent tokens of their intention—say, a shield, swords and feathers.<sup>231</sup> Then they and their antagonists chose a day and a battleground. We have seen how Norse armies did likewise, erecting hazel rods along the perimeter of the field.<sup>232</sup> To the Aztecs this space was in fact sacred. Flower wars, being demonstrations of superiority, involved uprightness and honor in a way that full wars didn't. No ambushes were allowed, for instance. Paper and incense smoldered between the enemies, and then the fighting began.<sup>233</sup>



*Aztec Flower War*  
(Tenochtitlan and Tlatelolco)

There is nothing like death in war,  
nothing like the flowery death

so precious to the Giver of Life:  
Far off I see it: my heart yearns for it.<sup>234</sup>

The purpose of the flower wars has been variously given as military training and the acquisition of captives,<sup>235</sup> but the anthropologist Hassig plausibly introduces an additional imputation of quasi-Clausewitzian rationality<sup>236</sup> The idea was to wear the defenders out over time without employing more force than was needed<sup>237</sup> Since the warriors in flower wars were matched in single or group combat, the numerically weaker side suffered proportionately more casualties.<sup>238</sup> Moreover, at any time, the Aztecs could escalate matters. Thus their conflict with the Chalca in the middle of the fifteenth century began as a *xochiyaoyotl* in which, as Hassig notes, only combatants were killed, then grew into a campaign which permitted the sacrifice of commoners, then into a campaign which allowed the sacrifice of nobles, and finally became a full assault launched with arrows, spattering everyone with the ubiquitous, random violence of the Clausewitzian battlefield<sup>239</sup> In the end the Chalca were conquered.<sup>240</sup> Deterrence, not deterring, had steadily converted itself into its own proof—violence. Whatever one might think about the Aztecs' war aims, at least they modulated force.

### ATOMIC DETERRENCE

The Japanese novelist Kenzaburo Oe, shocked and grieved (as are many of us) at the very *fact* of post-nuclear Hiroshima, committed a laudable error when he concluded:

It is quite abnormal that people in one city should decide to drop an atomic bomb on people in another city. The scientists involved cannot possibly have lacked the ability to imagine the hell that would issue from the explosion. The decision, nevertheless, was made. I presume that it was done on the basis of some calculation of a built-in harmony by virtue of which, if the incredibly destructive bomb were dropped, the greatest effort in history would be made to counterbalance the totality of the enormous evil to follow.<sup>241</sup>

First of all, there is, unfortunately, absolutely nothing abnormal about such a decision. The horrible acts which parade through *Rising Up and Rising Down* ought to prove that. Nor is there any reason to suppose that the Japanese, whose conduct of the war was deeply dyed rather than merely spotted with atrocities, would themselves have hesitated to use the bomb on us. As for the moral calculus which Oe imagines the scientists of the Manhattan Project as computing among other more physical equations, I don't suppose that it was anything like that. The scientists themselves did not decide to drop the bomb. They merely decided to *make* it, for motives variously ranging from intellectual curiosity to careerism to loyalty and fel-

lowship to fear of what might happen should Hitler's side get the bomb first. Once the bomb had been made, politicians, not scientists, decided what to do with it; and one need not suppose their moral calculus to have been anything but crude.

They had a plausible argument: Save American lives, crush "Jap" fanaticism. They had spent two billion dollars on it,<sup>242</sup> they wanted the United States to be the undisputed winner—which is to say, they wanted to intimidate and dominate the Soviets. Japan had already accepted the Potsdam Declaration, provided only that the Allies would guarantee that the Emperor not be hanged.<sup>243</sup> The American Secretary of State explained later that there was no time for such negotiations: "We wanted to get through with the Japanese phase of the war before the Russians came in."<sup>244</sup> Let Hiroshima be a lesson, then—the ultimate deterrence! Indeed, some went so far as to make the argument that because the bomb existed, it needed to be used, in order to deter its own use in future wars: thus, the hundred and forty thousand people who would die at Hiroshima over the next half-century<sup>245</sup> (for even now,<sup>246</sup> "Little Boy" goes on killing by means of various cancers) would constitute the necessary down payment on a perpetual peace.



*Charred corpse in Nagasaki (1945)*

Was this hypocritical? Maybe, but that isn't even the point. Haunted by a sense of immediate danger, most of us cannot think beyond an immediate response. "Think this atomic bomb will end the war?" a Nagasaki-bound sergeant asks a reporter, who gives him a cheery reply.<sup>247</sup> What "this atomic bomb" will do after the war is neither of their concern—a very natural state of affairs, which comprises one of the many moral tragedies of Hiroshima and Nagasaki. Well, then whose concern will it be? Most likely, the concern of the A-bomb experts, who for some strange reason are often among the people most likely to drop A-bombs. Enter the man who gave us the notion of a deterrence threshold!

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#### THE MORAL CALCULUS OF HERMAN KAHN (1959-60)

*What casualty rate will deter us?*

END: Maximal deterrence capability of the United States against the USSR.

#### DEFINITIONS:

TYPE 1 DETERRENCE: DETERRENCE AGAINST DIRECT ATTACK.

- "Most experts today argue that we must make this particular type of deterrence work, that we simply cannot face the possibility of failure."<sup>248</sup>

- “The difficulties of Type 1 Deterrence arise mainly from the fact that the deterring nation must strike second.”<sup>249</sup>

MEANS: *Massive retaliatory capability,*<sup>250</sup> *combined with will and rationality.*

PREDICTED SOVIET COUNTERMOVES: Not applicable, since the Soviets have moved first. Assume a full-scale nuclear war, which will be acceptable to us only *if we can keep our casualty rate below the deterrence threshold.*

TYPE 2 DETERRENCE: DETERRENCE AGAINST EXTREME PROVOCATION.

EXAMPLE: The Russians begin to sink our Polaris-missile-equipped subs one by one.<sup>251</sup>

- “The Soviet planner asks himself, If I make this very provocative move, will the Americans strike us?”<sup>252</sup>
- “If Khrushchev is a convinced adherent of the balance-of-terror theory and does not believe that his Type 1 Deterrence can fail, then he may just go ahead with the provocative action.”<sup>253</sup>

MEANS: *The same as for Type 1 and 2 Deterrence, with the additional capabilities of:*

- (a) evacuation to fallout shelters.
- (b) rapid upgrade of air defense and offense,<sup>254</sup>

[*The latter two of which are preferred to massive retaliation in this situation because full-scale nuclear war is only a last resort. By evacuating and alerting defenses, we render the Soviet deterrent threat less dangerous to ourselves.*]

PREDICTED SOVIET COUNTERMOVES:

1. Launch a first strike—blocked by our Type 1 Deterrence *if they believe that we can keep our casualty rate below the deterrence threshold.*
2. Prolong the crisis—blocked by our Type 2 Deterrence *if they believe that we can keep our casualty rate below the deterrence threshold.*
3. Give in.<sup>255</sup>

TYPE 3 DETERRENCE: DETERRENCE AGAINST MODERATE PROVOCATION.

EXAMPLE: The Russians back the North Koreans or blockade Berlin.

- “What deters the Russians from a series of Korea and

Indo-Chinas? It is probably less the fear of a direct U.S. attack with its current forces than the probability that the U.S. and her allies would greatly increase both their military strength and their resolve."<sup>256</sup>

• "The Russians have told us that any talk of our maintaining our position in Berlin by force is 'bluff.' If we send soldiers, they say they will kill them... While Berlin is important ethically and politically, its loss would not compare to the greatly increased power and resolve on the side of the West" should NATO mobilize.<sup>257</sup>

MEANS: *The same as for Type 1 and 2 deterrence, with the additional capabilities of:*

- (a) fighting a limited war;
  - (b) instigating internal costs to enemy;
  - (c) splitting off the enemy from his allies;
  - (d) touching the enemy's moral or ethical inhibitions;
  - (e) increasing our own military capability;
- Etcetera.<sup>258</sup>

PREDICTED SOVIET COUNTERMOVES: The same as for Type 2 Deterrence—with the same results *if they believe that we can keep our casualty rate below the deterrence threshold.*

#### GENERAL CONSIDERATIONS:

- (a) "Even with tested missiles, results of attacks are not really mathematically predictable."<sup>259</sup> In other words, we must expect a wide margin of error in our deterrence threshold.
- (b) "There is no acceptable way to protect ourselves from a psychotic Soviet decisionmaker."<sup>260</sup> Therefore, no matter how logically we negotiate, Types 2 and 3 alone are insufficient deterrence.
- (c) "We must be able both to stand up to the threat of fighting a war and to credibly threaten to initiate one."<sup>261</sup> In other words, we must possess Type 1 Deterrence, and we must know our own deterrence threshold.

#### *Computation of Deterrence Threshold*

##### WHAT CASUALTY RATE WILL DETER US?

"I have discussed this question with many Americans, and after about 15 minutes of discussion their estimates of an acceptable price generally fall between 10 and 60 million dead... The way one seems to arrive at the 60 million figure is rather interesting. One takes about one-third of a country's population, or a little less than half."<sup>262</sup>

- Mao Zedong's "acceptable price" was 300 million, or half of the Chinese population. "The atom bomb is nothing to be afraid of," he said.<sup>263</sup> During World War II, Onishi, the Japanese Vice-Admiral, had concluded that Japan could still save itself by "twenty million voluntary deaths."<sup>264</sup>

*Will the Soviets find the threat of U.S. retaliation credible?*

"I have not asked any Soviet citizen, so I lack the advantage of any introspection."<sup>265</sup>

ETHICAL CONSIDERATIONS: "These remarks will distress all who, very properly, view the thought of fighting a war with so much horror that they feel uneasy at having even a high-quality deterrent force... While one can sympathize with this attitude, it is, I believe, close to being irresponsible."<sup>266</sup>



*Woman burned  
in Nagasaki*

Mr. Oe is wrong, I'm sure of it: why should the sergeant and the reporter care that those two bombs, like the landmines now littering so much of the world, are not merely super-arrows or peerless bullets, which destroy on however grandiose a scale, ending the war indeed—but also tireless murderers, who continue their work long after the launchers' policy has been exhausted by victory? The sergeant and the reporter have seen and suffered enough. Let it be someone else's problem. And so it's ours. Deterrence and retaliation unravel their own effects, creating useless bitterness, anger, hatred and terror, and poisoning the relationship between the erstwhile antagonists. I remember visiting one room in the Tokyo-Edo

Museum which showed over and over a film loop of an American incendiary mission successfully accomplished: again and again, I saw those skinny charred bodies being stacked and counted among Tokyo's ruins. I was the only Caucasian. The Japanese expressed tense awareness of my presence, which began to resemble an intrusion, and several old people glared at me with malignant hatred. Nowhere in the museum did I find any indication of Japanese atrocities. The one-sidedness of the thing angered me, as did Mr. Oe's book, which refused to anywhere acknowledge his own nation's responsibility for war crimes, and so I shrugged their hatred off, gazing back into their eyes a trifle defiantly. That same year, in my own country, the Smithsonian Museum, which had sought to commemorate Hiroshima both as a war-ender and as an act of murder, lost out to the American-born haters, who allotted space only to the glorious silver fuselages of U.S. supremacy. And as I was writing this paragraph, I learned that at our Pearl Harbor memorial in

Hawaii, an American veteran recently punched a Japanese tourist whom he suspected of smiling.<sup>267</sup>

Another American reporter goes to Hiroshima, gazes around with war-weary jadedness ("in the part of town east of the river the destruction had looked no different from a typical bomb-torn city in Europe"),<sup>268</sup> tries unsuccessfully to interview a few "bowing and grinning" civilians and finally agrees to be interviewed by his Japanese counterparts, who ask him whether the A-bomb will in fact end all wars, and whether Hiroshima will be dangerous for the next seventy years. The American newspaperman gives the expected human answer: "We told them we didn't know."<sup>269</sup>

Once again we've arrived at the result of Seneca's Maxim: Absent imminent self-defense, *retaliation (either deterrence or retribution) is unjustified insofar as its effects are not foreseeable and controllable*. Hence the extreme irresponsibility of nuclear deterrence. If in fact the tale of Japan's surrender feelers is true, then Hiroshima was unjustified, although Japan in starting the war and fighting so barbarously must bear some responsibility. And Herman Kahn's moral calculus, for all the virtue of its attempt at modulation, disquiets us, not only for its acceptance of ten to sixty million casualties, but also for its assumption that such a figure could in fact be predicted and prepared for.



Nagasaki,  
August 9, 1945

I grant that in the face of direct nuclear attack, what Kahn terms Type 1 Deterrence, being straightforward self-defense, need not be bound by any preconceived number of casualty figures. Should an enemy be launching a rain of nuclear missiles upon our homeland, then any number of American deaths might occur, and would be laid not at our door, but at the aggressor's. But what about Type 2 Deterrence? How many American lives should be risked for our Polaris subs? Here it is all darkness, with the enemy softly groping with cold fingers, to see what we'll do, reconnoitering our will and strength. Neither he, nor we, nor Mr. Kahn can possibly know how many will die. And the immense danger to which his moral calculus is susceptible lies in its easy abuse by political "experts," who decide how provocative the enemy's provocation is.<sup>270</sup> In our chapter on defense of homeland we saw how natural it can be to conflate imminently justified self-defense with defense against futurity or long-term strategic aims which approach outright aggression.

## SYMMETRY AND DISCRIMINATION

**T**True or false? Against a violent deterrent of magnitude X, a counterdeterrent of magnitude X must be both necessary and justified. Against a wrongful violent act of magnitude X, retribution of magnitude X is fair. —My vote would be:



true. (We shall have more to say about this conception in our chapter on punishment.) But agreeing that symmetry may be *deserved* seems very different from asserting that righteousness *requires* a violent response of identical magnitude.

Under circumstances of unconstrained deterrence and retribution, when each side alternately appoints itself the other side's judge and executioner, invocations of symmetry feed violence's hideous tendency to automatism. "Does one feel any pity or compassion for the poor devils about to die?" the journalist on the Nagasaki atom-bombing mission asked himself. "Not when one thinks of Pearl Harbor and of the Death March on Bataan."<sup>271</sup> —"We were enraged and frustrated," recalled one of that journalist's enemies, possibly related to some of the poor devils (of whom many if not most were women and children); he was a Japanese naval policeman in Indonesia who, following orders, had beheaded three captured American airmen without trial. Most of the civilians at Nagasaki, although technically noncombatants, did contribute to the war effort and its numerous beheadings through their factory work—without which they wouldn't have received anything to eat. The three American fliers, on the other hand, *were* the war effort, which was why the police commander explained his actions thus: "When you lose your own fighting capability and can only suffer under their attacks, you become vengeful yourself. We'll get them! They'll pay for this!"<sup>272</sup> (Following their victory, the Americans made him dig up the bodies.) —They hurt us, so we'll hurt them: what could be more natural? Clausewitz in his physicianlike detachment (never look for ethical guidance from *him!*) pens merely that violence upon us will stimulate our desire for revenge—not on the superior officer who ordered it, but on the immediate perpetrator.<sup>273</sup> But perhaps, like the Soviets at Korsun'-Shevchenkovsky, or Hitler in Yugoslavia, we'll want to make them *both* pay.

The logical linkage between Nagasaki and Bataan (never mind that nobody's computing symmetry here), and between decapitating pilots and having been bombed by those pilots (or their colleagues)—and the equally plausible connections to any potential number of mutually succeeding acts on both sides—prove the *long-term inexpediency* of pure revenge as a means (of either deterrence or retributory justice), although each such action may chill the opponent's *immediate* resolve or capacity to retaliate.<sup>274</sup>

## TU QUOQUE

In terms of justification, the debased Golden Rule—do as you have been done by<sup>275</sup>—hardly constitutes a judicially accepted defense. The fact that you murdered my wife first may not preserve me undevoured by the law if I then murder yours to get even.<sup>276</sup>

Once again we slip into the Nuremberg courtroom in 1946. Here stands the German Admiral, Doenitz, sentenced to ten years for committing nearly the same

act on the high seas which the American Admiral Nimitz had done. In his memoirs, Telford Taylor, who served on the American side, is fair enough to admit that the Allies committed some such injustices. But he rejects the so-called *tu quoque* [you, too] defense, insisting that the guilt of the accuser remains irrelevant to the guilt of the accused. Fine. Let us also provisionally reject it. Whether or not Nimitz sank ships, Doenitz sank ships, so Doenitz is guilty. As Taylor genially admits (which admission costs him nothing), “the laws of war do not apply only to the suspected criminals of vanquished nations.”<sup>277</sup> Nimitz (and, ideally, Stalin) should have faced trial. The reason they didn’t, of course, is “political.”<sup>278</sup> Nimitz got a freeway named after him instead. And why weren’t the British brought to trial for aerial bombing in Germany? Taylor glibly replies that “here there were no recognized laws of war pertaining to aerial bombardments during World War II and ... none were formally proposed by the nations until 1977.”<sup>279</sup> But for the German defendants, Taylor helped to make up laws of war as he went along.<sup>280</sup>

*Tu quoque* is irrelevant, provided that the moral ends of deterrer and deterred are irrelevant to our judgment of them—that is, if unjust means poison those ends.

The Turks commit atrocities at Tafas. Lawrence of Arabia commits atrocities against the *same* Turks. What if he hadn’t succeeded in catching them, and invoked *tu quoque* to kill other Turks? This is more or less what that Icelandic retaliator was doing when he said: “It may be we’ll get our chance with some of those who had a hand in it, but even if that fails there are still others we can reach whose deaths won’t please the King.” But the *tu quoque* of the Nazi defendants went beyond this. In effect, they were saying: “We killed Jews and the Russians killed Poles,<sup>281</sup> and the Russians aren’t being indicted, so neither should we.”

Since unjust violence is *always absolutely* as well as *sometimes relatively or contextually* unjustified, *tu quoque* in its Nazi delineation doesn’t seem to extenuate the Nazis at all. But if that is the case, then isn’t the killing by Lawrence’s agency of the Turk who wept, if he were in fact innocent, also inexcusable? Does our prior consolatory assertion that imminence prevents our standards of discrimination from being accurate still seem fair?

Consider again those Peloponesian expediencies. If it was “normal” or characteristic for Greek city-states to put their prisoners of war to death, then may a Greek city-state which has just entered the war freely do the same? “They all did it in those days.” It seems to me that all we can say is that *tu quoque* is *not a justified defense for unethical acts of violence unless those acts have been consensualized into an ethos of acceptability*. For example, as of this writing (2003), the United States continues to employ land mines in some of its military operations. These mines kill civilians, sometimes decades after the end of the war for which they were laid.<sup>282</sup> They are barbarically indifferent to proportionality and discrimination.<sup>283</sup> And yet my government continues to use them. One excuse, which strikes me as both hypocritical but somewhat true: *Tu quoque*.

The Jew-killers and the Pole-killers were both wrong, because no ethos other than theirs accepted the murder of civilians.

A legitimate Peloponesian response to the murder of prisoners of war would have been anger, leading to justified deterrence and retaliation of some kind. And we ourselves must accept that the deterrent threshold was much higher for that epoch than now.

Here's the conundrum: For retaliation to be just, it must be consistent. But to the extent that it is consistent, it may begin to appear to its audience not as an effect, but as a mere situation. If every convicted arsonist gets burned alive, and there happen to be many arsonists, then bystanders, instead of remarking that the judges will burn arsonists, may propound that it is normal for human beings to be burned<sup>284</sup>—a statement with the same practical sense, but with a profoundly different moral connotation. Punishment is routine because crime is routine; therefore, deterrence no longer deters. This is what Caesar is getting at when he writes in his apologia for the Roman Civil War that “even Caesar’s kindness had lost some of its effect from the frequency with which it was offered.”<sup>285</sup> In point of fact, Caesar reveals himself to be little better than any other cool politician: he demands of kindness that it produce an effect.<sup>286</sup> Morality aside, it may well be that to produce an effect it may be necessary to continually alter the ratio between crime and deterrence.

Yes, a legitimate Peloponesian response to atrocity would have been anger. But a legitimate contemporary response to the Holocaust and the Katyń Massacre is *outrage*, leading to the judicial punishments of the Nuremberg Trials.

## ENDING RETALIATION

**I**f the most just action is that which harms the fewest people on either side, then justice means ending mutual retaliation; and the only way to end it is through restraint, which is the logical application of the Golden Rule. In 1994, during the Yugoslavian Civil War, one Croatian fighter described to me how the restraint of his Muslim enemies had freed him from the burden of revenge. Doubtless the Muslims who had offered that restraint had been accused of cowardice and unmanliness; but somehow or other they had been able to control their vengeance-lust. The Croatian and I had been talking about cutting enemy throats, and he said to me: “My aunt and my sister told me, if you catch someone, don’t do that. You understand, my sisters were in a prison in Zenica. There was an exchange. I asked them: Were you raped? They said they were not. And the women they were exchanged for were not raped by us. When it was good between us like that, I lost eighty percent of my hate. I have no hate in myself. If I were to cut someone’s throat, I would lose my soul.”<sup>287</sup> —From this I take it that if his sisters had been raped, he would have retained a hundred percent of his hatred, and slit throats. But they hadn’t been

raped; and so he too was impelled to be decent. Such is the reaction that Gandhian tacticians rightly bank on.

And the moral actor who sincerely desires to shut off the retaliation machine can go farther than restraining himself from retaliating. Employing the Golden Rule, he can offer compensation, making restitution for his own prior violence. That was Gandhi's way. In this situation, we must stand aside and praise the potential superiority of nonviolence.

Otherwise, we can use friendship or force to establish (or reassert) a social contract between enemies, calling into play retaliation against violence on either side, as administered by a functionary or agent of that contract.<sup>288</sup> "For the family of the murdered man," wrote a twentieth-century British penal reformer, "for the girl whose health has been permanently broken by brutal rape, for the skilled workman who can no longer follow his trade, the simple fact that their hardships had been specially recognized would help to assuage the bitterness of their lot."<sup>289</sup> In a way, the Icelandic system provided that "special recognition" admirably. The offender, or his kin, paid an agreed-upon restitution to the victim's family. Failing agreement, the victim had easy recourse to the blood feud, which afforded that special recognition in the more spectacular way beloved by Fulvia, Hitler, Lawrence and the Arabs, the Athenians... But with the establishment of the centralized state, revenge became the domain no longer of the victim, but of the sovereign power,<sup>290</sup> who, bedecking it with legality, magically transmuted it into *punishment*, the subject of our next chapter.

#### WHEN IS VIOLENT DETERRENCE JUSTIFIED?

1. As proactive defense against imminent harm.
2. Against the narrowly defined imminent threat of a specified foe, especially when the deterrence is itself specific and limited.
3. When it prevents unjustified violence; when it seeks to prevent violence generally. When it allows various retributive possibilities to be modulated, escalating itself only as needed.
4. When it enforces a legitimate social contract. When it is an instrument of legitimate authority.

#### WHEN IS VIOLENT MILITARY<sup>291</sup> RETRIBUTION JUSTIFIED?

1. To deter new atrocities by punishing old ones. [The retribution must not itself be an atrocity except under imminent conditions; it must stay well within the limits of proportionality and discrimination, and it ought to follow judicial forms as well as battle conditions allow.]

### WHEN IS VIOLENT REVENGE JUSTIFIED?

1. When it follows judicial forms, or when no judicial forms are available; and when it respects proportionality, discrimination and the Soldier's Golden Rule.

### WHEN IS VIOLENT DETERRENCE UNJUSTIFIED?

1. Absent imminence, insofar as its effects are not foreseeable and controllable.
2. When directed against persons who have broken no code and are actively or passively loyal to the deterrer's authority. When its violence does not fall entirely upon those who made the choice to undertake the proscribed behavior.
3. By mere symmetry without discrimination. *Tu quoque* is not a justified defense for unethical acts of violence unless those acts have been consensualized into an ethos of acceptability.
4. When it harms more people than those harmed by the deterred act.
5. When its main purpose is to overawe people into routine or perpetual compliance with authority.

CAVEAT: Deterrence is, however, justified when its main purpose is to overawe people into routine or perpetual compliance with the *laws* established by legitimate authority.

5. When it is not didactic.
6. When it is justified by proactive imminence alone, and the justifiability of the violence which invoked proactive imminence is debatable.
7. When it is executed proactively as both deterrence and retribution.
8. When the act deterred remains undefined, when there has been no deterrent warning or when the deterrer's retribution proves to be more severe than was indicated in the deterrent warning.
9. When the deterrent violence knowingly exceeds the deterrence threshold.

### WHEN IS VIOLENT MILITARY RETRIBUTION UNJUSTIFIED?

1. By *tu quoque* alone.
2. When it is not didactic.
3. When the degree of imminence is low enough to allow judicial retribution (punishment).

### WHEN IS VIOLENT REVENGE UNJUSTIFIED?

1. By *tu quoque* alone.
2. When it creates a new wrong equal to or worse than the wrong it has revenged.

## 15.

## CONTINUUM OF DETERRENCE

## A. T. E. Lawrence

"Fear as the common people's main incentive to action in war and peace ... I found ... a mean, overrated motive; no deterrent, and, though a stimulant, a poisonous stimulant, whose every injection served to consume more of the system to which it was applied."<sup>292</sup>

## B. Clarence Darrow

"The brutalizing effects of public executions are beyond dispute."<sup>293</sup>

"Any evil consequences that could flow from a casual killing of a human being by an irresponsible man would be like a drop of water in the sea compared with a public execution by the state."<sup>294</sup>

## C. Robert McNamara

"Nuclear weapons serve no military purpose whatsoever. They are totally useless except to deter one's opponent from using them."<sup>295</sup>

## D. George Savile, Marquess of Halifax

"Men are not hanged for stealing Horses, but that Horses may not be stolen."<sup>296</sup>

## E. Moltke

"Only the sword keeps other swords in their scabbards."<sup>297</sup>

## F. R. D. Laing

"If he is cheeky  
he doesn't respect you  
for not punishing him  
for not respecting you."<sup>298</sup>

## G. South Korean editorial, after North Korean incursion (1996)

South Korea must evince "firm determination to force the North to give up its aggressive tactics. This can only be done by harshly punishing the North for its provocative acts."<sup>299</sup>

H. The Glorious Flavius Chintasvintus, King, Visigothic Code

"If moderation is displayed in the treatment of crimes, the wickedness of criminals can never be restrained."<sup>300</sup>

I. Last words of two burglars executed at Worcester, Massachusetts, (1783)

"We pray that our unhappy fate may be a solemn *Warning to Youth*."<sup>301</sup>

J. Herman Kahn, nuclear strategist (1960)

"We will still need a balance of terror or other military sanctions to persuade those who would be tempted to use violence to use other machinery instead."<sup>302</sup>

K. Goebbels (diary entry for March 18, 1943)

"The English air raids can be stopped only by counterterror. There is no point in attacking English industrial cities and ports; one must strike the English where they are most easily inclined to defeatism; namely, in the residential sections and the homes of the plutocracy."<sup>303</sup>

L. Mikhail Tukhachevsky, on destroying insurgency

"One should practice large-scale repression and employ incentives. The most effective methods of repression are the eviction of the families of bandits who hide relatives and the confiscation and subsequent distribution among pro-Soviet peasants of their property. In the event of difficulty in organizing immediate eviction, the establishment of large-scale concentration camps is necessary. A system of collective responsibility should be introduced"<sup>304</sup>

M. Pablo Gonzolaz, decree of 1916

"Anyone who directly or indirectly lends service to Zapatismo, or to any other faction opposing Constitutionalism, will be shot by a firing squad with no more requirements than identification."<sup>305</sup>

N. Sir Charles Edward Callwell (Colonel) (1906)

"For it is a cardinal principle in the conduct of warfare that the initiative must be maintained... The lower races are impressionable. They are greatly influenced by a determined bearing

and a resolute force of action... 'Do not forget that in Asia he is the master who seized the people pitilessly by the throat and imposes on their imagination,' was Skolbelef's view... There must be no doubt as to which side is in the ascendant."<sup>306</sup>

O. Alexander Berkman, on the case of two Knights of Labor who allegedly poisoned the food of strikebreakers

"Is not the terrorizing of scabbery, and ultimately of the capitalist exploiters, an effective means of aiding the struggle? Therefore Dempsey and Beatty deserve acclaim ... though I am saddened by their denial of complicity in the scheme of wholesale extermination of the scabs."<sup>307</sup>

P. His Excellency the Governor of the Philippines, in Jose Rizal's novel

"As I said, he is the most innocent...'  
 "That's even better!" exclaimed H.E. joyfully; 'the punishment will be more beneficial and exemplary as it will inspire more terror!'"<sup>308</sup>



16.  
CONTINUUM OF RETRIBUTION  
AND REVENGE

A. Buddha

“Ye who have left the world and have adopted this glorious faith of putting aside selfishness, ye shall not do evil for evil nor return hate for hate.”<sup>309</sup>

B. Jesus Christ

“Love your enemies, do good to those who hate you, bless those who curse you, pray for those who abuse you. To him who strikes you on the cheek, offer the other also.”<sup>310</sup>

C. Socrates (quoted by Plato)

“So one ought not to return a wrong or an injury to any person, no matter what the provocation is.”<sup>311</sup>

D. Apocrypha, Book of Sirach

“Like a eunuch’s desire to violate a maiden is a man who executes judgments by violence.”<sup>312</sup>

E. Akkadian moral text

“Do not return evil to your adversary;  
Requite with kindness the one who does evil to you,  
Maintain justice for your enemy,  
Be friendly to your enemy.”<sup>313</sup>

F. Lincoln

“I wish you to do nothing merely for revenge, but ... what you may do, shall be solely done with reference to the security of the future.”<sup>314</sup>

G. Hesiod

“If your friend begins it / by speaking some disagreeable word,  
or doing some injury, / remember, and pay him back twice over. Then, if he would bring you / back into his friendship,  
and propose to give reparation, / take him back.”<sup>315</sup>

## H. The Babylonian Talmud

"If one says: I shall sin and repent, sin and repent, no opportunity will be given him to repent."<sup>316</sup>

## I. La Colle, Monsoni Indian chief (fl. 1736-42)

"And next spring we shall all go on a campaign against the Sioux to avenge the shedding of French blood, which is our own, and to protect your children against aggression."<sup>317</sup>

## J. Barga'yah, King of Katikka, in treaty with Mattii'el, King of Arpad

"Your son must come to avenge the blood of my son from his enemies."<sup>318</sup>

K. *The Poetic Edda* (Old Norse)

"If wrong was done thee, let thy wrong be known, and fall on thy foes straightaway."<sup>319</sup>

## L. Karl Heinzen

"So be it, then: blood for blood, murder for murder, destruction for destruction. The spirit of freedom must raise itself up to its full height, show its true vigor, and if it goes under, it must turn destroyer."<sup>320</sup>

## M. The anarchist bomb-maker Severino Di Giovanni, upon learning of Sacco and Vanzetti's execution

"Let us light the fuse on the dynamite of vengeance!"<sup>321</sup>

## N. Cicero

"A person who felt no inclination to relieve his own grief and torment by inflicting grief and torment on the criminal would, as I see it, be as unfeeling as if he were made of iron."<sup>322</sup>

## O. Seneca

"My father is being murdered—I will defend him; he is slain—I will avenge him, not because I grieve, but because it is my duty."<sup>323</sup>

## P. Lord Yoritomo of the victorious Genji clan, before executing his would-be assassin, Iesuke of the defeated Heike clan, A.D. 1192.

"Your attempt to revenge your master is highly commendable!"<sup>324</sup>

Q. Lord Xiang, setting free his would-be assassin (early Western Han dynasty)

“The Earl of Zhi is dead and has no offspring, yet one who served him will go so far as to seek revenge on his enemies. This is one of the most worthy men in the world.”<sup>325</sup>

CHAPTER 23

PUNISHMENT

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*"The great mass of humanity abstains from evil-doing only because of the penalties of the law and the retribution that comes from the gods."*

DIODORUS OF SICILY  
(FIRST CENTURY A.D.)<sup>1</sup>

*"My prayer to God is for the police to commit unlimited atrocities upon young Muslims. Whenever I hear about Muslim boys being tortured, I feel like dancing with joy. Unless these boys directly experience oppression on their bodies, they will never be able to stand up against it."*

"AKBAR" [INDIAN MUSLIM PELWAN,  
OR ORGANIZER OF COMMUNAL VIOLENCE  
AGAINST HINDUS DURING RIOTS] (CA. 1990)<sup>2</sup>

THE MEANING OF THE NOOSE

**T**he two epigraphs for this chapter exemplify two entirely opposed conceptions of the value of punishment as a deterrent. Diodorus claims that punishment deters; Akbar, that it radicalizes—in other words, actually incites.<sup>4</sup> Diodorus is speaking for the law-and-order faction;<sup>5</sup> Akbar represents the side of transgression.<sup>6</sup> In old Vienna, prisoners were corseted with thirty kilograms of shackles. Was that



Lucas Cranach: The Saw

sufficient weight to bear out Akbar's and Diodorus's respective theses? Engravings and woodblock prints of post-medieval tortures sicken us with their axes, swords, chains and wheels. Upon a brick-built mound, one figure is hanging; another kneels blindfolded, about to be beheaded; a third, already broken on the wheel, waits, disjointed, for death.<sup>7</sup> We see women screaming at the stake, the crowd's hands raised in malediction. They are dragging witches down into the torture chamber, holding them as ranchers grip calves at branding-time.<sup>8</sup>

The neatest case, of course, is when the criminal spontaneously embraces his own punishment. A sergeant in Singapore who obeys the white-lit hallucinatory voice<sup>9</sup> commanding him to "chop" his paramour to death now stands at the bar. He tells the court that "he hoped the judge would sentence him to death. He wanted to say sorry to his parents whom he could not serve until their old age."<sup>10</sup> In several of the Qur'-Anic *hadiths* or commentaries gathered together in the famous *Sahih Al-Bukhari*, an adulterer enters a mosque, approaches the Prophet and in default of the statutory four witnesses bears witness against himself four times. The Prophet, who'd first turned his face away, finally utters the necessary command. Punishment begins. "When the stones troubled him, he fled, but we overtook him at Al-Harra and stoned him to death."<sup>11</sup> "The Prophet spoke well of him and offered his funeral prayer."<sup>12</sup> Hence this rule in our moral calculus: *Punishment is justified when the transgressor agrees to, or belongs to a culture which subscribes to, the rule by which he has been judged, and when he can be proven to have violated that rule.*<sup>13</sup> Fourteen centuries after the adulterer fell bleeding and broken at Al-Harra, the Oklahoma City bomber, sentenced to death, waves and nods to his jurors, while the prosecutor labels his act "the crime that the death penalty was designed for."<sup>14</sup> What could be more satisfying to the sadism of public symmetry?

But, embraced or not, is the penalty just? A British soldier who fails to pass muster at parade gets flogged to death.<sup>15</sup> A mutinous felon is sentenced to be "flogged with a boatswain's cat until his bones were denuded of flesh."<sup>16</sup> Even if the felon begged for it, would that make it right?

Juridical fairness owns slow-grinding wheels. The defendant, his crime long since cooled and staled, is hauled in shackles before its bar. No matter how monstrous his deeds, he stands harmless now, his body and mind a *tabula rasa* upon which a long-calculated sentence can be engraved to a nicety.<sup>17</sup> But self-defense is attended by different circumstances than legal punishment. In the former case, to preserve himself (or what he considers to be a higher object of his loyalty—say, my comrades

over myself or my child) the victim is obliged to act hastily—which means without the benefit of the full knowledge required for a truly Platonic decision.<sup>18</sup> (Jewish law in fact *insists* that he act hastily: self-defense is acceptable under this code *only* “when the act is carried out without premeditation and when one’s life is in imminent danger.”<sup>19</sup> So too with Roman law.) Because the aggressor has forced this obligation upon him, it seems fair to correspondingly restrict consideration of the aggressor’s rights and motives during the crisis. This is not to say that they must be ignored altogether. (After all, the social balance will not ignore those of the defender. “For if his sole purpose be to withstand the injury done to him, and if he defend himself with due moderation,” says Aquinas, “it is no sin, and one cannot say properly that there is strife on his part.”)<sup>20</sup>



*Execution of partisans (Minsk, 1941)*

For law to partake of justice, it must codify its penalties into limit and consistency. But consistency is not enough. Dead legal forms lead us to death.<sup>21</sup>

#### PUNISHMENT FOR FAILURE TO MAKE BED PROPERLY

Ravensbrück concentration camp for women (1940)<sup>22</sup>

First offense: Punishment standing without food.

Second offense: Solitary confinement in the dark cell.

Third offense: Twenty-five lashes.

#### LEGAL RETALIATION MUST BE MORAL EXPRESSION

Why did the *Oberaufseberinnen* at Ravensbrück choose to be so strict? —Because she wanted subjection to her to be unquestioningly perfect. A badly made bed represented incomplete obedience; therefore, stern punishment gave her authority full measure of self-defense. Judicial retaliation<sup>23</sup> (applied law), being public, and being applied for a given reason, always insists upon being taken as a lesson—notwithstanding Tocqueville’s maxim that law seeks to apply justice to a given crime, not to create a new standard.<sup>24</sup> When Tocqueville made this remark, he meant it to be taken in the sense that judicial power does not and cannot make its own laws, they being the prerogative of the legislature. But we already saw how Stalin’s judiciary usurped legislative functions (being itself but the expedient tool of the executive), its busy procurement brigades, Committees of Unwealthy Peasants and firing squads injecting justice into millions.<sup>25</sup> (In China during the Cultural Revolution, one elderly prisoner’s interrogator contemptuously explained to her that “the victorious proletarian class makes the law to suit its purpose and serve its interest.”<sup>26</sup> The victorious class had already thrown her daughter out a window. She didn’t learn about that murder for years.) Thus law at its crudest, making and remaking itself.

But even when it's not crude, doesn't law by the very nature of applying a standard reinforce and deepen it? Aren't all codes, all memories, like those lines which children trace into the ocean's edge, washed away by the world again and again, hence defensively re-scored into the wet beach? In 1748, we find Montesquieu, that eloquent advocate of bureaucratic temperance, proposing in his *Spirit of the Laws* that in an aristocracy, "as a great share of virtue is very rare where men's fortunes are so unequal, the laws must tend as much as possible to infuse a spirit of moderation, and endeavour to re-establish that equality which was necessarily removed by the constitution."<sup>27</sup> (*Punishment is unjustified when applied unequally.*)<sup>28</sup> Four centuries before Christ, Plato similarly assigns his laws a guiding and instructive purpose: *virtue*, of course, which must be comprehended by all citizens, and thereby replicated, ritualized.<sup>29</sup> In China at the same time, Wei Liao-tzu is advising: "In general, to make punishments and fines clear and incentives and rewards correct, they must fall within the laws for instructing the soldiers."<sup>30</sup> In one of his many arguments in favor of separating church from state, Jefferson accuses England of hanging witches by fraudulent appeals to common law:

And thus they incorporate into the English code laws made for the Jews alone, and the precepts of the gospel, intended by their benevolent author as obligatory only in foro conscientiae; and they arm the whole with the coercion of municipal law,<sup>31</sup>

scoring lines after their own pattern, scoring them deeper and deeper, in all due consistency,<sup>32</sup> to prevail over the blood that rises up from those very legalistic gashes. In his draft of "A Bill for Establishing Religious Freedom," he speaks once again, eloquently and benevolently, of natural right<sup>33</sup>—another pattern, another figure which must be engraven in the sandstone flesh of tyrants:

...the opinions of men are not the object of civil government, nor under its jurisdiction... It is time enough for the rightful purposes of civil government for its officers to interfere when principles break out into overt acts against peace and good order.

Did Caesar, Xerxes, or Hitler accept all these natural rights? Did Rome's class system even allow what we now presuppose—namely, equality under the law?<sup>34</sup> *Law is ever an assertion*. Doesn't even the most routine and narrowly applied operation of the law, containing among its inventory of purposes, as it must, the qualities of instruction, deterrence, maintenance of order and the like, *make* law, even if only by stamping a familiar<sup>35</sup> impression into the quicksand of public sentiment?

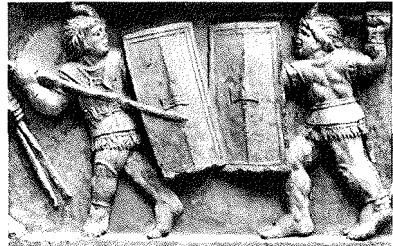
## WHO IS GUILTY?

The moral calculus of the Chinese Cultural Revolution (1966)<sup>36</sup>

"In each organization about 3 to 5 percent of the total must be declared 'the enemy' because that is the percentage mentioned by Chairman Mao in one of his speeches."

## WHOM IS JUSTICE FOR?

I speak of proofs, displays, spectacles and shows, because true justice must be public, however attenuated that public character might be. The Roman emperor Claudius has been reproved by posterity for his seeming sadism in witnessing executions, which, not being novel or honorable spectacles, often occurred during the luncheon intermissions of gladiatorial shows;<sup>37</sup> but one modern scholar believes his faithful attendance to be due to his goal of personifying justice: "a good emperor devotes time to the law courts, but also devotes time to, literally, seeing that malefactors are punished."<sup>38</sup> This is a way of doing honor to the social contract. A history of capital punishment in Germany concludes that in medieval times, it was "a symbolic discourse in which ritual acts demonstrated to a largely illiterate population the cohesiveness of an ordered society faced with physical and moral pollution."<sup>39</sup>



*Gladiators in Roman arena*

## LAW AS SOCIAL COHESION AND SALVATION

The moral calculus of Cicero (66 B.C.)

"The common interest, the interest of every one of us, is at stake."

"I cannot say I am impressed by Atticus' argument that the framing of the law, which imposes sanctions against a senator who corrupts a court, but not against a Roman knight who does the same, is deplorably wrong... even if I were prepared, for purposes of argument, to concede that it might be wrong, you for your part would have to concede to me that it is a great deal more wrong, in a country which depends on its laws, to refuse to obey them. For law is the bond which assures to each of us his honourable life within our commonwealth. It is the foundation of liberty, the fountain-head of justice."

SOURCE: CICERO, *MURDER TRIALS*, PP. 122, 216 "IN DEFENSE OF AULUS CLUENTIUS HABITUS".



Here, for instance, lies Nuremberg, in a double-page woodblock spread in the fifteenth-century *Schedelsche Weltchronik*. We notice before anything else a long, upturned crescent; this is the city's double wall, with its moat and drawbridge, stretching right across the picture, jointed by towers topped by fat inverted cones. Within this dramatic boundary rises a hill literally covered by rows of steep-roofed stone houses, from which the occasional church or double-towered cathedral bursts to eminence, like full grown oaks amidst a forest of saplings. So crowded and crammed is this place, so full of its own completed purpose, that from our outsider's vantage point there seems no room for a single new thing, let alone a deviation: perhaps we are not so far here from Plato's final republic of laws, orderly and final, from which all accidents (such as homicides caused by rocks) are simultaneously excluded and accounted for; it goes without saying that they must be accountable. Now the eye, wearying of this immense crystal of law and purpose, follows the drawbridge back outside, wanders through the fences studded with caltrops, then discovers, in the very center of the foreground, a blank white spot surmounted by two gibbets and a cross canted like a windmill's legs. Here waits justice, whose nightmare stench has thus been conveniently separated from the city's life, but whose presence instructs and deters anyone who approaches the city gate.<sup>40</sup> At the end of 1996, when former South Korean president Chun Doo-hwan, convicted of the capital crime of treason, wins a commutation to life imprisonment, one periodical attacks the "glaring discrepancy between the appellate court's interpretation of history and the interpretation shared by a majority of the people. The court's decision does not satisfy the popular desire for justice."<sup>41</sup> In Nuremberg, one presumes, that will not happen.

In 1612 a malefactor in Nuremberg is sentenced to no less than twenty-one blows with the dreaded wheel. The chronicler writes, and a Muslim would agree:<sup>42</sup> "I hope, therefore, that through his protracted sufferings and the breaking of his limbs he attained to everlasting life."<sup>43</sup> —And also, no doubt, that those protracted sufferings would likewise instruct and deter the man's fellow citizens right to Heaven.

The criminal thus becomes not only the *recipient* but also the *object* of a lesson. In 1892, when the anarchist Alexander Berkman tried to assassinate the ruthless strikebreaker Henry Clay Frick, his colleague Emma Goldman agreed to explain to the workers that "he had no personal grievance against Frick, that as a human being Frick was no less to him than to anyone else. Frick was the symbol of wealth and power."<sup>44</sup>

#### LAW AS PROPAGANDA AND PEDAGOGY

The moral calculus of Robespierre (1794)<sup>45</sup>

"The first concern of the legislator must be to strengthen the principles on which the government is founded. Thus, it is your duty to pro-

mote and establish all that tends to arouse a love of country, to purify manners, to elevate the spirit and to direct human passions towards the general good. Conversely, you must reject and suppress all that tends to direct these passions towards a love of self or to arouse infatuation with what is petty and contempt for what is great."

The character of justice's assertion—ritualistic or formalistic, cathartic or titillating, personalized or sterilized—depends in part on the local answer to the following question: Should your act of unlawful violence injure me, then did you infringe *my* rights, *society's* rights, or both? In many societies, you would offer me compensation, and should custom or desire constrain me to accept it, everything would be right again. Hence the penalty for homicide in old Rome (that is, the Rome of the republic, long before Claudius's day), old Iceland, old Germany, old England:<sup>46</sup> blood money.

"O you believe!" runs the Qur'-An. "Retaliation is prescribed for you in the matter of the slain: the free for the free, and the slave for the slave, and the female for the female." But compensation may be offered and accepted. "This is an alleviation from your Lord, and a mercy."<sup>47</sup>

As Sir Henry Sumner Maine explained, "the penal law of ancient communities is not the law of Crimes; it is the law ... of Torts. The person injured proceeds against the wrongdoer by an ordinary civil action."<sup>48</sup>

### ANCIENT TORT STATUTES

#### LAWS OF ESHUNNA (MESOPOTAMIA)

"If a man bites the nose of another man and severs it, he shall pay 1 mina of silver.[For] an eye [he shall pay] 1 mina of silver; (for) a tooth 1/2 mina."<sup>49</sup>

#### CODE OF HAMMURABI (AFTER 1727 B.C.)

"If a seignior has destroyed the eye of a member of the aristocracy, they shall destroy his eye... If he has destroyed the eye of a commoner ..., he shall pay 1 mina of silver... If a seignior has knocked out a tooth of a seignior of his own rank, they shall knock out his tooth. If he has knocked out a commoner's tooth, he shall pay one-third mina of silver."<sup>50</sup>

And yet through even this seemingly indifferent formulation, which leaves justice as a mere arrangement between two parties, the light of public interest fitfully gleams. Under Roman law, not merely the injured party but *any* citizen could prosecute a crime.<sup>51</sup>

## JUSTICE IS DELIBERATION, BUT ITS SUBSTANCE IS ACCIDENT

In the first book of his great poem, Dante finds a multi-tiered realm of divine torture upon the concept of the *contrapasso*, that is, the punishment perfectly ordained to fit the crime. Thus, gluttons find themselves choking in mud, and illicit lovers are whirled about for eternities by passion's winds. Plutarch informs us that Theseus and Hercules most symmetrically chastised the wicked, "who underwent the same violence . . . which they had inflicted upon others, justly suffering after the manner of their own injustice."<sup>52</sup> And Herodotus in one of his half-fabulous tales tells of a royal Egyptian judge who was caught accepting a bribe. King Cambyses commanded that his skin be "torn off and cut in strips, and the strips stretched across the seat of the chair which he used to sit in Court. Cambyses then appointed his son to be judge in his place, and told him not to forget what his chair was made of, when he gave his judgments."<sup>53</sup> This enactment forced, if not exactly a *contrapasso*, a sort of atonement, and an eerily, gruesomely fitting one. Every time that the corrupt judge's son sat down in that chair, I would think, his decisions must have taken on a ritualistic and meditative character. To him had been awarded full power to condemn others to death, but never for his own ends—was he not placed upon his own condemned father's skin? How could he forget that justice was, as John Brown always said about God, no respecter of persons?

"A Jew crushed the head of a girl between two stones... So the Jew was brought in and he confessed. The Prophet ordered that his head be crushed with the [same?] stones."<sup>54</sup>

In the "real world" of fallible judicial politics with which we are concerned, it is near-impossible to find a sensible link between cause and punitive effect. At best one can hope for, in C. L. Mayer's words, "not truth, but agreed compromises between utility and necessity."<sup>55</sup> And at worst, perhaps, are those same compromises, as when the Roman Senate, called upon to judge Publius Clodius for adulterous sacrilege, wrote their verdicts illegibly, "that they might not be in danger from the people by condemning him, nor in disgrace with the nobility by acquitting him."<sup>56</sup>

From the British government's *Report of the Commissioners of Prisons and the Directors of Convict Prisons with Appendices, for the Year ended 31st March 1902*, we read, in a table whose arbitrary determinations have been amplified by the sad and dreary odor of old books, the tale of floggings for that year. The chart divides "Sentence in Strokes Ordered" into two columns, "Birch" and "Cat"—the latter I suppose means cat-o'-nine-tails, which would be worse. Under what circumstances has one been chosen over the other? The report won't say. The number of strokes varies. Why? The table lists the number recommended, and the number actually given; at least these always match. As in Dante, British justice offers us in each case the "grounds for sentence"—but, while the punishment fails the test of uniformity, the

formula remains insidiously the same: "*The offence was of such a serious character as to render the infliction of corporal punishment necessary for the due preservation of discipline.*" In 1902 all floggable offenses were, with one exception, "Gross personal violence to an officer of the prison." The exception was incitement to mutiny.<sup>57</sup> One cannot expect more detailed explanations from any authority other than the Recording Angel, but it would be, as used to be said, more "edifying" did the mechanism reveal more.<sup>58</sup> This is why a perusal of this table inspires a vaguely morbid gloom, a feeling of uselessness, as would a list of traffic fatalities, or some typically shallow newscast of overseas atrocities whose causes we do not comprehend. And in 1937, a government Committee of Inquiry came to the conclusion that in the absolute best case flogging "can exercise no positive reformatory influence; at the worst, it may ... make the individual who receives it less willing, or less able ... to lead an honest and useful life in the community."<sup>59</sup> In 1948, corporal punishment was abolished in Britain—save for the usual exceptions: in jail, for mutiny or "gross personal violence to an officer of the prison." Justice had shifted. The *contrapasso* did not hold, if it ever had.

All law, however predicated on universal morality it may claim to be, partakes of local arbitrariness. I mean this in the obvious sense that predetermined equations between crimes and penalties have always been dissimilar. For instance, not every society condemns theft.<sup>60</sup> Those that do penalize it variously by death,<sup>61</sup> a fine, imprisonment, corporal punishment,<sup>62</sup> mutilation or mild ridicule. After all, too fixed a uniformity rings equally hollow. The half-mythical Greek lawgiver Draco, from whose name is derived the word "draconian," is supposed to have explained why he prescribed death for all offenses thus: "Small ones deserve that, and I have no higher for the greater ones."<sup>63</sup> Such reasoning hardly encourages belief in any finely calibrated *contrapasso*.

But assume for the moment that the *contrapasso* can and does exist. From what historians of law tell us, in ancient times people thought so: their penalties were both more specific and more minute than ours, being constituted based on "ideal" retaliation: an eye for an eye, etcetera. Perfect *contrapasso* hovered ideally in the air; it was an end which appeared to be almost within reach. Medieval Germans had their beloved "mirror punishments"—for example, the live burning of an arsonist,<sup>64</sup> a penalty of which the Romans were also fond.<sup>65</sup> *Punishment is justified when it is proportionate to the original injury.*<sup>66</sup>

## THE NECESSITY OF DEGRADATION

But why the whippings? Why the stake? Why, above all, the exposure, the humiliation, which sears the cruelty of the penalty ever deeper? Because to the extent that punishment is a civic or sovereign act (as opposed to private vengeance), it must be public. Solon, that other famous Greek lawgiver, once defined the best possible city-state as "that where those that are not injured try and punish the unjust as much as

those that are.”<sup>67</sup> In my own country, the government still prosecutes individuals in the name of “the people.” Legitimate authority is consensual authority,<sup>68</sup> people’s authority. Hence the scaffold in the public square. The same moral and expedient considerations apply as for deterrence: Justice must be a spectacle.

As late as the beginning of the nineteenth century we can still witness such morality plays in Germany. The town actuary proclaims to a condemned murderer:



*Convicted murder, sentenced to death by dismemberment (China, 1905)*

“Whosoever sheddeth man’s blood, by man shall his blood be shed ... so receive then the well-merited punishment for your misdeed. You are doomed to die, and in hereby sundering the tie which has bound you to civil society, I ask God to have mercy on your soul.”<sup>69</sup> In England a hundred-odd years later, we find Sir John Anderson, the former Home Secretary, saying that “I do not know that ignominy is so very out of place in a penalty for murder.”<sup>70</sup> In order to reform the transgressor or even to make itself meaningful in his eyes, punishment ought to make him feel bad for having been bad—that is, it ought to

attack his inner honor.<sup>71</sup> This may be what Che Guevara is driving at when he justifies punishment because it “produces an individual with inner discipline.”<sup>72</sup> Montesquieu endorses it, too, on the grounds that “nature, who has given shame to man for his scourge,” will make the humiliation so severe that physical cruelty may perhaps be avoided. He cites an old Spartan penalty which contented itself with depriving a citizen from lending out or borrowing another man’s wife, concluding: “in short, whatever the law calls a punishment is such effectively.”<sup>73</sup>

For it to be expedient, or for it to move or deter “the public,” it ought to at least attack the culprit’s outer honor. Hence this advice from the fourth-century Chinese writer Wei Liao-tzu:

If a general commanding one thousand men or more retreats from battle, surrenders his defenses, or abandons his terrain and deserts his troops, he is termed a ‘state brigand.’ He should be executed, his family exterminated, his name expunged from the registers, his ancestral graves broken open, his bones exposed in the marketplace, and his male and female children pressed into government servitude.<sup>74</sup>

Over a thousand years later, a witch-burners’ manual describes how a cleric convicted of heresy must undergo a ceremony of degradation, his vestments being stripped off “in some square or open place outside the church, and the Inquisitor shall preach a sermon.”<sup>75</sup> In sixteenth-century Nuremberg, some men who strike the

town mayor are officially declared dishonorable and paraded around.<sup>76</sup> We read that in sixteenth, seventeenth and eighteenth century England, "ladies of quality" arranged little outings to witness the spectacle of prostitutes being stripped naked and whipped.<sup>77</sup>

Moreover, the criminal's crime often consists of devouring another's rights, which translates (to hierarchialists) as stealing a higher social place than the one to which he is entitled. Degradation therefore restores symmetry.<sup>78</sup> Do you remember what Montesquieu said?<sup>79</sup> Law must promote equality. And wouldn't you agree that symmetry equalizes?

Where inequality of rank and status exists, degradation is employed almost surgically to maintain the existing ethos of class relations right to the bitter end. Hierarchialism keeps even the highest-born offender to his suicidal duty: Medieval samurai, for instance, participate willingly in their own death-spectacles, to avoid the further punishment of shame by reduction to the level of common filth. In his classic treatise on voluntary death in Japan, Maurice Pinguet writes that for the warrior class, for whom a death-sentence (unless the offender had fallen so far below honor as to merit decapitation, crucifixion, burning alive or the other punishments reserved for commoners) meant cutting one's belly open,

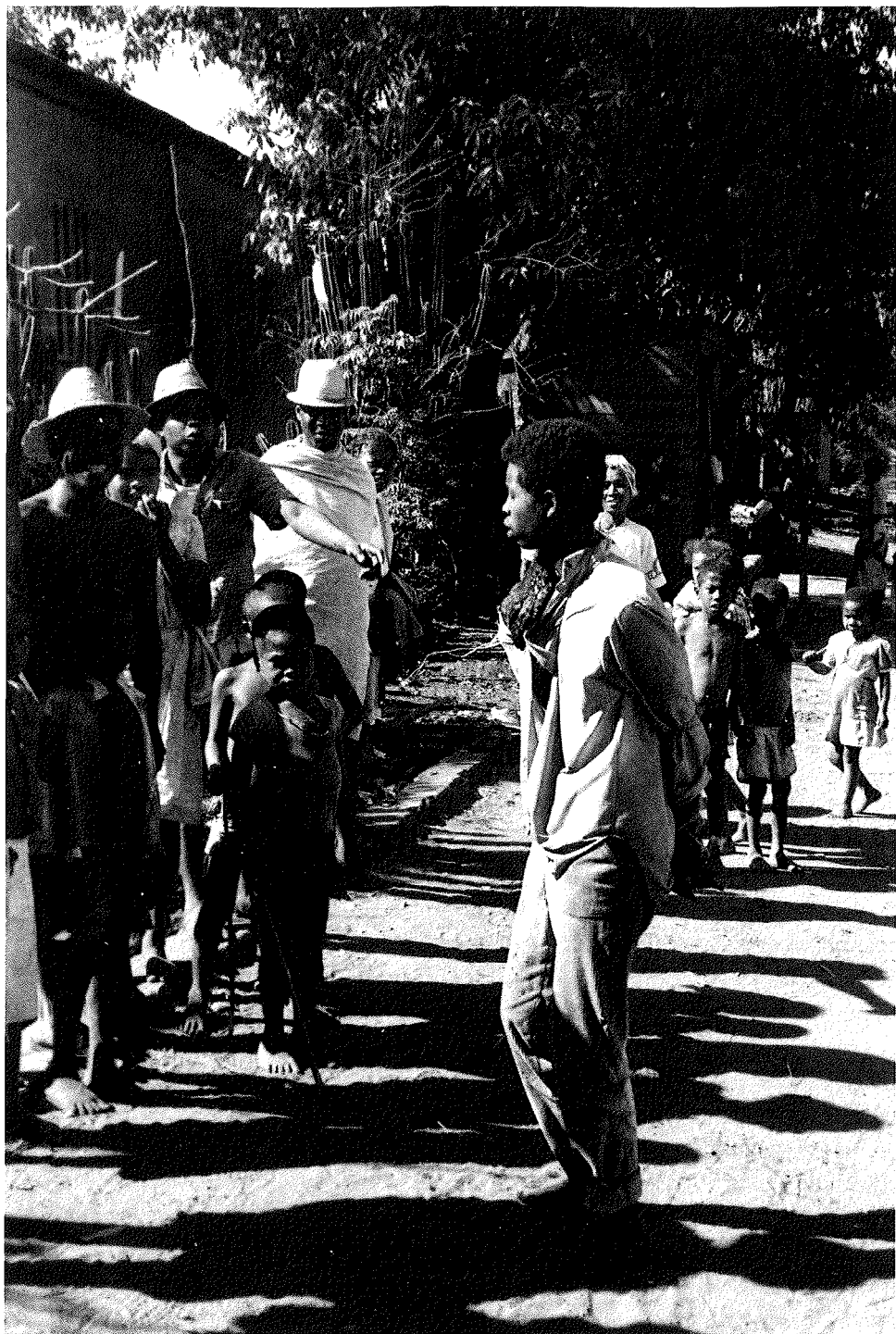
no penal system was ever so economical—costly, perhaps, in terms of human lives, but smooth in operation... However harsh the judge, he could count on the cooperation of his victim. Even if he thought the sentence unjust, he would take pride in performing the ceremony without a murmur of protest... Until the last moment he would be treated as a noble and free man.<sup>80</sup>

Yes, the criminal plays his part—sometimes with truly pious zest, sometimes for fear of getting tortured once again in reaction to a perceived recantation.<sup>81</sup> Justice consists of expiation. An infanticidal mother's pastor assures her that she will soon be in heaven. The criminal's own blood will wash him clean. The choir, which is sometimes composed of schoolboys, explains and admonishes, while red-hot tongs rip the flesh from his limbs. The executioner lifts the great wheel, then smashes it down on the criminal's arms and legs, shattering every bone, while the maimed, crushed human being roars out the name of Jesus, or merely shrieks.<sup>82</sup>

### A WITCH-BURNER'S CASEBOOK

And why expect otherwise? Authority does not love the Joan of Arcs and John Browns of this world. Refusing to be a mere foil, it demands to direct its morality play. What to do? Given sufficient judicial power, a *contrapasso* can almost invariably be stage-managed, with or without consent.

In the year 1484 or thereabouts, two learned and systematic Inquisitors pub-



*A chicken thief is caught red-handed. Everybody points and mocks him before he is taken to prison, where he may possibly starve. (Madagascar, 1994)*

lished their *Malleus Maleficarum*, or “Witches’ Hammer.” A modern scholar describes it as “one of the most morally obtuse and pornographically obsessive works existing.”<sup>83</sup> Its twentieth-century editor, on the other hand, calls it “a great work—admirable in spite of its trifling blemishes.”<sup>84</sup>

The ecclesiastical magistrate begins by posting a notice demanding that all who know anything which might be used to indict their neighbors of witchcraft had better report it. Should they fail to do so within twelve days, they risk excommunication.

Denunciations follow. “The accused N.” is brought in. Should he have no tales to tell, the magistrate asks: Do you believe in witches? “Note that for the most part witches deny this at first; and therefore this engenders a greater suspicion than if they were to answer that they left it to a superior judgment to say whether



From 1555 broadside about witch-burnings

there were such or not.” In other words, just as under Mao and Stalin, professed ignorance or skepticism constitutes defiance of the examiner’s authority: it obstructs stage management. “So if they deny it,” continues the treatise slyly, “they must be questioned as follows: Then are they innocently condemned when they are burned? And he or she must answer.”<sup>85</sup>

An affirmative answer, of course, constitutes rebellion, which deserves punishment. A negative answer returns the accused to the starting point: acquiescence in the judge’s righteous authority and control.

What does an Inquisitor himself believe? He believes in sin. Kin to those legislators who punish rocks or who discrown kings on the evidence of shooting stars, he holds such a high opinion of human moral-power that he’s certain that any ill effect issues from a malignant cause: a walking cause, a fellow citizen fit for burning.

In the *Malleus Maleficarum*, he is warned not to let the witch face him or touch him. Satan hides near. He’d better change her clothes, lest she has devilish defenses hidden in them. He shouldn’t neglect to shave her head, armpits and pubic hair. “And the Inquisitor of Como has informed us that last year, that is, in 1485, he ordered forty-one witches to be burned, after they had been shaved all over.”<sup>86</sup>

To establish proof of guilt, the examiner needs only to find that the accused has a bad reputation, that her vicinity contains victims—dry cows, sick children—and that anonymous witnesses testify against her.<sup>87</sup> Most likely she’ll get no opportunity to confront her accusers; and her advocate, should he be overzealous to save her, may receive a pointed warning against defending heresy. “And it is not a valid argument for him to say to the Judge that he is not defending the error, but the person.”<sup>88</sup>

The woman has two means of clearing herself. The first is to prove that her accusers bear her mortal enmity—not an easy task when the judge will not tell her who they are.<sup>89</sup> The second is to be lucky enough to confront only a weak case of



accusation, and to repeatedly undergo torture without confessing.<sup>90</sup> (But should she fail to weep while the examiners are hurting her, she is probably a witch.)<sup>91</sup> "But what we are to consider now," write our witch-burners, "is what action the Judge should take, and how he should proceed to question the accused with a view to extorting the truth from her so that"—So that the truth can be made manifest?—No. —"*So that sentence of death may finally be passed on her.*"<sup>92</sup> Some witches, we are told, strangle themselves in their cells—no doubt to avoid further torture. To the Inquisitors, this but *proves* them to be witches, tricked by the Devil into dying damned and in despair, bereft of the sacrament of confession,<sup>93</sup> which is the one zone where the interests of accused and judge coincide. For confession affirms the judge's doings, which in turn renders a public *contrapasso* realizable. It also allows the witch, self-branded as such by its agency, the possibility of at the very least saving her soul after she has been burned,<sup>94</sup> and perhaps (a weakish perhaps) of saving her life. This too is the Stalinist promise: Admit the charges against you, and you will be forgiven—a promise frequently unkept.

For witch-burners have many tricks. Because they are dealing with the enemy of creed and homeland—an imminent enemy who kills cows and children—they need not feel bound by the truth.

Pause a moment. We know this procedure and these punishments to be reprehensibly unjustifiable. But ethics, and in particular defense against imminence, excuses us from our misperceptions.<sup>95</sup> The Inquisitors, one hopes, genuinely believed that there were witches. *What if there had actually been witches?* Would the Inquisitors be unjustified then? All I can reply is that a widespread presupposition of the danger of witchcraft might have extenuated the execution of these helpless women; but the treachery of the system, its dismissal of its own norms of consistency, integrity and truth, should revolt any open mind.

Promise the woman her life, advise Messers Kramer and Sprenger, and encourage her to think that she will be sent into exile, when in fact she'll face a prison cell with bread and water. "But notwithstanding . . . , the secular Judge can, on account of the temporal injuries which she has committed, deliver her to be burned."<sup>96</sup> Furthermore,

Others think that, after she has been consigned to prison in this way, the promise to spare her life should be kept for a time, but after a certain period she should be burned.

A third opinion is that the Judge may safely promise the accused her life, but in such a way that he should afterwards disclaim the duty of passing sentence on her, deputing another Judge in his place.<sup>97</sup>

In the unlikely event that the defendant is found to be innocent, "let care be taken not to put anywhere in the sentence that the accused is innocent and immune,

but [only] that it was not legally proved against him," for, after all, he has an excellent chance of re-arrest.<sup>98</sup> (One recalls Solzhenitsyn's definition of release in the Soviet Union: the interval between two arrests.)<sup>99</sup> Moreover, as always, the judge's position and prestige must be preserved. It cannot be said that he was wrong. Witches defamed by their neighbors, but not convicted, must, according to the severity of the case, either get their neighbors to witness and subscribe to an oath of their innocence, or else abjure any past or future heresy. Perhaps penances will be assigned them: standing in sackcloth during High Mass, for instance, holding a candle of a certain weight.<sup>100</sup> In any event, for the rest of their lives they'll exist on sufferance. Confessed heretics are even more on their parole. Should they be accused again, they'll most likely be convicted, and then will suffer the fate of relapsed heretics: burning. (The judge is instructed in his sentence to hypocritically "pray that the said secular court" to which he is about to deliver the convicted witch "may temper its justice with mercy, that there be no bloodshed or danger of death.")<sup>101</sup>

Only once does the *Malleus Maleficarum* show a hint of self-awareness. The authors advise any judge who has tricked and wheedled a lethal self-conviction out of the witch not to face her when the sentence is announced. "For the face of his Judge terrifies the prisoner, and his words are more likely to cause one who is to be punished to be impenitent than penitent."<sup>102</sup>

## WITCH-BURNING CONTINUED, OR RUBY RIDGE

The result of such practices: precisely counterdeterrence. In my time and place, the notion of witchcraft trials repels us, not only because we don't entirely<sup>103</sup> believe in witches, but also because the trials strike us not as procedures for establishing the truth on which justice ought to be founded, but mechanisms for condemnation. We said before that at best, "justice is deliberation, but its substance is accident." At worst, "justice is deliberation and its substance is malice." This, I suppose, was how Randy Weaver felt when the U.S. government sniper received no punishment for shooting his wife in the face, while he himself, accused only of selling a shotgun one-quarter-inch shorter than the legal limit, had to face trial.<sup>104</sup>

### RULES OF ENGAGEMENT AT RUBY RIDGE

The FBI's moral calculus (August 22, 1992)<sup>105</sup>

1. "If any adult male in the compound" (that is, Weaver's cabin, so called to make it sound more threatening) "is observed with a weapon prior to the [surrender] announcement, deadly force can and should be employed, if the shot can be taken without endangering any children."
2. "If any adult in the compound is observed with a weapon after

the surrender announcement is made, and is not attempting to surrender, deadly force can and should be employed to neutralize the individual."

3. "If compromised" (that is, discovered) "by any animal (dog), that animal should be eliminated."
4. "Any subjects other than Randall Weaver, Vicki Weaver, Kevin Harris presenting threats of death or grievous bodily harm" to government agents (the Weaver children must be these "other subjects"), "the FBI Rules of Deadly Force are in effect. Deadly Force can be utilized to prevent ... death or grievous bodily injury to ones' self or ... another."

#### CASUALTIES (before ROE issued, August 21)

1. Weavers' family dog, Striker, shot dead by the G-men it scented.
2. U.S. Marshal William Deagan, shot dead in a firefight by Sammy Weaver, age 14, or by Randy Weaver's friend Kevin Harris, evidently in response to seeing Striker killed by these unidentified intruders.
3. Sammy Weaver, wounded in the firefight, then shot dead while trying to run away from the U.S. Marshals.

#### CASUALTIES (after ROE issued, August 22)

1. Randy Weaver, wounded only, shot from behind while visiting Sammy's body.
2. Vicki Weaver, killed while holding the door open for her husband, with a baby in her arms. The baby was fortunately unhurt. The Weavers' daughter Sara was standing close enough to be spattered with her mother's skull and brain fragments.
3. Kevin Harris seriously wounded by the same bullet.

#### RESULTS

Larry A. Potts, acting deputy director of the FBI, was issued a letter of censure. "Letters of censure are apparently also issued for comparatively insignificant infractions, as where an FBI employee has lost a cellular phone." The next day, Potts was promoted to full deputy director.<sup>106</sup>

Through this cruelty, my government played into the hands of the odious racists with whom the Weavers were associated, strengthening evil and boosting the propaganda of its enemies.<sup>107</sup> The worst offense which an authority ostensibly based on law can commit is the expedient (or slapdash) employment of arbitrary means.<sup>108</sup>

"Let The High Praise Of God  
Be In Their Mouth,

**ARYAN**



And A Twodged Sword  
In Their Hand"  
Ps. 149:6

**NATIONS**

NEWSLETTER

Church of Jesus Christ Christian

#79

## De Facto Government Wages War AGAINST WHITE CHRISTIAN CITIZENS

### RANDY WEAVER AND THE CONSTITUTION --By Richard G. Butler

Several years ago, Supreme Court Justice Thurgood Marshall stated that the United States Constitution was dead and that it was replaced by the fourteenth Amendment. As much as I hate to take a black's word over hundreds of thousands of well-meaning but ignorant White "conservatives," honesty forces me to side with the Black -- the Constitution is dead for White men. Oh, the written document still exists, but unless the thoughts expressed therein live in the hearts of White men, the paper and ink provides no shield against a 30.06, M-16, or even an AK47!

The original constitution was made by White men and for White men; it cannot be made to represent any other. It represented a National (Racial) State of the White Race. Hence, the citizenry was under a national obligation to be armed, thus the difference between a citizen, subject, and slave. The framers of the government envisioned White males as citizens (sovereigns), as opposed to British "subjects" or the alien Race of Black slaves.

One hundred twenty-four years ago Race treason in Washington, D.C., was in full swing. The so-called Fourteenth Amendment was never ratified constitutionally, just declared so by the race treason crowd of anti-Christ in the becoming "District of Corruption." The 64,000 dollar question: Why did the "We the People..." of that day allow it? Were we not then the sovereigns? Were we seduced by the lying priest and preacher (Jeremiah 23:11)? When we take stock and apply the laws of our Father, do we not deserve what we permit and permit what we deserve? The tyranny of the federal government, which was intended to serve for our well being, has become a terrible master. In Randy Weaver's case, murdering his son and wife and seriously wounding his friend, Kevin Harris, not for anyone's well being but perhaps just to kill and maim for pleasure!



Is this the assassin that shot Sam in the back, and then Vicki between the eyes while holding her baby in her arms?

The alien Negro was by treason accorded citizenship. Since a law of physics states that "no two objects can occupy the same place at the same time," the White man is being thrust out of citizenship to slave status.

Once, divine law was a subject in our schools, now it is forbidden and our schools are in shambles.

Once, politicians would invoke the name of Jesus The Christ; now they don't dare to utter anything in favor of the Bible or the White Race.

Once, the Second Amendment meant what it said; now it means whatever the slave master wants it to mean.

When will the sons of God awaken to their duty? (See II Chronicles 7:14).

### 1/4 INCH RANDY WEAVER'S STORY

--by Louis Beam

In 1985, the FBI approached Randy Weaver, a former Special Forces soldier, and asked him to become an informant for the federal government.

(The federals have over 12,000 paid informants nationwide, whose job is to spy on the American populace.) Weaver refused - then filed an affidavit with his county recorder saying he feared for his life as a result of the refusal.

In August, 1992, an eleven-day siege of the Weaver home in North Idaho began. A federal agent charged that Weaver had sold a shotgun with the barrel 1/4" too short. Weaver said it was a frame-up for refusing to plimp for the government. Over 500 federal personnel (Marshals, FBI, ATF, U.S. soldiers, some just returning from the killing fields in Iraq) surrounded the Weaver home; and above in the sky flew U.S.A.F. planes. Included on the ground were crack snipers, trained at the FBI Academy in Quantico, Virginia. Their job was to kill Weaver. Randy had vowed not to surrender to the federals on the phony charges brought on for refusing them.

## WEAVER FAMILY LETTER

June 12, 1990

Dear Aryan Nations:

To All our brethren of the Anglo Saxon race:

This evening at approximately 6:15pm at Deep Creek, ID - two U. S. Treasury agents (Gunderson & Barley) followed Randy & Vicki Weaver to the home of friends (They were driving a Forest Service Vehicle). When a woman of the house went out to her yard they told her they wanted to talk privately with Randy. She thought they were locals - he went out.

They threatened him with federal firearms charges & prison time and they confiscation of our truck. They said they didn't have a warrant yet. They said they want him to join their team and that he must come alone to the courthouse in Spokane tomorrow at 11:00am. Randy said "NO WAY!" They said "Oh Yes, That's the way we do things."

This letter is to let you know what is happening. Randy and I & the children are ready to stand for the truth and our freedom. We cannot make deals with the enemy. This is a war against the White Sons of Isaac. Yahweh our Yashua is our Savior and King. The decree (Genocide Treaty) has gone out to destroy Israel our people. If we are not free to obey the laws of Yahweh, we may as well be dead!

I don't know if they'll push this or not, it may be a royal bluff.... Randy's first thought was to let them arrest him to protect his children, but he is well aware that once they have him the Feds will send agents to search and destroy our home, looking for "evidence". He knows his children - they won't let that happen to their mother.

So he's going to stay with them and let the Edomites bring on the war!

Let Yah-Yahshua's prefect will be done. If it is our time, we'll go home. If it is not, we will praise His separated Name! Halleluyah!

*Yahweh be Praised, Vicki J. Weaver*

### WEAVER'S MOUNTAIN

—by *Barbara Curiale - Santa Ana, California*

They called themselves heroes  
on Weaver's Mountain  
Amidst laughing and pats on their backs  
They spoiled tall trees  
They spat in the wind  
They polluted the skies  
ZOG's filthy half-men  
Shooting dead a young boy in his tracks

Two tongues for each hero on Weaver's Mountain

This side deceives a man for two guns  
Now thirsting for blood  
They murdered his wife  
But not before taking  
His son Samuel's life

The other to excuse what they had done.

Now the fires that rage on Weaver's Mountain  
Will spread beyond what ZOG can control  
We'll bury our own  
Their loss we will grieve  
We'll bow before Yahweh  
In Whom we believe  
Cowardly ZOG will soon pay the toll.

High on a mountain in God's Country  
Where nature reigns supreme  
Where the trees grow tall  
'Neath the crisp blue skies  
And song birds are flying free  
Ran barefoot young children  
Through the leaves and moist earth  
Laughing and sharing their mom's sunny love  
Growing and caring for Father above  
Now Samuel will run there no more.

ZOG the dog  
swine and dung  
Hid in the bushes  
Loading their guns  
Shot little Samuel  
And sweet Vicki too  
Hell is more ready for you!

### FROM INSIDE ZOG'S PRISON

September 4, 1992

—Letter from Randy Weaver

Your support is so much appreciated. I want the folk to know that if Sam and Vicki were able to speak with us right now, that they would not change any of Yahweh's Plans. Sam and Vicki have always been ready and willing to do exactly what they did. What more could a man ask than to be able to say that under fire from ZOG, his family stuck together?

With the great offerings that Yahweh has required from this family, I know that great rewards are in the making.

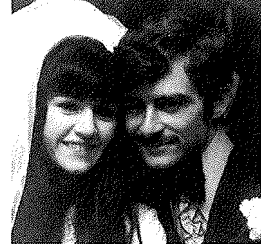
Please pray especially for Kevin and my daughters. If they are all right, then I'm all right."

*Randy Weaver*

**Last Word:** The Anti-Christ AIPAC/JOG's *de facto* communist government, long in control of this great land, has executed *their* judgement on Randy Weaver by reason of his *Patriotic American* convictions and *Christian Identity Faith!* Seeing their complicity and treasonous agents address the commands of *their* master, Anti-Christ Satanic Jewry, the enemy emergent from within has openly attacked the heart of America! White Christians must at once, with all conviction, address the commands of *their* King - Jesus Christ: Mark 13:13; Revelation 2:9 & 3:9; Matthew 10:34; Jeremiah 51:20; Luke 19:27....

**!... READ THEM AND ACT...!**

8What's done cannot be undone, but it can be punished. In 1997 the sniper, Lon Horiuchi, was finally arraigned—and, with vindictiveness disguised as evenhandedness, so was Weaver's friend, Kevin Harris, who had allegedly killed a G-man in a shootout the day before Mrs. Weaver was murdered. No matter that he'd already been tried and acquitted in another jurisdiction—the government was not prepared to admit unilateral fault. I decided then that until the sniper is punished (and Harris released, *guilty or not*, since he was previously found to be innocent) I would continue to believe that certain departments of my government have a free hand to murder my fellow-citizens. *Punishment is justified when it tends to prove that a legitimate social contract will be honored and obeyed by authority.*<sup>109</sup> *Punishment is unjustified when the punishment is inconsistently applied to penalize similar acts committed under similar circumstances.*<sup>110</sup> We know what would happen to an ordinary citizen who shot a woman in the face because she happened to open a door.



Randy and Vicki Weaver  
(1971)

## MEDITATIONS IN THE PUNISHMENT MUSEUM

The justice of retribution is more perfect, as it reveals itself to the spectator's understanding and thereby calls forth his agreement—which never occurred at Ruby Ridge. To the extent that justice remains public (as the employers of executioners once took for granted that it was), the audience ought to have the opportunity to feel some approximation of the *contrapasso* no matter how fake—or at least of somehow restoring symmetry, “making good again” (a crude translation of the evocative German word *Wiedergutmachung*).<sup>111</sup> Here is Plato on the proper penalty to be applied to a military deserter: Since the man has flung his shield away to avoid death, his punishment ought not to include death, because the judiciary should rather approach feminization and dishonor “in our treatment of the craven's pitiful clinging to his life, . . . that he may have no risks to take for the future, but prolong his life of infamy to the last minute possible.”<sup>112</sup> In many countries this sensibility still lingers, as in the show trials of Communist regimes, or the show penalties of Saudi Arabia, where hands and heads are severed before a crowd according to the dictates of Islamic law;<sup>113</sup> as I've repeatedly said, I prefer such procedures (if and only if the convictions were justly obtained) to the furtiveness with which authority murders murderers<sup>114</sup> in the United States. The legal phrase *corpus delicti* means “body of the crime,” and the murdered or maimed recipient of unlawful violence exhibits to his finder the ugly piteousness of crime-inscribed flesh. It is precisely this which Marc Antony shows off to the crowd when for propaganda purposes he lays bare Caesar's murdered body with its twenty-three stab-wounds, then raises the corpse's toga on a spear-point:

and shook it aloft, pierced with dagger-thrusts and red with the dictator's blood. Whereupon the people, like a chorus in a play, mourned with him in the most sorrowful manner, and from sorrow became filled again with anger.<sup>115</sup>

Retributive justice must likewise fashion an ugly thing.

This is part of what Hobbes means when he says: "The aim of Punishment is not a revenge, but terrour."<sup>116</sup> The other part of what he means, the implication that authority is within its rights to cow, gets enacted whenever another Stalin murders another Rudzutak;<sup>117</sup> we need not hold with that part, to accept the necessary equation between the frightfulness of the teenaged runaway's strangled, mutilated body found in the woods, and the blue, swollen corpse of the murderer in the state's gas chamber. Better, to my mind, that we see the ugliness, and bear in mind the transgressive ugliness which necessitated it, than that we pretend (as fainthearted Eichmann wanted to do with his "shipments," "transports," "pieces," "resettlements," "solutions") that it doesn't exist.<sup>118</sup>

Sometimes I almost agree that pretense is better. In the *Kriminalmuseum* in Vienna we see an old death sentence, printed huge and posted, so that the public will be informed of, and invited to, the doom of the mother-murderer Hackler. His fading *Todesurteil* is now grimly meaningless, a trinket of history. In a neighboring glass case we meet anarchist bombs: spheres like limpet-minds, metal or porcelain, deployed in Vienna by anarchists in 1889. What strange objects they are—earth-colored or grey, studded with protuberances: *Wüirfbombe* and *Kügelwurfbombe!* Their unfamiliarity renders them more interesting to me; their ominous fragility and sea-urchinlike shapes trap my eye: as artifacts they deserve preservation. But over here I see a sickening photograph of an axe-murderer's victim, along with the actual murderer's skull. I see photos of smashed, murdered heads (at Ruby Ridge, the FBI was quick to carry all such evidence away). On display, a bloody sack used to hide the dismembered victim indicates ghoulish malice and low cunning: this is the *corpus delecti*, all right. The victim and the murderer are long dead: What does the bloody sack teach me, after all? Justice has been done. Will it deter me from crime? Will I be a better person, if I look down this murderer's path and turn away shuddering? (Would I have been better for watching a witch burn?) How many such displays do I need to see to be deterred and improved? I see a golden box of *Zyanepustik*. My gaze is imprisoned by a wall-sized photograph from 1910 of a nude dismembered woman, black-stockinged with wrinkled eyelids and a bloody mouth, dried blood speckled at her crotch. The blood, the death, the missing limbs all revolt me. I never wanted to dismember anyone; I never wanted to kill anyone: does it instruct me to see this, or does it coarsen me? The first time I saw a cow slaughtered, I was shocked and sorry. Then it became my job every three weeks: that was how long a steer took to feed forty people. I remember the colors of fat and guts, the smell of blood, urine, dung and bile, the bright green if you mistakenly cut the gall blad-

der, the crimson blood loudly and steadily gushing, as if from a faucet, when one severs the neck; it grew easy. If I killed people, legitimately or illegitimately, perhaps that would grow easy, too.

I have never seen an execution, but when I was a teenager I used to go to horror movies, and I remember how there were always people who laughed. There must be people who laugh at executions, too. In aesthetically sadistic variants of the *contrapasso*, Nero and his successors enjoyed making condemned criminals play parts in myth-dramas: Icarus comes hurtling down from the heights of the Coliseum, then hits the dirt, spraying the emperor with blood.<sup>119</sup> A batch of Christian women find themselves dressed as Danaids and pushed into the arena, where they vainly run from devouring beasts...<sup>120</sup> But Nero passed on, and justice drew back.

## A PROPORTIONALIST QUAGMIRE

**W**hy weren't these *contrapasso* laws maintained forever? I doubt that spectators objected to them. After half a lifetime of studying the history of jurisprudence, Maine concluded that "much the greatest part of mankind has never shown a particle of desire that its civil institutions should be improved since the moment when external completeness was first given to them by their embodiment in some permanent record."<sup>121</sup> But in the German case, once administrative centralism consolidated its hold on what had heretofore constituted but isolated villages huddling in a Hobbesian wilderness of wolves and brigands, the *omnipotence* of justice increased, thereby decreasing the requisite severity of the deterrent effect.<sup>122</sup> (Arsonists, roll your dice: Before, you enjoyed a higher likelihood of getting away, combined with a more hideous punishment were you caught. Now your chances of being apprehended are on the rise, so we can let you off with something mild like decapitation—it equates, doesn't it?) Beccaria's theories began to make torture and immolation into an embarrassment for the magistrates of the "barbaric" nations concerned—if not for the public.

But that begs the question: How could anyone be so susceptible to Beccaria's arguments? Where did the embarrassment come from? —Because, I would argue, the notion of the *contrapasso* rests on metaphorical rather than analytical logic. In Elizabethan England, a justice of the peace asserts, as a matter too obvious to be proved, that "due analogy and proportion" of punishment have been violated, because both ordinary murderers and witches are strangled on the gallows, "wherein doubtless there is a great inequality of justice, considering the inequality of the trespass, which deserveth a death so much the more horrible by how much the honour of God is eclipsed."<sup>123</sup> Under the secularized law of nineteenth- or twentieth-century England, those "proportions" might have been exactly reversed, because the law no longer asserted the venomous dangerousness of witchcraft. Likewise, the





*Policemen arresting department store robber (New York City, 1995). He had just been captured after a long chase. He gave me permission to take his picture, but asked me not to photograph his face because he was ashamed.*

father of a nineteen-year-old American girl killed by a drunken driver explains in approval of the killer's sentence—life in prison without parole—that “my wife and I are in a sort of prison and will be for the rest of our natural lives, and we feel that Mr. Jones should be, too.”<sup>124</sup> Had Mr. Jones been condemned to death, the father might equally have said that “my wife and I are dead in our hearts, and so Mr. Jones ought to be in his body.”<sup>125</sup> Due proportion varies according to the moral eyesight.

This is not to say that the notion of proportion has no utility. Montesquieu claimed that because in the Russia of his day the penalty for robbery and murder were the same, robbers always murdered for expediency's sake, whereas in China robbers who murdered were cut into pieces, which was why “though they rob in that country they never murder”<sup>126</sup>—an argument whose basis in actuality I do not know, but which makes logical sense to me.

Proportionality, to be effective, requires *utterance*. Justice must trumpet its own presence. “Meaning,” “message,” sanctifies violence. This is why authority sometimes assumes the obligation to explicate the reason for the punishment by proclaiming the crime. Hence the placards around the necks of Nazi-hanged partisans, or the label at the foot of the cross: JESUS, KING OF THE JEWS. Hence the sermons preached by New England divines at the scene of the crime—and the scene of the

execution.<sup>127</sup> It's thanks to their good offices that we hear that Hanna Ocuish, "a mulatto girl twelve years and nine months," praying aloud at her own execution ground that "every spectator of this day's painful scene, learn the importance of faithfulness [toward] Parent and Master."<sup>128</sup> Authority loves to make sure that we get the point.

Most of us now reject the importance of faithfulness to one's slavemaster as a social good. We have no reason to believe that many of the social goods of our own era won't also be rejected. In other words, to the extent that I become habituated to obey the law, I run the risk of becoming Eichmann. To the extent that I disavow it, I fall into peril of becoming Sade or Stalin.

One historian bitterly claims that law's very arbitrariness establishes capital punishment's "effectiveness, indeed its very meaning as a symbol of sovereignty"<sup>129</sup>—authority defending itself by means of Damocles's sword. Wherever that sovereignty has grown established, its idiosyncratic manifestations, no matter how idiosyncratic they might seem to us, become as uncontroversially ubiquitous within its own context as the law of gravity.<sup>130</sup> Hence Montesquieu's worldly assertion that "if the people observe the laws, what signifies it whether these laws are the same?"<sup>131</sup> [*See following page.*]

"Those who believe in the beneficence of force have never yet agreed upon the crimes that should be forbidden, the method and extent of punishment, nor even its result. They simply agree that without force and violence social life cannot be maintained."<sup>A</sup>

I. PUNISHMENTS ENFORCED BY VICTIM'S KIN OR FOLLOWERS

SOCIETY	PENALTY FOR MURDER	PENALTY FOR ASSAULT	PENALTY FOR RAPE
Hittite Kingdom, 15th or 14th cent. B.C. <sup>B</sup>  <i>A 20th cent. compiler remarks: "There was no room for mercy for the poor and the hungry."</i>	In anger: Surrender 4 persons to victim's family (2 if victim was slave). Manslaughter: Surrender 2 persons (1 for slave). If Hittite merchant killed, must give 1.5 silver <i>manehs</i> .	For knocking out a man's teeth or blinding him, 20 shekels (10 shekels for slave). For injuring his head: 6 shekels. For breaking his arm or leg, 20 shekels (10 for slave). For biting off his nose, 1 <i>maneh</i> (3 shekels for slave). Etcetera. General Rule: Must succour victim, pay his doctor, provide him with labor until he recovers.	"If a man seize a woman in the mountain, it is the man's offense; he shall die. But if he seizes her in the house, it is the women's offense; she shall die." Except above, difficult to distinguish rape from seduction. Adulterers may be spared or killed as the husband chooses. No compensation needed if the woman-stealer is killed by those who seek to recover her. A man who elopes with another's betrothed must pay compensation. Should a shepherd elope with a free woman and pay no bride price, becomes a slave in the third year.

WILLIAM T. VOLLMANN

SOCIETY	PENALTY FOR MURDER	PENALTY FOR ASSAULT	PENALTY FOR RAPE
Rome (Twelve Tablets, ca. 450 B.C.) <sup>C</sup>	Blood money. Arsonist burned alive.	Blood money, fixed amount; later, courts could assess penalty. Considered an outrage or insult. For a broken limb, if compensation not paid, "retaliation in kind" allowed. Compensation for breaking bone of freeman: 300 asses. For slave: 25. For accidental wounding: ram given as peace offering, "to prevent blood revenge."	[Blood money to nearest male relative considered a kind of insult to him; hence not specifically mentioned. Seduction presumably treated likewise.] Compensation for undefined "outrage": 25 asses.

*The Twelve Tables list 7 penalties: fines, shackles, flogging, retaliation in kind, exile, death, and slavery.*

Iceland, 9th-12th cent. <sup>D</sup>	Blood revenge, within 24 hours, or blood money. {For murdered slave, 12 oz. of silver within 3 days forestalls legal consequences.} <sup>E</sup>	Blood revenge, or blood money.	Blood revenge, or blood money.
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*Valid only until the meeting of the Althing (legal assembly), after which private vengeance must give way to adjudication.*

Japan, 9th-18th cent. <sup>F</sup>	Blood revenge for murdered parent or lord.	[Blood revenge?]	[Blood revenge?]
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*In later centuries, the authorities had to be notified first.*

Powhatan Indians, pre-1607 and late 17th cent. <sup>G</sup>	Blood revenge	[Blood revenge?]	[Blood revenge?]
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PUNISHMENT

SOCIETY	PENALTY FOR MURDER	PENALTY FOR ASSAULT	PENALTY FOR RAPE
Huron, 17th cent. <sup>H</sup>	Blood revenge from kin (in theory); but compensation socially encouraged to avoid blood feuds. 1 murdered man = 30 presents (beaverskins). 1 murdered woman = 40 presents. Chief = more.	Compensation through presents.	Unknown.
Central Eskimo (Cumberland Sound, Davis Strait, 1880s). <sup>I</sup>	Blood revenge.	Blood revenge.	Blood revenge.

## II. PUNISHMENTS JUDICIALLY ENFORCED

Code of Exodus, 1200 B.C. <sup>J</sup>	Death, with right to sanctuary if murderer did not lie in wait. For murder of slave: "he shall be punished. But if the slave survives a day or two, he is not to be punished; for the slave is his death money."	Compensation, plus responsibility to heal the victim. For causing a woman to miscarry: a fine if she lives, death if she dies. For harm to eye or tooth of slave: slave is freed.	Seduction of unbetrothed virgin: must make marriage present to father and marry her. "You shall not afflict any widow or orphan." [No more explicit mention of rape.]
Greek code of Draco [Drakon], 621-20 B.C. <sup>K</sup>	Exile "even if without premeditation."	No penalty for homicide in the act of repelling a violent thief.	Unknown.

SOCIETY	PENALTY FOR MURDER	PENALTY FOR ASSAULT	PENALTY FOR RAPE
Code of Leviticus and Deuteronomy, 600 B.C. <sup>L</sup>	Death.	"An eye for an eye, a tooth for a tooth."	Of virgin: bride-price of 50 shekels to father, then compulsory inalienable marriage. Of betrothed virgin, outside: death to rapist. Of betrothed virgin, in city: death to both (by stoning), "because she did not cry out." (Marriage to captive woman allowed; no mention of consent.)
Greek code of Solon, 594 B.C. <sup>M</sup>	Death, unless murderer flees after first day of trial. Infanticide by violence not permissible; by abandonment allowed. Self-defense killing, or slaying of a highwayman, outlaw, night robber, or adulterer caught with one's near female relatives permitted. Unintentional homicide penalized by exile. Execution by exposure or strangling while pinioned to board, or, more rarely, by precipitation or hemlock-poisoning. Victim's relatives must prosecute.	Mere battery punished by fine. Deliberate wounding punished by exile and loss of property.	Fine of 100 drachmas, if victim is a free Athenian woman. Rape of free man or boy subject to same. Rape of slave subject to 50 drachmas. 20 drachmas for seduction. [But seduction of free woman punished more harshly than rape. Seducer could be killed or maltreated without penalty; wife must be divorced.] No penalty for fornication with harlots.

SOCIETY	PENALTY FOR MURDER	PENALTY FOR ASSAULT	PENALTY FOR RAPE
<p>Various Roman statutes, 1st cent. B.C.<sup>N</sup></p> <p><i>"The Romans did not create an organic body of statutes relating to criminal law."<sup>O</sup></i></p>	<p>Death (but not of a citizen "without sanction of the people").</p> <p>For parricide: drowning sewn up in sack with dog, cock, monkey, and viper.</p> <p>Exile or compensation also sometimes required. Condemnation to fight as a gladiator possible. Noncitizens might be crucified, thrown to wild animals, or burned.</p>	<p>Compensation and/or death or branding (for slave).</p> <p>Exile in some cases.</p> <p>Flogging also sometimes administered for non-citizens.</p>	<p>Compensation and/or death (by victim's kinsmen if rapist taken in the act—usually no capital penalty for citizens).</p> <p>[In 76 B.C., the legions of Quintus Sertorius pillage the Roman town of Lauro. One soldier tries to rape a woman, who rips out his eyes. Sertorius executes the entire cohort of probably 480 Roman soldiers.]</p>

*Masters had the power of life and death over their slaves during this period, and could flog, prostitute or crucify them for virtually any reason. Crucifixion was performed by a hired private contractor in early 1st cent., and possibly in Republican times also.*

<p>Roman code of Justinian, A.D. 533<sup>P</sup></p>	<p>Death or exile.</p> <p>Penalties for slaves similar to those of Republican days, but masters gradually lost the right to punish them without imperial sanction.</p>	<p>Striking, beating, or forcible house-breaking all considered in this category.</p>	<p>Rape of slave-woman also considered an "outrage."</p> <p>Attempted seduction of a woman dressed as a slave or as prostitute less actionable than if she is dressed like a "respectable mother of a family."</p> <p>Owner of female slave can sue seducer for insult to him.</p>
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*Roman citizens became divided into two classes, honestiores and humiliores. The former were usually exempt from the worst punishments, but even they could be executed for murder or treason. Degrading punishments included being sent to work in the mines (a capital sentence) or being reduced to a gladiator.*

SOCIETY	PENALTY FOR MURDER	PENALTY FOR ASSAULT	PENALTY FOR RAPE
<p>Laws of old Chosun, Korea, A.D. 100-200<sup>Q</sup></p>	<p>Death.</p>	<p>"Compensation in grain."</p>	<p>Unknown.</p>
<p>Laws of Puyo, Korea, A.D. 100-300<sup>R</sup></p>	<p>Death. Family of murderer enslaved.</p>	<p>Unknown.</p>	<p>Unknown. [Polygamy probably practiced. Adulterous women executed; jealous women executed and left to rot on the mountainside; no similar penalties for men.]</p>
<p>Laws of the Roman emperor Constantine, d. A.D. 337<sup>S</sup></p>	<p>Unknown.</p>	<p>Unknown.</p>	<p>Death by fire or by wild beasts, for rapists. If woman was unmarried and under 25, and she eloped voluntarily (that is, if the crime was fornication rather than violent rape), she will be executed in the same way.</p>
<p>Islamic code, from the Qur-'An, 7th cent.<sup>T</sup></p>	<p>Death, unless a fine is accepted.</p>	<p>Imprisonment, corporal punishment, or cutting off of hands and feet, depending on severity.</p>	<p>Similar to Deuteronomy. [Slave-girls cannot be forced into prostitution, but marriage allowed to currently married women captured in battle; no mention of consent.]</p>
<p>Consitutio Criminalis (15th-early 16th cent.)<sup>U</sup></p>	<p>Unknown.</p>	<p>Unknown.</p>	<p>Death. [Same as seduction and adultery; if willing, or even only apparently so, woman also dies.]</p>

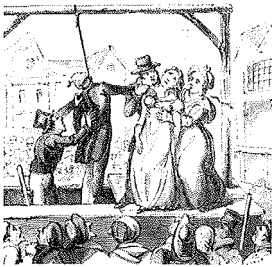
SOCIETY	PENALTY FOR MURDER	PENALTY FOR ASSAULT	PENALTY FOR RAPE
Constitutio Criminalis Carolina, Holy Roman Empire <sup>v</sup>	Death.	Death.	Death.
Jamestown colony, 1606 <sup>w</sup>	Death without benefit of clergy. (Clergy allowed in executions for manslaughter.)	Corporal punishment, fine or imprisonment, at council's discretion.	Death without benefit of clergy.
Powhatan Indians, 1607 <sup>x</sup>	Burning alive, sometimes after flogging until bones broken.	Unknown.	Unknown.
Russian trading and taxcollecting post in Siberia, 1676 <sup>y</sup>	Punishment depending on guilt.	Punishment depending on guilt.	Flogging ("mercilessly") and fine; same penalty whether "native women and young girls and children: acquired through "pawning," "purchase, or by force."
Pre-revolutionary France, France, 18th cent. <sup>z</sup>	Homicide (including suicide), parricide, infanticide: Breaking at wheel (for men only), burning alive, hanging. Decapitation for nobility only.	Unknown.	Imprisonment for violent rape or seduction. Rape usually not punished if victim is more than ten years of age.
Revolutionary France, Code, 1791-92 <sup>aa</sup>	Assassination, homicide, poisoning: decapitation (for all classes), prison or galley slavery.	Decapitation, prison or investigative detention.	Imprisonment for violent rape or violence causing a woman to miscarry.

SOCIETY	PENALTY FOR MURDER	PENALTY FOR ASSAULT	PENALTY FOR RAPE
Prussian General Law Code, 1794 <sup>bb</sup>	Simple murder: break at wheel from top down. Poisoning: break from bottom up (more prolonged). Infanticide: decapitation.	Unknown.	Unknown.
England, 1904-43 <sup>cc</sup>	Hanging to imprisonment, depending on circumstances.	Whipping for robbery with violence (for 61 out of 1414 convictions).	Unknown.
Soviet criminal code, post-Stalin <sup>dd</sup>	Death penalty, or 3-10 years imprisonment.	3-10 years imprisonment.	3-10 years imprisonment, or death for extreme circumstances (e.g.; death of child). Death for rape by recidivist sex offender.

NOTE: Justified homicide and assault not here defined. Only homicide and assault considered unlawful are considered. Rape in our sense is not always defined as such, but sometimes is conceived of merely as an offense against the husband's or father's property.

## “REPUGNANT TO MODERN IDEAS”

And so, swayed perhaps by legalistic notions of *consistency*, by fears that our gashes in the transgressor’s flesh might not be laid down according to the same pattern as another judge would prescribe, we resolved to abolish gashes. Stalin, Hitler and Pol Pot witness that we didn’t succeed, but isn’t it pleasurable kingly, just the same, to be *righteous*? In his history of capital punishment in Germany from 1600 to the present, Richard J. Evans describes punishment’s privatization, be it flogging or execution, accompanied by the de-emphasis of torture, that is to say, of causing aggravated suffering in the condemned.<sup>132</sup> As collective honor<sup>133</sup> declines in importance and prestige, so does the lesson of public punishment. At executions, they say, pious crowds give way to drunken and obstreperous individuals<sup>134</sup>—but I’ll bet that the obstreperous had always been present.



*British hanging (1828)*

In 1868, the British began hanging their condemned out of sight, because, to quote a Home Office document, “though the publicity was deterrent in intention ... it became in practice a degrading form of public entertainment, which could only serve to deprave the minds of the spectators.”<sup>135</sup> Should the depravity simply be accepted, because it deepens the criminal’s humiliation, and hence his punishment? The British Royal Commission on Capital Punishment thinks it shouldn’t. The more horrible the punishment, the greater the deterrent, is “a theory not supported by the history of the criminal law and repugnant to modern ideas.”<sup>136</sup>

Here we have a sideways genital view of a lust-murder, May 22, 1934, with bloody clothes, wanted posters, a hank of the victim’s hair and both relevant death-masks. I despise the evil hand which committed this crime. Don’t forget this tarnished old guillotine with the rusty bloody headbasket. —“No doubt the guillotine is an effective instrument,” concluded the British commission, “but we are sure that the mutilation it produces would be shocking to public opinion in this country.”<sup>137</sup>

Is a shock wanted or not?

Next I see a photograph of a Nazi mass execution: a long beam with many nooses parallels the beam beneath. A line of condemned hang and a man is inspecting each one, to make sure that they are dead. I am horrified; I am terrified; I am deterred—I hate the Nazis, not the supposed criminals. One thing I’m compelled to admire in this museum is that one usually finds *crimes matched with punishments*. The Nazi execution is, most likely, given its mass character, a punishment linked to no crime, or linked to innocent hostages rather than culprits—in short, a punishment which is a crime. As Kant explains:

Juridical punishment can never be administered merely as a means for promoting another good either with regard to the criminal himself or to civil society, but must in all cases be imposed only because the individual on whom it is inflicted has committed a crime. For one man ought never to be dealt with merely as a means subservient to the purposes of another, nor be mixed up with the subjects of real right. Against such treatment his inborn personality has a right to protect him, even although he may be condemned to lose his civil personality.<sup>138</sup>

The display for the Nazi mass execution is therefore almost death-pornography, worthwhile only for what it says about the Nazi regime, and, by negative implication, about justice generally; whereas the image of the axe-murderer's victim and the axe-murderer's real skull together behind glass repel and sadden me, but they also reassure me. (I assume that justice convicted the right man.) Continuing to consider what I've seen, I decide that in fact I want more people to see it, especially in my country, which as I write is infected by the notion that violence both judicial and nonjudicial brings pleasure without consequences. I believe that these artifacts may be useful and important. I approve of them. In his eloquent if not always persuasive treatise against judicial violence, Darrow follows my line—with angry irony:

If the purpose of the punishment is to terrorize the community so that none will dare again to commit these acts, then the more terrible the punishment the surer the result... It should be steadfastly remembered by all squeamish judges and executioners that one vigorous punishment would prevent a thousand crimes. But more than all this, death should be in the most public way. The kettle of boiling oil should be heated with its victim inside, out upon the commons, where all eyes could see and all ears could hear. The scaffold should be erected high on a hill, and the occasion be made a public holiday for miles around.<sup>139</sup>

## THE PUNISHMENT OF ROCKS

Without the least bit of irony, Cambyses would agree; and likewise Robespierre, Trotsky, Hitler, the Roman jurists (for whom, we are told, "the infliction of pain was an essential element in dealing with criminals")<sup>140</sup> and, with reservations, Thomas Jefferson, who was prepared to cut transgressors' noses off; Plato likewise approves, so far exceeding the Saudis in his need to compose and solve ethical equations in public that he, who so well grasps the difference between voluntary and involuntary detriment, between crimes of passion, of manslaughter and of malice, nonetheless pursues this course of uncovering to its extreme and, most absurdly by our standards, proposes in his *Laws* to try and convict even beasts and falling rocks for homicide.<sup>141</sup> This was already the practice in Athens.<sup>142</sup> We sometimes encounter, particularly among people steeped in philosophy and religion, the strange and fascinating



conception that the law—or, I should write it, as Plato thinks it, the Law—has more reality than we, that it has been inscribed by the Master Mason in the walls of time itself, that human lives come and go but the commandment (for instance) *Thou shalt have no other gods before Me* must be valid for eternity, that the Platonic Form is the end, more durably valid than the world. In ancient Rome, “the subject of litigation is supposed to be in Court. If it is moveable, it is actually there.”<sup>143</sup> In a dispute over land, a clod of earth is brought into court; if a house is the subject of dissension, a brick must be there; if a slave, the plaintiff and the defendant each lay hands upon him in front of the judges.<sup>144</sup> In classical Athens, each law, cut into wood or stone, might exist in only one copy: the law pertaining to the council of the Areopagos is set up there. A scholar explains: “If any . . . Athenian wanted to know the law about some matter, he would normally have had to find out where that law was, and walk there.”<sup>145</sup> All the more reason why a philosopher might seek to condemn falling rocks, why the Athenians could pass sentence of disinterment on men posthumously convicted of murderous sacrilege,<sup>146</sup> why in the Middle Ages cattle and children could be executed for witchcraft, why King Xerxes supposedly had the waters of the Hellespont whipped with three hundred lashes for breaking up his bridge of boats<sup>147</sup> and, yes, why the Saudi thief must lose his right hand. . .

## NINE TO TWELVE SECONDS

Such proceedings remain, in the words of the British commission, “repugnant to modern ideas.” How then run modern ideas?<sup>148</sup> In the middle of the twentieth century, before its practical abolition, capital punishment in England was conducted thus: Pinion the prisoner’s arms behind his back. Lead him to the chalk mark. Pinion his legs. Pull the white cap over his head, then slip the noose on “with a knot drawn tight on the left lower jaw, where it is held in position by a sliding ring.”<sup>149</sup> It will all be over in nine to twelve seconds, but the body is left hanging for one hour because “the heart may continue to beat for up to twenty minutes, but this is a purely automatic function.”<sup>150</sup> The public will see nothing. Tradition requires that an announcement of the forthcoming execution be posted outside the prison wall, but the Royal Commission, deploring the crowds of rubberneckers thus attracted, proposes to abolish this practice, and instead to simply place such notices in the press. As it is, the executioners no longer toll the bell, fly the black flag or lock down the prison;<sup>151</sup> they no longer seek to reify justice. What then is the point of retribution? Lord Justice Denning called it “the emphatic denunciation by the community of a crime.”<sup>152</sup> But how emphatic can it be, when the community has been excluded? How do we wish to imbue the executioner’s act—with public, self-satisfied sadism, or with stealthy shame? “The craving that draws a crowd to the prison where a notorious murderer is being executed, reveals psychic qualities of the sort that no state would wish to foster in its citizens.”<sup>153</sup> The Romans who crucified myriads on public highways, Wei Liao-tzu, Trotsky and the witch-burners would beg to differ.<sup>154</sup>

## THE ATONEMENTS OF JOHN BROWN

If the Royal Commission is blind—that is to say, if the Law does in fact confront us with a living gaze, if the Word is truly God, Logos, so that by transgressing we harm not only our victims but this divine thing which hangs over us all, then our problems are solved: Why shouldn't I pick up the lash to punish you? I do this not only for myself—or not for myself at all—but for outraged Symmetry.<sup>155</sup>

### THE WHIPPING OF JOHN BROWN

Let us bring to mind again that famous story of how old John Brown kept an account-book of whippings due for infractions of familial discipline—lies, laziness in assisting the tannery's blind old horse to grind bark, and the like (the penalty being six or eight strokes for each such sin); how one Sunday John Brown brought his scared but resigned boy out to the tannery to (as Hitler would have said) settle accounts; how John Brown administered a third of the settlement—"masterfully laid on" as his son later told it—and then suddenly stopped, stripped off his own shirt, handed the boy the switch, knelt down and commanded that his own bare back be striped! How must John Jr. have felt? Sad, relieved, grateful, ashamed, repulsed, horrified, moved to love? His father said that he was not punishing hard enough. I can almost see the boy now gritting his teeth and perhaps crying, desperate to get this over with, obediently striking his father with all his might until the blood flowed; no doubt that tough old man made no movement, showed no pain, uttered nothing except further commands to flog him harder. Very likely the instrument employed was a whip constructed by old Brown himself. In a third-person autobiography, the father recounts that as a boy he'd quickly learned "the entire Process of ... Skin dressing... he could at any time dress his own leather such as Squirrel, Raccoon, Goat, Calf, or Dog Skins: + also learned to make Whip Lashes, which brought him some change ... & was of considerable service in many ways."<sup>156</sup> Did those sessions in the tannery comprise one category of that service? Oh, other-worldly, inflexible old John Brown! Strike, and strike again! It was the youth's first illustration, as he later put it, of the doctrine of the Atonement.<sup>157</sup> By what might be more than an interesting coincidence, Brown himself uses the same word in that same long autobiographical letter. His main vice as a child, he confesses, was lying,

generally to screen himself from blame; or from punishment. He could not well endure to be reproached; & I now think had he been oftener encouraged to be entirely frank; by making perhaps a kind of atonement for some of his faults; he would not have been so often guilty of this fault; nor have been obliged to struggle so long with so mean a fault.<sup>158</sup>

In other words, corporal punishment was felt by Brown to be a kindness, because it granted quick instant release—not, obviously, in the sexual sense that it had for the Marquis de Sade a century earlier, but rather as moral catharsis: some pain, and all was cleared away!<sup>159</sup> We are almost back in the era of the German mirror-punishments. As with the Christian Atonement to which John Jr. was referring—that is, the notion that Christ's suffering is the solvent in which (if we but submit) our inborn sins can be dissolved—this equation between stripes and righteousness constitutes no more of any moral universal than the preference shown by Captain Nolan of the Light Brigade toward honor over self-preservation.<sup>160</sup> Let's therefore interpret the concept of punitive purification purely as a didactic or magical measure on John Brown's part, like the condemnation of a stone. As Hobbes says, and as we have already noted, for a punishment to be more than revenge, it must be publicly witnessed, and sanctioned by authority.<sup>161</sup> The only public in the tannery was John Brown and his son, but punishers and offenders can be each other's public, especially when they switch roles. (Besides, a child may be a parent's most important public.) In one of his famous Ninety-Five Theses, Martin Luther insists that inward "penitence is null unless it produces outward signs in various mortifications of the flesh."<sup>162</sup> The outward signs are for the benefit of the penitent—and the audience. Hence also the remarks of some of John Brown's enemies, an association of Confederate property owners, on the subject of slaves running away to the Yankees: "A few executions of leading transgressors among them by hanging or shooting would dissipate the ignorance which may be said to possess their minds and which may be pleaded in arrest of judgment."<sup>163</sup>

That sounds evil; and an anarchist presents the case for edifying punishments in an even worse light when he bitterly complains: "Governments need police to produce criminals; because the mass of people are so frightened of criminals they willingly give away their rights and freedoms to obtain protection."<sup>164</sup> The analogy with slavery doesn't hold up; the slaves never gave away their rights but were robbed of them. But perhaps it works for people like John Brown. He was not afraid of criminals, but he must have been terrified of sins. Is it too far-fetched to say that his conscience was his policeman, causing him to be whipped or to humble himself before his own children in order to protect him from invasive thoughts, little lies? Can we posit that for all his great principles he might have suffered from unfreedom of thought, his tethered soul struggling round and round his political and religious obsessions, like the blind horse in his tannery? Practically everything he tried failed, including the Harpers Ferry raid. —And yet, he *was* a bold man; he *was* free; he scorned the laws and punishments of others... Strange old Brown! With other figures of deterrence and retribution, the anarchist has a better case: his maxim explains precisely why Stalin harped so much on counterrevolutionaries, kulaks and wreckers; which is to say, why his secret police had to keep devouring all the Rudzutaks. After awhile it becomes a miracle of perpetual motion: I must destroy

Comrade Rudzutak in order to remind the masses that they depend on me to save them from him; and I must remind the masses that they need me so that it will be easier for me to destroy the next Rudzutak. *Violent punishment is unjustified to the extent that the punishment, which may be just or unjust in and of itself, furthers authority's power beyond the minimum necessary for enforcing the social contract.*<sup>165</sup>

John Brown, on the other hand, never crushed his victims through the aid of moral-ideological machinery moving in smooth circles, but, like Lawrence liquidating the Mezerib Turks,<sup>166</sup> acted with desperately illogical stabs of rage against what he hated. Unlike Lawrence, more fortunate than he in obsession, John Brown was certain that what he did was ordained by God.<sup>167</sup> What we see as convulsive acts of violence he interpreted as chastisements writ in the bloody ink of meaning. In part, the tale of his career is a warning to us against self-righteousness and inflexible anti-bigotry carried to the point of bigotry itself, as when he murdered his prisoners on that dark cold night in Kansas;<sup>168</sup> and one must likewise wonder regarding the whipping how he knew (or did he know?) that God demanded eight strokes for some particular lie of his son's, not seven or nine; but if we grant (as he would) that fathers are given latitude to administer reasonable penalties for the offenses of their children, and that those penalties, having been once explicated, earned and noted in that dreaded account-book, must be carried out in order to avoid still another sin, namely the sin of a lie, of a broken promise, of (more to the point) a failure to whole-somely correct a child given into one's care, then suddenly that account becomes an absolute thing in and of itself, as universal and inevitable as the principle described by Newton, which dictates that the great boulder in Plato's never-never Country of the Laws must, once dislodged from its matrix, fall without respect to the living flesh below.

### LOVE'S DUTY

Because his public life became so spectacular, John Brown's life as a family man holds less comparative "interest"—that is, offers less sensationalism. But the most cursory reading of the man's private letters, with their even lines of script, their capitalized nouns and capriciously underlined phrases, their news of calving lambs and oat fields, prove him to be either surprisingly home-centered, or else an excellent actor. "I am unable to pray for any thing better than a good Log House hewed inside, of peeled logs (with a good Cellar under it, about two feet longer outside than the old one we lived in."<sup>169</sup> And he proceeds to build his dream-house line by line, at one point laying down his pen and resuming on the same subject two days later. It is strangely moving to observe this restless, distant, peripatetic murderer striving through unassisted will and imagination to create and consolidate in his image a world for his distant family. Brown was a would-be Biblical patriarch, with his many children whom he instructed to regard and copy the wisdom of his letters,

his increasing flocks, his potatoes and corn—but unlike Jacob or Laban, he remained a poor wanderer, a Moses born in Canaan, struggling to overthrow heathen ways, shepherd of an insignificant few. In his bankruptcy inventory of 1841 we find, among other sad flotsam, a mirror valued at ten cents, eight chairs valued at two seventy-five, two braining knives valued at a dollar twelve and, of course, eleven “Bibles & testaments” valued at six dollars and fifty cents...<sup>170</sup> “There is a peculiar music in the word” *home*, he writes his wife (and typically enough—I love him for it—adds the mass revolutionary’s touch: “Millions there are who have no such thing to lay claim to”).<sup>171</sup> Moses died before he even came into Canaan; one recalls that Martin Luther King compared himself to Moses shortly before he was assassinated; and John Brown shared with King not only zeal for defense of race but also the same manly mournfulness about oncoming doom. At the end of his long invocation of the ideal home we read: “These are my general ideas of a Log House but should you go on to build one you had better exercise your own good judgment about it considerably for I may never live to occupy it.”<sup>172</sup> This was written in 1853; Brown, a year older than his century, still had half a dozen years left to live before the rope cut him off. We have seen him in his role of revolutionary know-it-all; but though he comprehended full well the path of righteousness, and the misdemeanors of his family who sometimes strayed from that path, Brown was quick to confess that he often likewise failed to follow it. “Yesterday I began my fifty-fourth year,” he writes in this same letter, “& I am surprised that one guilty of such an incredible amount of Sin & folly should be spared so long... I still keep hoping to do better hereafter.”<sup>173</sup> He *deserves* to be whipped, then—so perhaps he feels. When John Jr.’s strokes flew down upon his back that day in the tannery, did old Brown feel that he was expiating his son’s guilt or his own? —*Both*, I would guess: he, who will soon become the avenging angel, can never be chastised enough. This may be the secret source of his strength: whenever life strikes at him, he accepts and glories in the punishment. —*Both*, I said; for Brown’s logic, like Stalin’s, forms a circle with its corollary: If I am hard with myself, then by a sly subversion of the Golden Rule I have the right to be hard with you. —He whips young John; young John whips him.<sup>174</sup> He kills proslavers and is killed.

To this difficult son of his, old Brown at one point pens a long epistle of witty, angry sarcasm, which must have mortified the recipient’s soul, since it was unable to become a whip and mortify his back:

In your Letter, you appear rather disposed to Sermonise; & how will it operate on you and Wealthy [John Jr.’s wife] should I try to pattern after you a little, & also quote some from the Bible? In choosing my texts; & in quoting from the Bible I may perhaps select the very portions which “another portion” of my family hold as “not to be wholly received as true.” I forgot to say that my younger sons (as is common in this “progressive age”) appear to be a little in advance of my older ones; &

have thrown off the old Shackles entirely, after thorough & candid investigation. They have discovered the Bible to be all a fiction. Shall I add? that a Letter received from you some time since; gave me little else than pain and sorrow.<sup>175</sup>

Old Brown then goes on for page after page, quoting maxims against backsliders, covenant-forsakers, father-dishonorers, and with an underlined Amen and a final Biblical shot: “‘And I beseech you’ Children ‘Suffer the word of exhortation.’”<sup>176</sup> In other words: Permit me to deter you from your ways.

The following month, “Your Affectionate Father” is writing to all his “Dear Children” at home that he hopes that through God’s mercy “you may soon be brought to see the error of your ways; & be in earnest to ‘turn many to righteousness’... I do not feel ‘estranged from my children’ but I cannot flatter them; nor ‘cry peace when there is no peace.”<sup>177</sup>

It was as if he could not break himself of his harshness, merely direct it—lovingly against those he loved, or lethally against his enemies, or, lovingly or lethally we’ll never know, against himself, like Seneca’s simile of the horse-breaker’s whip sizzling down angerlessly, “in order that by pain we may overcome their obstinacy.”<sup>178</sup> Despite their similarities of convulsiveness already noted, his tannery punishment-sessions in no way equate with Lawrence’s execution of the Mezerib Turks: in the latter case, the improvement of the recipient was no object; whereas for Brown, at least in the case of those who were dear to him, *punishment was love*. “Forgive the many faults and foibles you have seen in me,” he writes the entire family, “and try to proffit by any thing good in either my example, or my council.”<sup>179</sup> To his wife he writes, in a richly affectionate and intimate letter which again allows us to set his murderous deeds momentarily aside, that he never forgets her, that she is truly his “better half.” Then he gets down to the business of administering punishment long-range through her proxy:

If the large boys do wrong call them alone into your room, & expostulate with them kindly, & see if you cannot reach them by a kind but powerful appeal to their honor. I do not claim that such a theory accords very much with my practice; I frankly confess it does not; but I want Your face to shine even if my own should be dark, and cloudy. You can let the family read this letter.<sup>180</sup>

The violent man (who venerates the mother who in keeping with the fashion of the times had whipped him) is trying Gandhism! Possibly he did not think it practical for Mary Brown to be whipping almost grown men of superior physical strength... But in the last year of his life, shortly before setting out to raid Harpers Ferry, he addressed his little daughter Ellen:

I want very much to have you grow good every day; to have you learn to mind your

Mother very quick; & sit very still at the table; & to mind what all older persons say to you; that is right. I hope to see you soon again; & if I should bring some little thing that will please you; it will not be very strange. I want you to be uncommon good natured. God help you, my child.

Your Affectionate Father,  
John Brown<sup>181</sup>

From such a man, this letter seems almost shockingly gentle.

He had his way: his children venerated *him*. The result? The killer-martyr father raised a crop of sacrificial sons in his own image.<sup>182</sup> (A proximate result: Blows struck on the proper side of the slavery question.) When he wrote his wife a year after murdering those pro-slave men at Pottawattomie that “as regards the resolution of the boys to ‘learn, & practice war no more;’... it was not at my solicitation that they engaged in it at the first,”<sup>183</sup> he was surely being mendacious—even if only he believed that “little lie” which added to his whip-deservingness. Under whose solicitation could they have otherwise grown militant? For Brown was, by his own wry admission, “a King against whom there is no rising up.”<sup>184</sup> That is why by 1858, having proven himself at Pottawatomie, John Jr. that flogger and whipping-boy from the tannery days, had also become, however ineffectually,<sup>185</sup> his father’s deputy, sent off on sensitive missions of what the CIA would call “stroking,” garnering support for covert operations, “traveling slowly along, & enquiring out every man on the way.”<sup>186</sup> John Jr. obeyed. In 1859, old Brown led his sons Watson and Oliver to death at Harpers Ferry. (Their brother Owen escaped capture.) As usual, from the letter he sent home, one would never suspect that his party had been the aggressors. At least he continued to bear himself without pity:<sup>187</sup>

My dear Wife + Children every one

I suppose you have learned before this by the newspapers that two weeks ago today we were fighting for our lives at Harpers ferry: that during the fight Watson was mortally wounded; Oliver killed; Wm Thompson killed, + Dauphin slightly wounded[,] that on the following day I was taken prisoner immediately after which I received several Sabre cuts in my head: + Bayonet stabs in my body. As nearly as I can learn Watson died of his wounds on Wednesday. Also [illegible] on Thursday the 3 day after I was taken Dauphin was killed when I was taken + Anderson I suppose also. I have since been tried and found guilty of treason, &c; and of murder in the first degree. I have not received my sentence... Under all these terrible calamities, I feel quite cheerful in the assurance that God reigns; + will overrule all for his glory, + the best possible good. I feel no consciousness of guilt in the matter, not even mortification on account of my imprisonment; + irons... Be sure to remember + to follow my advice and my example...

P.S. Yesterday Nov 2 I was sentenced to be hanged on 2 December next. Do not grieve on my account. I am still quite cheerful.

So bless you all Four Ever,  
J. Brown<sup>188</sup>

A terrible heaviness falls on me whenever I peruse this letter. My heart goes out to the shackled, bloody-scabbed old man in his prison, trying to do what little he can to prepare his blighted family for a fresh double loss, and for the loss of its patriarch inevitably to come. We have already asked the question: Did he do right or wrong as a terrorist and an insurgent?<sup>189</sup> The question remains: Did he do right or wrong by his slaughtered sons? Were they martyrs or dupes? I can't really say, but one thing is certain: loved, admonished and punished into obedience, the boys did not universally obey. When Watson and Oliver were killed, they joined in a violent grave their brother Frederick, killed by a pro-slave man in retaliation for Pottawatomie; John Jr. had gone temporarily insane after Pottawatomie, which may have been why he didn't accompany his father to Harpers Ferry; the other three surviving brothers (four had died of childhood diseases) refused to go with him. Brown was grieved,<sup>190</sup> but accepted this decision. Perhaps I was wrong, and he wasn't entirely the king against whom there is no rising up, in which case one cannot hold Brown accountable for Watson and Oliver's participation in the doomed raid; perhaps, on the other hand, the dissenting brothers simply happened to be as stubborn as their father.

### THE HANGING OF JOHN BROWN

If he was so sure he had divine right on his side, then why did he win only to the scaffold? The answer was simple: "God is no respecter of persons," Brown said again and again. The ancient oracle of Delphi would have concurred. Back to the punishment of rocks. We are told that a man who asked the Priestess whether he could perjure himself and keep money which did not belong to him had already sinned by requesting divine approval for the crime. Furthermore, "an oath has a son, nameless, without hands or feet, but swift to pursue until he has seized and destroyed utterly the race and house of the perjured one."<sup>191</sup> I am haunted by the remark of one scholar that in the mind of the ancient Greeks, Zeus made us but does not care for us, that, unlike John Brown's God, Zeus is not our mainstay; and following His every commandment will not necessarily benefit us. (Indeed, He never does lay out the explicit commandments of which Jehovah is so fond; He only renders judgment after the fact, based on His own sacred, hidden calculus.)<sup>192</sup> But, though He cannot be counted on to reward us, Zeus's greatest gift to mortals is "that 'violent grace' by virtue of which he punishes, late or soon, a man who has done injustice to another,



Charlestown, Jefferson Co, Va, 27<sup>th</sup> Nov 1857, Sabbath  
 My dearly beloved Sisters Mary A., & Martha.

I am obliged to occupy a part of what is probably (my last) Sabbath on Earth in answering the very kind & very comforting letters of Sister Hand & Son of the 2<sup>d</sup> inst. or I must fail to do so at all. I do not think it any violation of the day that God made for man. Nothing could be more grateful to my feelings than to learn that you do not feel unpleasantly modified & even disgraced on account of your relation to one who is to die on the scaffold. I have really suffered <sup>more</sup> by ten fold since my confinement here; on account of what I feared would be the terrible feelings of my kindred on my account than from all other causes. I am most glad to learn from you that my pain on your own account were ill founded. I was afraid that a little seeming pretext for superstition might have carried you away from realities or that the honor that comes from men might lead you in some measure to undervalue that which cometh from God. I bless God who has most abundantly supported & comforted me: all along to find you not ensnared. Dr. Heman Humphrey has just sent <sup>me</sup> a most doleful lamentation over my infatuation & madness (very kindly expressed;) in which I cannot doubt he has given expression to the greatest grief of others of our kindred. I have endeavored to answer him kindly also: & at the same time to deal faithfully with my old friend. I think I will send you his letter; & if you deem it worth the trouble you can probably get my reply or a copy of it. Suppose it for me to say none of things move me. I have experienced a consolation; & peace which I fear he has not yet known. Luther Humphrey wrote me a very comforting letter. These are things dear Sisters that God hides even from the wise & prudent. I feel astonished that one so exceedingly

Letter from Brown, shortly before his execution

rich & unworthy as I am would ever be supposed to have a place any where amongst the very best of all who when they come to die (as all must) were permitted to pay the debt of nature in defence of the right: & of God's eternal & immutable truth. Oh my dear friends can you believe it possible that the scaffold has no persons for you own you believe it possible that the scaffold has no persons for you own poor, old unworthy brother? I thank God through Jesus Christ my Lord; it is even so I am now shedding tears: but they are no longer tears of grief or sorrow I trust I have nearly done with those. I am weeping for joy: & gratitude that I can in no other way express. I get many very kind & comforting letters that I cannot possibly reply to. With I had time & strength to answer all, I am obliged to ask those to whom I do write to let friends read what I send as much as they well can. So write my deeply afflicted Wife; it will greatly comfort her to have you write her freely. She has borne up manfully under accumulated trials. She will be most glad to know that <sup>she</sup> that has not been entirely forgotten by relatives and say to all my friends that I am waiting cheerfully & patiently the days of my appointed time: fully believing that for me now to die will be to me an infinite gain & of infinite benefit to the cause we love. Wherefore be of good cheer & let not your hearts be troubled. "So him that overcome will I grant to sit with me; in my throne even as I also overcome; & am set down with my father in his throne." I wish my friends could know but a little of the same opportunities I now get for kind & faithful labour in God's cause. I hope <sup>they</sup> have not been entirely lost. Now dear friends I have done. "May the God of peace bring us all again from the dead."

Your Affectionate Brother  
 John Brown

either in his own person or in that of his descendants."<sup>193</sup> In short, He is authority, upholder of social contracts. (Does John Brown believe in this mechanism? Probably, for it's in his favorite Book.) In ancient Greek history and literature, just as in the Old Testament, we can scarcely turn without encountering the notion of transgression as a living monster, armed and fanged with the power of retribution over the sinner's descendants, who themselves never did anything wrong.<sup>194</sup> Why? Perhaps because ancient societies tended to regard their basic atom as the family, not the individual. A jurist explains that "as the family group is immortal, and its liability to punishment indefinite, the primitive mind is not perplexed by the questions which become troublesome as soon as the individual is conceived as altogether separate from the group."<sup>195</sup> "So there is no way to avoid what Zeus intended," writes Hesiod.<sup>196</sup> "Often a whole city is paid punishment for one man."<sup>197</sup>

"And We have made every man's actions to cling to his neck," says the Qur'an,<sup>198</sup> and the Biblical book of Leviticus speaks in a similar vein.<sup>199</sup> Sin is disease; above all, it is pollution.<sup>200</sup> Julius Caesar ascribes to the Gallic Druids he conquers the belief that "unless for a man's life a man's life be paid, the majesty of the immortal gods may not be appeased," and when they run out of guilty people to burn alive inside their twig-woven mannikins, they turn to the innocent.<sup>201</sup> Those Druids had fellow-travelers throughout history. Phythius the Lydian, that antithesis of John Brown, asks that one of his five sons be excused from military service. To punish Phythius, not the unoffending victim, King Xerxes has the man's favorite son cut in half, "and the two halves hung upon the road for his armies to march between."<sup>202</sup> The principle is not unlike that of Brown in the tannery with his shirt off, paying the penalty for his son's misdeeds.

Although the *Diamond Sutra* proclaims the opposite,<sup>203</sup> Buddhist texts frequently preach the notion that evil in this life will be punished in one's own successive reincarnations into new bodies.<sup>204</sup> We read that in India the traditional purpose ascribed to capital punishment is "not to inflict pain but to eradicate evil."<sup>205</sup> How can we deny the cousinhood of this doctrine with "the sins of the father shall be revisited on the son"? My new body is still me, just as my son (at least in a culture which prizes bloodlines) is me, or partly me, or a stand-in for me. Therefore I am he; I can accept his punishment. In homage to this creed, John Brown would have placed himself on the block in place of a slave to whom he was no biological relation: his vast expansion of local norms of kinship was his most radical quality.

#### POSSIBLY VALID JUSTIFICATIONS FOR PUNISHMENT<sup>206</sup>

1. To isolate (render harmless) an offender.
2. To improve him.
3. To make him accept, or at least to charge him with, responsibility for his crime.

NOTE: This will free others from responsibility for his crime.<sup>207</sup>

4. To restore a social balance.

5. To restore a spiritual balance.
6. To restore a balance of honor.
7. To assert a social norm or moral calculus.
8. To make him pay the price of readmission to the social contract.
9. To make him pay, period.
10. To compensate, gratify or soothe the victim.

Justifying some of these ends and effects would require adding to or modifying our axioms about the fundamental violent rights of the self [see 5.1.1-3, 5.1.8]. Others are probably already justified in practice; their formulations here are based on the ethos [5.2.G.2] of a particular society.

To pay the penalty in this life, then—for oneself or for another—can be fitting, even honorable. In his *Phaedo*, which unlike his *Laws* is eerily sublime, Plato has the condemned Socrates refuse to choose exile over execution. The cup of hemlock is what he owes the state. He is a citizen. Here stands his obligation and his pride. Whatever the state demands of him, he will cheerfully render it up. All the same, like John Brown he has chosen to break those laws. And like John Brown, he thanks the jailer for kindnesses received, and drinks the cup of his own accord. He ennobles his own punishment by embracing it and participating it (Phythius the Lydian's son had no such opportunity, and I suppose he screamed pitiably when he was being cut in half). John Brown accepts with equanimity the fact that he owes the state of Virginia his life. He never possessed Socrates's choice of death or exile, but he will essay to infuse his execution with the same voluntarism—in part because he is a brave man, in part because he continues to be certain that he is right, in part to exercise the Christian meekness which so ill befits him—a mocking sort of meekness, perhaps; until the very end, John Brown continues to thumb his nose at secular authority, towards which he feels inextinguishable contempt.

### CAN PUNISHMENT BE TRANSFERABLE?

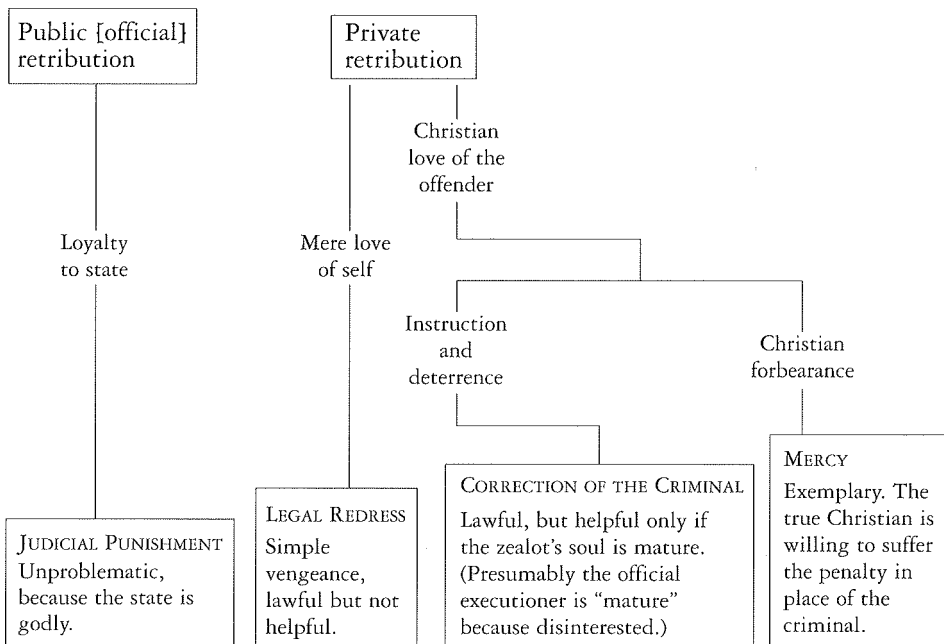
The episode in the tannery leads us to consider the eerie supposition that an executioner can become as Christ, by taking on himself the death legally required of his victim.

Stop for a moment. By a paradox beloved of authoritarians, the executioner already *is* Christ. With his typical polemical determination, which strikes us as violent and unstoppable, like Lenin's, Martin Luther insists that our Savior could have been a hangman without compromising His mission one iota.<sup>208</sup> The acts He never committed are hardly by that token prohibited. He never married, did He? But does that mean that marriage is wrong? He was a carpenter, not a soldier, but (unlike Tolstoy)<sup>209</sup> He never told the soldiers to go home, did He? And what about all of

us who aren't carpenters? Can't we be saved, too? For that matter, didn't carpenters make crosses for the crucifiers? Christ and His earthly father might thus be thought of as the executioner's occasional wholesaler. For that matter, didn't He scourge the moneylenders from the Temple with whips? Thus Luther, whose doctrine of judicial punishment at least can be most simply expressed as *What is necessary must be good*. (Its controversiality comes from humankind's continuing disagreement over what is necessary.)<sup>210</sup>

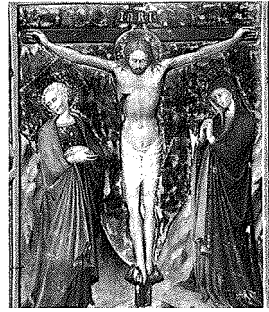
Should the state in fact be sacred—a notion that Bakunin indignantly rejects—and if the state is, as Luther and Bakunin agree, founded on coercion, then the state's coercer must be worthy. Look upon him. He is the eighteenth-century executioner of Salzburg, and his name is Franz Wohlmuth. A portrait allows him a calm, resolute, slightly ruddy face in his forty-eighth year of life, mouth firm, pale eyes a little distant, as is often the case with subjects who have to sit for paintings. The cover of his daybook, which is earth-brown or red-brown with two soft leather ties near the fore-edge, contains within an apple-shaped border a scene of burghers gazing up at the execution ground, upon which the condemned man kneels, gazing at the priest's upraised cross; while forming the third element of this trinity stands Wohlmuth himself with his upraised sword.<sup>211</sup> The sword without the cross would

### JUSTIFIED RESPONSES TO WRONG Martin Luther (1519)



be mere cruel murder by the standards of the time; for that cross reifies the common purpose, or at least the common ideology—to the extent that the criminal gazes upon it in his final instance, he partakes of the social contract—but the cross without the sword would allow authority no recompense: the condemned presence is raw material upon which justice will be hewn.

Next comes the full title page, upon which we see citizens happily hastening through the greenery to watch the punishment, while in a *calèche* the condemned and the priest make up a sort of military procession. On the cover we've already seen their rendezvous with Wohlmut. The verso side of the page shows its aftermath: the criminal's head hangs upon a pole, vaguely smiling, while hungry crows approach, and a rabbit bounds from a bush. The legend reads "Memento Mori."<sup>212</sup> Remember that you must die. Should you fail to remember that, and thereby, privileging and desiring too greatly the things of this life, transgress the law, then I'll kill you.<sup>213</sup>



*The punishment of a famous anti-authoritarian*

Should the state *not* be sacred—and here, of course, John Brown stands with Bakunin—and should insurgency's cause be sanctified in its place, then he who rises up, coercing and killing for his own reasons, snatches away the executioner's cross of legitimacy, seizes his axe and goes into business. Give place again to the anarchist Berkman, whose story we'll shortly tell, and who, hating authority as he does, and rejecting Martin Luther King's maxim that "you can't murder murder," seeks to execute people's justice upon a capitalist exploiter while all the while retaining in his consciousness this conceptualization, fashioned from boyhood terrors, of the executioner in his Russian homeland:

There stood the powerful figure of the giant *palátch*, all in black, his right arm bare to the shoulder, in his hand the uplifted ax. I could see the glimmer of the sharp steel as it began to descend, slowly, so torturingly slowly...<sup>214</sup>

And Berkman has become the *palátch*. He's resolved to kill.

Thus precisely John Brown. The sin was that of the slave society, he argued, not his. He had explicitly said: "Those men who hold slaves have even forfeited their right to live."<sup>215</sup> And his was the gallows, his the fate—like that of the Buddhist monks who burned themselves alive as a protest against the U.S. invasion of Vietnam.<sup>216</sup> Of course, as one biographer so properly wrote—and others have stated in different words—"John Brown always found it very easy to believe anything he himself said. He was interested in putting his case before the world in the most favorable light possible, and he did not recognize the least scruple as to how he accomplished it."<sup>217</sup> His intention had not originally been to go South and get

hanged, but to be a new Spartacus. "I want to free all of the negroes," he'd announced at the height of his temporal glory. "I have possession now of the U.S. armory, and if the citizens interfere, I must only burn the town and have blood."<sup>218</sup> Once he was dispossessed of that armory, he retreated to the paradigm of the whipping in the tannery, and quickly found it a crowd-pleaser.

But the fact that John Brown's motives were not unmixed need not bar us from considering the question of transferred accountability in its pure form. Recall that after being kidnapped by the Israelis, Adolf Eichmann had offered to publicly hang himself to atone for his crimes. What if during the Hitler regime almost three decades earlier he'd donned an armband of the yellow star and publicly hanged himself the first time that he had been ordered to deport a Jew? —Deterrence and retribution with a vengeance that would have been, almost, satyagraha! —What then if in 1960 Eichmann's interrogator, somehow, impossibly, able to forgive and accept, like John Brown in the tannery, had put on Eichmann's death's head cap and hanged himself? What would the John Browns of this world say? (Never mind the prosecutors.) Should Eichmann have thereby become free to go back to Argentina? John Jr. was free to put his shirt back on even though he'd only been halfway whipped. Sinful Christians (so I am told) can yet hope for Heaven by virtue of Christ's sacrifice. —Well, how about it? Would the suicide of a stand-in have let Eichmann off the hook, or would six million people, Jewish or Gentile, have had to voluntarily, lovingly hang themselves first, in order to pay off all that dull demon's victims? What if one short of six million went to the gallows for Eichmann, and then the prosecutor demanded that the murderer be neck-elevated after all? Such absurdities illustrate, I believe, why it is that John Brown's notion of retribution should never be institutionalized: If I am free to take on myself your penalty, I may be equally free to reject my own.

### MUST MY HANGMAN THINK AS I?

But the episode in the tannery is not without a certain savage moral beauty, and may inspire certain people in their personal relations, *provided that transgressor and punisher share the same moral absolutes*. Does he who actually received the stripes understand (whether or not he accepts) the equation between them and his criminal deed? That question is more fundamental, and far more important, than the issue of whether the administration of justice ought to be a private matter or a morality play.<sup>219</sup> Until we've answered it, we cannot rightly condemn even the tall King of Ugarit (now missing his neck and shoulders in the crumbled, ancient tablet), standing serene and far-seeing above his supplicating enemy whose topknot he grasps in his left hand, while in his right the taper wedge of a sword begins to go into the enemy's eye.<sup>220</sup> Had the enemy transgressed by his own lights, or only by the King's? To John Brown, of course and to any politician or revolutionary who is determined to get

something done, that just doesn't matter: the Law is absolute. The rock must be punished for a homicide of which it can never even be conscious. The pro-slave men in Pottawattomie can't get out of Brown's clutches by invoking any counter-right to believe that blacks are beasts of the field: wrong is wrong; they must die.

Of course any executioner would prefer that the condemned agree with him about the rules (whether or not rule-breaking is admitted). In ancient societies, which were more isolated and homogenous than mine, harmony of belief was likely. It is in the context of such an agreed-upon Law—a *Dharma*, a *Sangha*—that the Buddha, who focuses as much upon the done-to as upon the doer, advises: "Where there is much suffering there is also great bliss"—regaling us with the tale of a courtesan who, having arranged a murder, was executed in a particularly slow and ghastly way: "Having taken refuge in the Buddha, the Dharma, and the Sangha, she died in pious submission to the punishment of her crime."<sup>221</sup> This sounds rather more edifying than convincing, but it's what the executioner loves to hear,<sup>222</sup> and in certain cases may comfort the condemned: better that I die for good reason, if die I must. Among the few, half-ruined questions to the ancient Greek oracles that survive we find this one: "The Dodonaean ask Zeus and Dione whether it is on account of the impurity of some human being that god sends the storm."<sup>223</sup> —Through such inquiries we approach astrology and ritual propitiation, for if one accepts as I do the notion that storms are not caused by crimes, then whoever will be condemned for this bit of dark weather (should the oracle of Zeus return an affirmative answer) will be condemned unjustly, as was the case with the supposed custom of the Spartans of arraiging their kings as a result of the appearances of shooting stars and other divine omens. But if the condemned believes and affirms, "Yes, I was impure; I am responsible for the storm," does the retribution thereby become fair? And if he doesn't, must we call it unfair?

Even Gandhi accepted the ugly necessity of imposing moral-political actions upon the unwilling, arguing that in Jesus's career "he did not count the cost of suffering entailed upon his neighbours whether it was undergone by them voluntarily or otherwise."<sup>224</sup> Suppose, therefore, that the transgressor and the punisher do *not* agree.<sup>225</sup> Told that he would be hanged and not honorably shot, Hermann Göring wrote in one of his three suicide notes: "I have no moral obligation to submit to the justice of my enemies. I have therefore chosen the manner of death of the great Hannibal."<sup>226</sup> And this brutally evil man was, for once, morally correct. He deserved to die, and was doomed to, but why not at his own hand? *Retaliation which is not accepted as legitimate must be perceived as repression.* Perhaps this is the source of Cortes's assumed sadness when, having sentenced two rebels to be hanged, and the third to have his feet cut off (the prisoners might have disagreed), "he exclaimed with a deep and sorrowful sigh, 'It would be better not to know how to write. Then one would not have to sign death sentences.'"<sup>227</sup>

## THE HANGING OF JOHN BROWN (CONTINUED)

John Brown, of course, has not been asked whether he follows the State of Virginia's moral calculus. Strange! He always chooses the punishment he fails to deserve. When his son whipped him, he voluntarily took on the latter's sins; when he was condemned to be hanged, he accepted the penalty most "cheerfully," as his letters keep saying, as recompense for a bloody deed he'd committed with equal élan. On the Sunday before his execution he writes his family: "Nothing could be more grateful to my feelings than to learn that you do not feel dreadfully mortified and even disgraced on account of your relation to one who is to die on the scaffold."<sup>228</sup> A century later, the British Royal Commission will conclude that there is "some evidence, though no convincing statistical evidence," that capital punishment deters;<sup>229</sup> but because deterrence presupposes calculation, crimes of passion cannot be much deterred, whereas it exerts a most powerful effect upon "professional criminals."<sup>230</sup>

Well, which is John Brown? His raid was nothing if not calculated; and the fact that he'd raided at least twice before makes him a professional of sorts. Of course he bungled; he calculated poorly. But the deterrent effect of capital punishment upon him seems to have been slight. And certainly the public deterrent value of his execution, at least vis-à-vis his intimates, will be nil.<sup>231</sup> Quite the contrary. A page later, the handwriting shrinks a trifle and begins to hurry as Brown goes farther, insisting that the rope will not only be no disgrace, it will be his glory:

I feel so astonished that one so exceedingly vile, & unworthy as I am would ever be suffered to have a place any how or any where amongst the very least of All who when they come to die (as all must:) were permitted to pay the "debt of nature" in defence of the right: & of Gods eternal, immutable truth. Oh my dear friends can you believe it possible that the scaffold has no terrors for your own poor, old, unworthy brother?<sup>232</sup>

Replying to his cousin the Reverend Luther Humphrey, who's just now addressed him an epistle of pitying horror, he explicitly states that there is no necessary relationship between punishment and crime: "The fact that a man dies under the hand of an executioner (or otherwise) has but little to do with his true character, as I suppose."<sup>233</sup> He insists that "no part of my life has been more hapily [sic] spent; than that I have spent here [in prison]; and I humbly trust that no part has been spent to better purpose."<sup>234</sup>

When it comes to divine will, as opposed to state authority, Brown is all obedience. In 1846 we find him writing his wife that they have been chastised by God once again. "The sudden, & dreadful manner in which he has seen fit to call our dear little Kitty to take her leave of us, is I Kneede not tell you how much on mind; but



before Him; I will bow my head in submission and hold my peace."<sup>235</sup> Why? As usual in such cases, because of perceived commonality: "Whatever judgment God may hereafter pass on us as individuals; will also be reasonable, & will be fully sustained by our own sense of right and wrong."<sup>236</sup>

So there is for John Brown a ranking of obedience due to whippers of all species, thus:

### JOHN BROWN'S HIERARCHY OF PUNITIVE AUTHORITY (1844-1859)

1. The chastisements of God

AUTHORITY: Incontestable.

2. The chastisements of family

AUTHORITY: Fairly incontestable, it would seem from the tannery.

3. The chastisements of government

AUTHORITY: Nil, when they violate divine law as interpreted by John Brown.

SOURCES: BROWN'S LETTERS.

The Christian lamb thus retains his discretion to become a wolf. He dies triumphantly principled; but he dies because he was convicted, and he was convicted only *because he was caught*.

## DE SADE'S DUNGEONS

**W**hat is the function of defiance? Why, to make martyrs!<sup>237</sup> Thoreau refuses to pay his poll tax and proudly goes to jail (if only for a night). The young militants in Vietnam's new Self-Determination Movement get arrested by French or American puppet gendarmes, and are greeted by applause from their colleagues in the cells. John Brown becomes eager to be punished precisely because he feels he's noble—which translates (or pretends to translate) as "he doesn't deserve it."

But the more common logic is to assert that since I don't deserve it, I ought not to be punished. Such souls aren't pulled up serenely into Heaven at the rope's end, like old John Brown; rather, they're dragged screeching (or cursingly drag themselves) into the sacrificial victim's sainthood-by-necessity.<sup>238</sup>

## RIGGED JUDGMENTS

Sade being one of the dragged, it behooves us to remind ourselves that so deeply does it lie in society's interest to affirm the equations of justice that the opposing advocates in a court of law frequently reconstruct the circumstances of a crime in

terms not of what is known, but what is “supposed” to be known—what *ought* to be true. In 80 B.C., the eloquently mercurial Cicero, defending Sextus Roscius of Ameria against the charge of parricide, whose statutory penalty is particularly hideous,<sup>239</sup> gives the evidence itself scarcely a disdainful mention. Instead, he exhibits the defendant’s character to the public—or, I should say, paints an expedient portrait. Wouldn’t a person capable of such a terrible impiety have shown himself up in other ways? Wouldn’t he be either a debauched and confused youth, or else a hardened old criminal (this latter category corresponding exactly to that of the “reprobates” in the British government’s *Report of the Commissioners of Prisons*)?<sup>240</sup> By easily excluding Sextus from these two groupings, which Cicero pretends are as accurate as they are facile, he claims to have proved his client’s innocence. He “led a life that was quite the opposite of vicious,” he concludes,<sup>241</sup> and the imputation is that men don’t live lies or act out of turn, that an otherwise exemplary life demonstrates innocence because it is consistent with it. Once again, Symmetry has been so well sanctified that it deserves a capital letter. Sextus Roscius is acquitted.

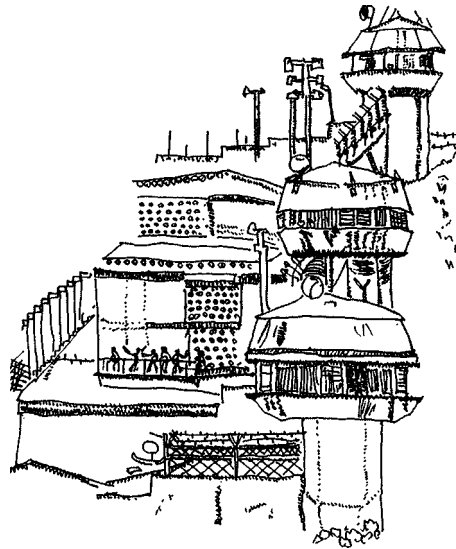
The modern reader remains unconvinced. Boy Scout leaders and Chamber of Commerce bigshots who turn out to have been child molesters all along, nobleness-spewing politicians of evil, and all the rest shatter by their very existence Cicero’s harmonious chain of logic. And the case of Sade twists the matter into deeper strangeness, because the defendant claims that *conviction alone* (fair or not) brands him as guilty in a Ciceronian sense, that imputed wrongdoing permits the advocates of consistency-as-proof to believe him guilty of everything. And it gets stranger still: through a perhaps unequalled act of macabre genius, Sade pens his very infamy into something exemplary, something that can teach us something, something “quite the opposite of vicious”—an act which gives the death-blow not only to consistency, but to any number of notions of moral value. No John Brown submissiveness for him! He eloquently rages; he bottles his soul’s bile and paints masterpieces with it, just as Turner, so they say, painted sunsets using the piss and menstrual blood of whores...

### “HE MUST HAVE BEEN GUILTY SINCE HE HAS BEEN PUNISHED”

Despairing in his prison cell in Vincennes,<sup>242</sup> Sade writes his wife, in an exact inversion of John Brown’s equation: “People will merely say, *‘He must have been guilty since he has been punished.’*”<sup>243</sup> Shades of Ruby Ridge and the old witchcraft trials! (Well, *was* he guilty? Never mind—he’s not interested in that.) If guilt demands punishment, and if only the guilty are punished, then this sheep-logic follows—oh, they should all be beaten to death! If not only the guilty are punished, if the law has mistaken itself, then he stands a martyr like John Brown, and indeed his modern literary admirers claim so.

He is (as he believes)<sup>244</sup> a distant descendant of Petrarch's Laure, who also bore the name De Sade; Laure was also the name of the girl he loved; but in 1763 at his father's demand he married the rich Renée-Pelágie de Montreuil instead. (His only daughter is named Madeleine-Laure.) Thus a single drop of his blood is worth more than every vein's worth from plebeian carrion! Aristocrat above all, he swears that defense of class alone ought to justify his release into perpetual immunity! Aesthete, sad masturbator, he writes his wife (doubtless hoping to extort her pity's bounty) that Petrarch remains his only comfort. What other solace *could* he have? —Certainly not Luther's doctrine, so comforting to the condemned, and so expedient to the executioner, that the jaws of the Law can devour only our bodies, which are hardly significant, while our souls remain free and untouched. "For no human being can kill a soul or make it alive, conduct it to heaven or hell."<sup>245</sup> — Sade might or might not have read Luther, but he's an atheist—and not only that, but perhaps the ultimate materialist, for whom reality lies almost exclusively in the corporeal realm, in the glance and glitter of light upon a droplet of blood, in the slow scarlet darkening of a fresh cut, in the jewel-like sparkling of a drop of whore-spittle.

When we look in upon him, he is dreaming of ancestral Laure. (Compare him, if you will, to Caesar, who at victory erects a temple to ancestral Venus.) He dreams that she emerges still beautiful from her tomb, invites him to embrace her in death, vanishes into air.<sup>246</sup> He scribbles endless philosopho-pornographic manuscripts, the content of which we shall consider in another chapter. Dead Laure never returns. After the first half-decade has gone by, he becomes hardened in his defiance, writing: "You refuse to understand that since vices exist, it is as unjust for you to punish them as it would be to jeer at a one-eyed man."<sup>247</sup> In other words, the rights of the self<sup>248</sup> supersede all other rights. The practical result of this doctrine is the same as that of John Brown's: he holds himself under no obligation to follow the law. John Brown justifies himself with his favorite strands from the self-contradictory Bible; Sade is more frankly the wounded animal. Soon enough his snarls increase in pitch: "I have always been inclined to favour vice[s], and I regard those who have the capacity to persist in them as great men."<sup>249</sup> At the same moment, he begs his now implacable mother-in-law for pity; he implores her to see that he has repented, will



*Sketch of Reclusario Barrientos, a maximum-security prison near Mexico City (1992)*

cleave to his wife, will never go astray again. (His letters to Madame de Sade vary between querulous or paranoid reproaches and heartbreaking tenderness. Faithful to him throughout this first long stretch of imprisonment, she'll divorce him immediately upon his release.) He returns to the attack. "Ask Madame la Présidente de Montreuil whether there is in the whole world a better method than that of bolts and bars to lead to virtue?" he scribbles in desperate anger.<sup>250</sup>



*Renée-Pélagie*

That is the crux of it, of course: the meaninglessness and uselessness we can always find in penal suffering. I think again of that musty old *Report of the Commissioners of Prisons and the Directors of Convict Prisons with Appendices, for the Year ended 31st March 1902*, with its table of floggings. I think of the Kriminalemuseum in Vienna. Three and a half centuries after Sade, another convict will write: "I cannot fathom the reason of a prison system keeping a man isolated with nothing but vengeful and vindictive fantasies to sustain him for years and then one day releasing him upon an unsuspecting community."<sup>251</sup> —Very good, replies Sade's prison system, then we *won't* release him! Not ever...

His wife assures him, no doubt believing it, that he won't be imprisoned a moment longer than necessary. "It is charming," he replies, "and truly, those who guide your behaviour have every reason to congratulate themselves on the progress you are making in their profound art of poisoning the wounds of hapless victims."<sup>252</sup> He hates her as he now does almost everyone. *He will not accept his punishment.* Finally he cries, just as Joan of Arc had done: "I would not change even in the presence of the scaffold."<sup>253</sup>

## FOLLIES OF A LIBERTINE

Well, even though the *justice* of his immurement may be murky, the *cause* of it remains clear enough: sexual gluttony, accompanied by sharp-toothed mastication. (Dante would have punished him by having him eat mud in Hell, but, as we have seen, Sade does not believe in that place—or, we might say, he is already there.) He enjoys causing pain. He's repeatedly compromised the family honor by flagellating, pricking or half-poisoning prostitutes—or, I should say, he's wounded honor not by doing these things but by being arrested for them: getting caught transformed John Brown, as we saw, into a pseudo-Gandhi, and it made Sade into a resplendently true and naked Satan.

His social and financial position picks another hole in Clarence Darrow's half-true assertion that the prevalence of crime is directly proportional to the price of bread,<sup>254</sup> that "men would not explore their neighbor's houses at dead of night, if their own were filled; and women would not sell their bodies if society left them any other fairly decent and pleasant way to live."<sup>255</sup> Granted, he's buying bodies, not sell-

ing; but why? In his case, what would be another “decent” way to live? Nowadays a person with his tendencies can very easily find discreet and willing partners; but the “divine Marquis,” class snob that he was, never was attracted by consensuality; and his impulses did impel him beyond the rights of others into outright aggression. He *was* a criminal; he deserved to be, at the very least, restrained. The ethos of his time left small place for the notion that violence’s evil could be extenuated by sickness; and the asylum in which he eventually perished greatly resembled his various dungeons.

In retrospect, it started mildly enough, when, going wild with his in-laws’ money, he merely brought too many girls to his *petite maison* in Paris; and police got involved; other aristocratic husbands committed the same peculations, and Renée-Pelágie didn’t seem to mind; her mother laughed it off, and broke him out of prison, certain that he’d learned his lesson. He continued to keep actresses and courtesans.

Forgiving, sullen or maliciously complacent, we don’t know, Madame de Montreuil remained willing to subsidize mistresses if he would only be discreet. He wasn’t.



Marquis de Sade

## ROZE KAILAIR

We find foreshadowed in Roze Kailair’s legal deposition (April 22, 1768) the lineaments of Sade’s impending novels: luxury asserting itself over poverty, cruel class “quality” (remember, he is Count Louis-Aldonse<sup>256</sup>—Donatien de Sade, *Count* de Sade, that is—Captain of Cavalry in the Régiment de Bourgogne) devouring helplessness in a monstrously “aesthetic” fashion. Madame Kailair, a widow “of thirty-six years or thereabouts,”<sup>257</sup> emerges from Easter Mass, and in the Places des Victoires, where prostitutes often rent themselves, meets a dandy in a grey redingote, who wears a hunting-knife at his side and holds a cane. He offers her an *écu* should she go with him, “and she replying that she wasn’t what he thought her”—an assertion made to her interrogators, and hence quite possibly false; most commentators believe she *was* what he thought her—“he told her that it was for her to be his chambermaid, and that she had but to follow him, which she did.”<sup>258</sup> Then, inevitably, we look in upon the “interview” in the room of yellow damask, the coach-ride to his secluded country house in Arcueil (fatal words: the poor creature had said that “it was all the same to her where she made her living”),<sup>259</sup> then, as in a dream, the little green door, the garden, the “petit cabinet” into which he ushers her and whose door he closes. Now for the second act. He demands that she undress. “She asking why, he replied that it was for pleasure, and when she represented that it wasn’t for that that he had brought her hither, he said that if she didn’t strip he

would kill her and bury her himself."<sup>260</sup> She strips. Now for the bed, on which he throws her belly down, tying her to it by the arms and legs, with another cord cinched about her middle. The third act begins. Delighting in her cries of pain and terror, he makes "different incisions" with a tiny knife, then pours hot wax, red and white (for his scenarios require *elaborateness*) into the wounds. He also beats her with a knotted whip and a rod. She begs him not to murder her, for the pathetic reason that she hasn't yet made her Easter confession, whereupon, in a reply which wouldn't have been out of place in his *Juliette* or *Sodom*, he jeeringly offers to be her confessor himself. Finally he unties her, giving her bread and a restorative cordial. Does he plan to repeat the performance? She cleans her wounds; the cloth is saturated with blood.<sup>261</sup>

She escapes. Sade's mother-in-law has to pay to keep her quiet.

In his own deposition, her assailant (whom I believe even less than I believe her) denies that he forced her into anything. Rose Keller agreed to go with him for a "partie de libertinage," he says. (That much I do believe.) He never tied her, he said. As for the hot wax, well, that was simply a helpful "pomade" to heal her wounds<sup>262</sup>—for everyone recognizes the kindness of sadists to the unfortunate.

## HOW IT ALL TURNED OUT

Imprisoned for a few months at Pierre-Encise, he got a *lettre d'abolition* which conveniently "exempted him from crimes punishable by death."<sup>263</sup> Then he ran away with his wife's younger sister.

## A PERVERT'S CONSCIENCE

He disproves the naive axiom that "no man can draw a free breath who does not share with other men a common and disinterested ideal."<sup>264</sup> He buys the bodies of others, although he has a wife; he bullies, tortures, threatens, rapes. Through it all, he breathes quite freely, thank you! Undeterred by the prospect of any legal penalties,<sup>265</sup> certain that his mother-in-law will always buy him out—or else utterly self-destructive—he struts and spends, the only full human being in a world of pleasure-puppets and two-legged trash!

France in Sade's time was, in one jurist's words, "smitten with the curse of an anomalous and dissonant jurisprudence beyond every other country in Europe... the stratum of feudal rules which overlay the Roman law was of the most miscellaneous composition."<sup>266</sup> How could one in such times not hold the supposed universality of law in contempt? We're far, far from Cicero and the Twelve Tables! Up until the Revolution, in certain *arrondissements* of Paris, police power could be exercised only with the cooperation of the seigneurs concerned.<sup>267</sup> So why can't Sade be arbitrary, too? In 1772, he feeds Spanish fly to half a dozen girls whom he keeps busy whip-

ping and being whipped. They don't know what they're munching; they help themselves to his pillbox, thinking that these pastilles are only candies. Oh, what a joker he is! As his Japanese kinsman-in-aesthetics, Mishima, will imagine the scene two centuries later, "he, [the prostitute] Mariette, and the manservant joined in a fellowship of pain like galley slaves rowing their banks of oars in a trireme across the sea. The sunrise glowed like blood."<sup>268</sup> For Mishima, sunrises always did, and that was precisely why he adored them. But the whores fall dangerously ill, and file charges. Sade finds himself condemned in absentia to death, his property seized. His mother-in-law, losing patience at last, gets him imprisoned for a time in Chambéry...

In 1775 we find him choreographing an orgy at Château de la Coste, "possibly, it appears," says one commentator, "with the co-operation of his wife,"<sup>269</sup> whom he sodomizes, as he does his manservant. It's all going well, with his mother-in-law's money lubricating every orifice. But the girls grow discontented with their isolation; meanwhile, neighbors hiss that he's conducted murderous scientific experiments on women whom he's buried in his garden. One prostitute, Du Plan, did in fact carry human bones in her baggage to "decorate a little room" for him, so he later tells the tale to his wife. Would their hue have set off his yellow damask to aesthetic advantage? Was his plan to terrify children with them? The joke having worn off, Du Plan inters them in the garden; hence that discreditable neighbor-gossip. What will come of it all? Nothing; he's the Count; his pleasures will *never* have repercussions! He dreams of the "glorious" days of the ancestral Sades, "when France counted in its borders a host of sovereigns rather than thirty million vile slaves crawling before a single man."<sup>270</sup> He couldn't care less about the other vile slaves, who very soon will make the French Revolution; he simply doesn't want to be one of them. But the bones? He explains again to the personified forces of justice. It doesn't help that in his wallet he's carrying a recipe for criminal abortion, which I'm sure he's made use of, another for poisoning swords, and a criminal confession—someone else's, he claims, but it's in his own handwriting! (Could it be the germ of one of his novels?) ...Did he ever poison any swords? I doubt it. He had neither the goals nor the energies of John Brown. He must have kept that recipe only for its macabre novelty.

In prison his procuress-wife will write him, in the approved style of Justine or the other submissive heroines of his blood- and semen-drenched tales: "I shall never be able to stop adoring you, even if you heap insults upon my head."<sup>271</sup> Well, that's between them. But the business with his sister-in-law Madame la Présidente can't forget. He's known to have spread venereal disease—and how will it all affect the poor girl's marriage settlement—and her sister?

His twaddling justifications: "I am a libertine, but I have saved a deserter from death... I am a libertine, but I have never compromised my wife's health."<sup>272</sup>

Not impressed, his mother-in-law gets a *lettre de cachet* to put him away for life.

## A HISTORICAL NOTE

Call him lucky. As far as we know, he'll never face physical torture. We saw the sorts of punishments that the Germans inflicted. One gloomy author of a history of corporal punishment concluded that "every form of cruelty which the law allows is practiced in a wholesale manner and with gusto by the public."<sup>273</sup> During the French Revolution, our Marquis will need to pretend to be an energetic atom of the masses he despises, in order to avoid such a public and summary fate. But he avoids it. He's lucky, isn't he?

Georges Bataille will write: "Sade endured this life, and endured it only by imagining the intolerable. In his agitation there was the equivalent of an explosion which tore him apart but suffocated him nonetheless."<sup>274</sup>

As an anonymous polemic against *lettres de cachet* insists, "it's for the social body to define if one of its members is to be declared an enemy of all his associates for his crimes"<sup>275</sup>—the social body, not the king, not the *lieutenant-de-police*,<sup>276</sup> not his mother-in-law. Either way, punishment is punishment. From a rebel's point of view, it remains unjustified.<sup>277</sup> Bataille again: "The only way to respond to the possibility of overcoming horror is in a rush of the blood."<sup>278</sup>

## THE MORAL EFFECTS OF ENDUNGEONMENT

He will be locked into eleven different prisons over a period of twenty-seven years. (I am fortunate enough not to be able to imagine what one year in prison would do to me.)

His earlier spells in prison suggest that such punishment, like the executions of Rudzutak and John Brown, will scarcely deter him or by society's standards<sup>279</sup> improve him. Plato prescribes: "We should neither inflame the culprit by brutal punishments nor spoil a servant by leaving him uncorrected, so we must adopt the same course with the freeborn."<sup>280</sup>—Sade agrees—with the first half of this, at least: "Any punishment that does not correct, that can merely rouse rebellion in whoever has to endure it, is a piece of gratuitous infamy..."<sup>281</sup>—Well, what would correct him, then?—Nothing.—Sade's behaviorist definition of virtue—"our responsibility is limited to not spreading the poison and seeing that those who are around us not only do not suffer but are unaware of our weakness"<sup>282</sup>—stands, like his relativistic one—"for a very vicious soul a lesser vice can be considered a virtue"<sup>283</sup>—frank testimony to ethical impotence.

What's the point of confining him, then? His mother-in-law can't care less about giving satisfaction to the prostitutes in Marseilles he'd almost killed; as for those ladies, they've received justice according to the classical standard of torts: they've been paid off. Moreover, not being the omnipotent fiend he paints her, the mother-in-law possesses neither power nor desire to liquidate him; but she'll accomplish the next best thing: his removal from circulation. Meanwhile, insulted kins-



folk speak the forthright language of expediency, which will be so dear to Napoleon and Stalin. Although some of them pity Renée-Pelágie, who pleads and battles for her terrible husband's release, they're staunch for defense of family, of bloodline, of the now joined clan of Sades and Montreuils: —“Misplaced pity must not disturb our plans, which are dictated by prudence and necessity. My nephew's freedom cannot and should not reward anything other than his good conduct.”<sup>284</sup> I dislike the first sentence, but approve the second.

Sade will never acknowledge this calculus in others—because he follows it himself. His immense self-centeredness scarcely comprehends the effect or rationale of any measure, except upon himself—a trait which will now serve his art. *Justine*, *Juliette*, *The One Hundred and Twenty Days of Sodom*: In these books we watch a procession or succession of dominant characters; but although they scheme together, or undermine each other, at any given locus within the oeuvre there never reigns but one will, one intelligence enacting shrilly, snarlingly monotonous cravings. Each one is, in turn, Sade himself, and rarely do they meet with any answering humanity in the Other.<sup>285</sup>

Even more than Stalin, Sade remains the quintessential inhuman—or, if you prefer, the unfettered (*in fetters*) state-of-nature human. Herewith, a typical passage from the steadily more schematic *Sodom*, the only narrative progression being composed of procedural escalation: “First a finger-twister, he currently breaks all her limbs, tears out her tongue, gouges out her eyes, and leaves her thus to live, diminishing her sustenance day by day.”<sup>286</sup> Sade denies the Golden Rule. He pleads for himself, cursing friends and enemies alike, that they don't serve him more expertly; but he never pleads for another. Projecting himself into another's life, he arrives within voyeuristic striking distance of the body, the intellect, above all the consciousness; but he never apprehends the soul. Nor does he want to. —“Adieu, my angel, think of me sometimes when you are between two sheets, your thighs open and your right hand busy . . . feeling for your fleas.”<sup>287</sup> He is very funny and brilliant and elegant sometimes; he writes sentences as delicious as a spoonful of vanilla icing; but he is one of the most selfish people on earth.

### “THE DIVINE MARQUIS”

He stands for *totality*.

Ernest Becker once wrote that “the ideal of the innovator must remain pure . . . we cannot compromise on an ideal of maximum individuality.”<sup>288</sup> For Becker, the alternative was Stalinist dullness. For Sade, the alternative was respect for law and for other human beings. Thus ever the artistic dilemma, and, like Nero, who died murmuring, “What a great artist the world has lost in me!” Sade was ever the aesthete, not merely with his books, but with his red and white candle-wax, his bones in the garden, his room of yellow damask. *He aestheticizes his rage*—not merely on the

Roze Kaillairs he tortures, but in his continual petitions for release, which scamper mercurially back and forth between rage, pathos and sarcastic humor: "*To the stupid villains who torment me,*" he pens from his cell in Vincennes (1783): "Vile minions of the tunny-fish vendors of Aix, low and infamous servants of torturers, invent then for my torment tortures from which at least some good may result." What tortures might those be? He proposes one for his mother-in-law: "This morning as I suffered I saw her, the strumpet, I saw her flayed alive, dragged over thistles and then thrown into a barrel of vinegar. And I said to her: Execrable creature, that is for selling your son-in-law to the torturers! Take that, you procuress, for hiring out your two daughters!"—that is, the wife he married for gain, and the sister-in-law he himself seduced. What need has he to be fair? "Take that for making him hate the children for whose sake you supposedly sacrificed him!"<sup>289</sup> Is it her fault he hates his children? No, but it's her fault he's incarcerated. His sentence proves as arbitrary as his own acts and desires—a *contrapasso* of sorts. Is it justified? No. Why not release him and cut him off from the family? —Not that he'll ever be a good citizen now! He rails, vituperates, gloats, fantasizes, chuckles, masturbates, dreams: His mother-in-law is screaming in vinegar! Juliette brutalizes her "good" sister and sends her naked into the rain, laughing to see her struck by lightning! In this book of mine, already so long, we can scarcely pause to do justice to Sade the artist. Suffice it to say that he dares, he searches, he casts the lamplight of his intellect into the dark unknown tunnels of self-obsession (no matter that those passageways usually represent merely his own anus).

PUNISHMENT AS ILLICIT JOY,  
CATHARSIS AND CONTRAPASSO  
The aesthetic calculus of Sade (1783)<sup>290</sup>

"And I increased her tortures and insulted her in her pain and for  
got mine.

"My pen falls from my hand. I must suffer. Adieu, torturers, I must  
curse you."

Many pages ago,<sup>291</sup> *Rising Up and Rising Down* asserted that the self may do violence under the following condition, which remains controversial in all times and places:

IN IMMINENT DEFENSE OF FREEDOM OF SPEECH [SEE 5.2.E.2.]

The self retains the inalienable right to express itself as it chooses, on any topic that it chooses, the right to empathize with friend or foe (shall we call that treason?), to assent and to deny, to offend, to express its conscience and to express no conscience, to be offensive, vulgar, vicious and even evil in the object and manner of its expression, at any and all times.<sup>292</sup>

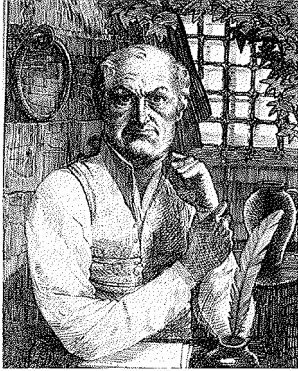
As an artist myself, I offend people, and not always by choice; I resent authority; I *need* to express myself, and this need becomes almost a sickness which most of us who are not artists find it difficult to understand. Where do my rights end? If my nature is predatory, should I be allowed to express that? We must each of us decide how far we're willing to let authority's ocean-wave rush up our shore, and where, if anywhere, we choose to build our pathetic doomed dykes of wet sand, to keep authority from overrunning us while we can. My grandfather, who as my mother always says "had a very hard life," used to say, "Bill, those sonofabitches who talk back to authority *have no rights!*" His solution for better engaging me with society: If I'd been his child, he would have punished me more often (his punishments were on the same continuum as John Brown's). And here for my part I stand, condoning Gauguin's abandonment of his family and his so-called marriages to thirteen-year-olds, in part because I believe in "different standards, different times," and in part because I love the art which resulted. As for Sade the artist, I don't know whether or not to call him a "genius," but I believe with all my heart that art and experience are both richer for his books, precisely because they terrify and disgust me, methodically, gleefully, with the same consistency and proportion which one feels when standing in the cathedral of Chartres.

What this chapter has been trying to say is that punishment must somehow be meaningful to be right. I pity Sade to the extent that he was ill, incapable of controlling his actions. I pity him as a human being who suffered. I admire him for creating art from his punishment, and at least nourishing himself on that sort of meaning. I uphold his right to express whatever gorgeous filth and filthy gorgeousness he wants. And I would defend his right to use lethal force against whomever tried to destroy his manuscripts. But what he did to Rose Keller went too far beyond self-expression. Within the limits of his corrupt and stagnant era, his confinement expressed this basic meaning: The social contract prohibits us from raping people or hurting them without their consent. His punishment was just.

### IF NOT ENDUNGEONMENT, THEN WHAT?

Back to the issue of giving satisfaction to those prostitute-victims. More than one commentator has argued that by discarding the ancient legal practice of direct restitution, enforced either by the victim's kin (as in ancient Iceland) or by the community at large, "the modern criminal legal process" has been rendered "an inherently destructive one, because its aim is not to restore the injured party but to punish the guilty one."<sup>293</sup> For the fine of goods, liberty or life now gets paid not to the injured individual, but to the sovereign power. Imagine John Brown as being sentenced not to hanging, but to working for the rest of his life at prison wages, some going toward his maintenance, some toward his family's support and the rest toward restitution for the victims of his raids. Would he be a martyr then? De Sade's is alto-

gether a different case. Thanks to the immense wealth he'd married, he could easily have made restitution to all the prostitutes he'd harmed—and, as we saw, this is exactly what his mother-in-law did. The result: He thinks his violence can be bought and paid for: intimidate and occasionally injure members of the vile underclass, and then compensate them at above the market price. This does not feel like justice. And yet the ease with which he can discharge such debts might be tolerable.



*De Sade during imprisonment*

Consider the notion, so well propounded by the utilitarian Jeremy Bentham,<sup>294</sup> that if justice is equity, then restitution to the victim must be the proper way to repair the social fabric—at least in cases of theft and suchlike offenses where the logic of the specific assessment would be incontestable. As we have seen,<sup>295</sup> other proponents of restitution propose its extension in cases of violent assault (Sade's specialty) to reimbursing medical bills, lost work, etcetera.

There's the matter of his wife's sister. How could he possibly pay compensation for that? His income derives from the family he's insulted. But suppose that he did compensate her, if she wanted to be compensated—or, more likely, suppose that her mother wanted compensation. How could he compensate her to whom money meant so little? *By being punished.*

That is another reason why I believe that (in the beginning, at least) Sade's imprisonment was justified. It remanded him to the principle that ignoring the Golden Rule—nay, trampling on it—subjected him to the operation of the debased, political Golden Rule: As he had done, so was he done by.<sup>296</sup> He might never have understood this as a lesson; but, with or without that understanding, it rightly constrained his future acts.

Herbert Spencer, the Adam Smith of penology, as it were, proposed in the nineteenth century to let the invisible hand of hunger do its work in turning the convict into a productive citizen: deprive him of his liberty for society's sake, not for punishment; and pay him, if he works—and require him to pay for his food and keep.<sup>297</sup> In the overcrowded prisons of my own time and place, where inmates rape and brutalize each other, the practical effect of the system, as of most systems, would be to starve the weak at the expense of the strong. But Sade got his own cell. What if they'd forced him to become an artisan, and work at artisan's wages to compensate Madame de Montreuil?<sup>298</sup> Could this possibly have "reformed" Sade? It seems very unlikely.<sup>299</sup> Indeed, if the purpose of punishment were only reform, then most instances of punishment throughout human history would not be justified. We remain what we are.

### “THERE IS NO SAFE PLACE”

Unimpressed by any Inquisitorial sophistries about his culpability, Sade escapes.

He flees to Italy. He writes his agent words whose sentiment, if not their overt self-centeredness, mirrors John Brown's: "When the court denies me my rights, I shall make my own rights..."<sup>300</sup>

Contrast him with Gandhi, who wrote:

If my life were regulated by violence in the last resort, I would refuse to give an inch lest an ell might be asked for. I would be a fool if I did otherwise. But if my life is regulated by non-violence, I should be prepared to and actually give an ell when an inch is asked for.<sup>301</sup>

Miserable, broke, police-anxious and above all at loose ends, he returns to France. Why didn't he sneak off to America or something? Then he might have died free. Did he need wealth that badly? An ambiguous listlessness prevents him from concealing his whereabouts from his mother-in-law, Madame la Présidente, who promptly sends gendarmes to seize him again. His return to prison under such circumstances leads me to wonder whether Sade is merely lazy, impractical, indiscreet, or whether he actually connives at his punishment, which would almost begin to justify it... Or has he begun to realize the awful truth that he might be "happier" in a dungeon?

As we've noted, his barred life there won't begin to compare with that of an inmate in a late twentieth century American prison, where, as one rapist-murderer writes, "there is no safe place"; this rapist must fight off other rapists (*contrapasso*, anyone?); at mealtime he sees one convict beat another's brains out.<sup>302</sup> Sade, on the other hand, will have books, sweetmeats, even custom-made leather merkins in which to sheathe his aging penis. His situation strikes me as not unlike one of the strange prison-paradoxes so common to Ho Chi Minh's poems: outside of jail one can be arrested for gambling but inside one gambles as one pleases; inside of prison it is safe during air raids, but prisoners brought outside during those times, even if at greater risk, are happy to be free. Certainly Sade is safer in prison: he can't get into any worse trouble than he is already in; he doesn't have to face the family he antagonized and abused; in place of sordid deeds, he's free to imagine triumphal monstrosities, ritual slaughters, delectable sex-murders, tortures of the powerless; and because they occur only in his head, or, at worst, on paper, there are no consequences; he can dream up the next scenario, masturbate again, eat yet another pastry... "He was capable of wolfing down frightening quantities," writes Maurice Lever, "and in the solitude of his cell he sometimes indulged in veritable orgies of meringues, biscuits, macaroons, preserves, marmalades, jellies, syrups, marshmallows, fresh and preserved fruits, and candied chestnuts."<sup>303</sup> If other human beings are

not real, then why can't he get along just fine with his own characters: cruel Juliette, the ogre Minski and ever so many young peasant boys and girls to eat for dinner? He does perhaps miss the taste of real flesh, the smell of a real whore's farts; but what he loses in realism he can make up for in giganticism, penning exhaustive orgies which must be staged as carefully as an ambassador's dinner parties. He munches on, excreting what one commentator calls "a raw passion, whetted by the imagination, without any frills—that is . . . what we find so unbearable."<sup>304</sup> No justifications, says this commentator: defense of class and race, all the excuses valid and invalid of *Rising Up and Rising Down*, are irrelevant; flesh and chestnuts are the same: he munches on. Since the paradoxically indulgent Montreuil's own the resources to pay for any number of desserts, over the years he grows stout.

### A PUNISHMENT SUITABLE TO HIS CLASS

The fact that he has access to those macaroons and jellied chestnuts, when poorer prisoners are lucky to get stale bread, hardly seems fair. Punishment is arbitrary enough as it is. Shouldn't it at least be uniform?

But practically speaking, it never has been and never will be. One study in Saint Louis, Missouri, conducted in 1962 found that three-quarters of all defendants charged with felonies could not even afford the bail bondsman's ten percent of the bail.<sup>305</sup>

### CAVEAT

We might also remind ourselves that the lack of fairness implicit in Sade's being able to gobble macaroons in no way entitles anybody to belittle his punishment's endless, almost hopeless pain.

In Vincennes prison he replies by letter to his wife, who wants to know how he is. "I am in a tower, locked behind nineteen iron doors, receiving daylight by two small windows, each provided with a score of iron bars. For about ten or twelve minutes of the day I have the company of a man who brings me my food. I spend the rest of my time alone and in tears."<sup>306</sup> He writes his mother-in-law, his "tyrant" as he calls her: "I would like to share your belief for a moment that a *lettre de cachet* is indispensable to avoid a lawsuit which is always disagreeable, but need it have been so severe, so cruel?"<sup>307</sup> —"My mother calls out to me from the depths of her tomb: I seem to see her open her bosom once more to clasp me to it—the only refuge I have left."<sup>308</sup> "Oh! my dearest one," he writes his wife, "when will there be an end to my horrible plight? When, in the name of Heaven, are they going to release me from the tomb in which they have buried me alive?"<sup>309</sup> "Get me out of here, dear wife, get me out, I beg you."<sup>310</sup>

## A HOLIDAY

In this seventeen-year stretch<sup>311</sup> he writes (so he claims) fifteen volumes, many of which will get destroyed in the sacking of the Bastille. Come the Revolution, he benefits for once from the populism toward which he expresses such furious contempt: they actually liberate him! Herewith, his second chance of escape. What will he do now? I imagine him blinking like one of those prisoners led out of Plato's cave—but dazzled by the glare not of reason but of impending debauchery. What will he do? He's older, remember, and the times aren't so ripe now for libertinage. His beloved mistress of a sister-in-law died long ago. The revolutionaries call for a new republic of Roman virtue. They demote and imprison the king, then execute him. Aristocrats flee; others lose their heads. Robespierre shrills louder and louder. The *sans-culottes* hang class enemies from lampposts. What will Sade do? He takes (spurious) credit for having incited the crowd outside to conquer the Bastille; but any knowing flamebrand would grin to recognize that our divine Marquis, for all his nihilistic posturing, remains first and foremost—an aristocrat,

angry over losing a great deal, still more angry to see my sovereign in irons, baffled that you gentlemen in Provence do not feel that it is impossible that good should be done and continue when the monarch's authority is constrained by thirty thousand idlers under arms with twenty cannon.<sup>312</sup>

Absolutism was bad enough, but *fraternity* is worse. With so many masters, where will he find slaves? To quote Sartre's protagonist in *La nausée*, he finds the world "stale and dismal" but he fakes his way into becoming a good facsimile of a witch-burner. After all, the characters in his manuscripts love to talk—he himself is a great letter-writer—after years behind bars, maybe he enjoys talking... Soon Citizen de Sade is a leader in his section, making fine radical speeches to a portion of the thirty thousand (I imagine him chuckling deep in his paunch—extremism of any kind comes easily to him; politics is a game, just as sex used to be when he was young and potent). First he's the secretary, then the president. To his credit, our sadist never uses his new influence to revenge himself upon his in-laws, upon whom class suspicion now falls. His wife has divorced him; he does nothing against her. His father-in-law pleads with him for protection, which he graciously accords. "If I had said a word" to the section meeting, "they would have been treated severely. I kept quiet: that's how I avenge myself."<sup>313</sup> But hasn't his obsession always been with *randomly* swirling energies? In the end, too flamboyant, he slips; and, denounced by the Robespierrists, goes home to prison again. Among condemned aristocrats he enjoys the odd lust-intrigue, probably finding the atmosphere not unlike that of the sealed castle in his salaciously ferocious *Hundred and Twenty Days of Sodom*.

Now for defense of the revolution: zealots erect a guillotine in the garden. Sade

saves his head at the last moment, when Robespierre loses his. But his liberty will never come back. "Justice," insists Darrow, "is not the function of the state; this forms no part of the scheme of punishment. Punishment is punishment."<sup>314</sup>

### MEDITATIONS IN THE PUNISHMENT MUSEUM (CONTINUED)

At the end of his life, confined to the mental asylum at Charenton, and confirmed in that confinement by Napoleon's order, Sade will very movingly write: "If I am what I ought to be, and I am, what is the use of making me suffer so long? And taking the second horn [if I am not what I ought to be], why torment me if there is no hope?"<sup>315</sup>

He no longer shouts. The Montreuilis are dead. He only tries to understand, reasoning heartbreakingly against the Providence he denies. He wants to understand; he strives to postulate. He's tired. He only goes through the motions. Maybe that's all he ever did. When he'd tied Rose Keller to the bed and threatened her with death, he could have murdered her, but he didn't. During the Revolution he resigned the presidency of his section in protest against a decree he thought too cruelly violent. Now he waits to die. He waits. He waits.

### MEDITATIONS IN THE PUNISHMENT MUSEUM (CONTINUED)

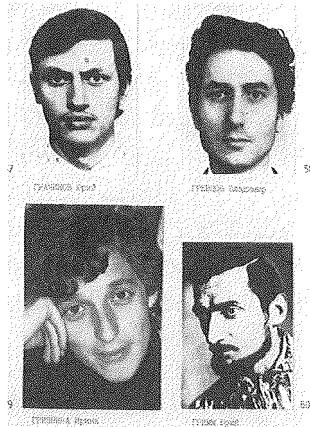
One begins to yearn, not for the *cruelty* of that father-skinned chair of Cambyses's Egyptian judge, but for the *logic* of it. And, indeed, it is to such neat punishments with attached messages that retributors love to refer. Thus one twentieth-century Indian *sadhavi*—half holy woman (she consecrated herself to virginity), half militant politician—who rabble-rouses Hindus against Muslims, indignantly informs her constituents that in Kashmir, "slogans of 'long live Pakistan' were carved with red hot rods on the thighs of our Hindu daughters. Try to feel the unhappiness and the pain... The Hindu was dishonored."<sup>316</sup> Whether or not the story is true, what could be more perfect? The crime is its own message: *I was perpetrated on this innocent flesh by Muslims. By the Victim's Maxim,<sup>317</sup> I hereby give license to retaliation upon Muslims.* If only Sade had committed such a crime, which he could tally against his punishment! (Would he have ruefully laughed if they'd compelled him to eat Spanish fly pastilles until he died?) Whatever transgressions he might have committed, surely he's paid them off by now! (Or is that not true? And wouldn't he commit more if he could?) What more does anyone want of him? —Why, they want him buried! —Their new, impersonal justification: deterrence. Sadean libertines will think twice before they emulate the "divine Marquis"! —"He is an unnatural being," reads the police report given to Napoleon, "and no effort should be spared to keep him out of



society.”<sup>318</sup> They try to deny him pen and paper, to keep him from speaking with more than three persons, but a sympathetic doctor helps him. For awhile he’s even able to direct plays. In his last winter of life, 1814, he is seventy-four years of age, and completes his ninety-sixth copulation<sup>319</sup> (probably, like so many others, an act of sodomy) with the sixteen-year-old Madeleine Leclerc, daughter of a nurse who has evidently been prostituting her to him since she was fourteen or thereabouts.<sup>320</sup> A typical diary entry: “Mgl. [Madeleine] came to do her 88th of the total and her 64th *chambre*. It was easy to see that she had been sick; she was still feeling the effects. She had cut the hair on her cunt.”<sup>321</sup> Is his behavior wrong? I don’t know. The girl evidently liked him and was willing. In any event, this would have gotten him locked up in my country at the time of writing.

### THE MEANING OF THE CELL

T. E. Lawrence obeyed his government, or tried to, and as a result his conscience bled for the rest of his life. We’ve seen how, always high-strung, he occasionally went crazy. De Sade rarely did his duty to anyone, was probably never sane. He searched for ciphers and “signals” in his correspondence, convinced that some providential code would whisper to him the number of days remaining until he regained that freedom which he longed for but for which he had so little use. Through disobedience he created his integrity. Without his punishment, he might never have written the books and letters for which we remember him today. Without his punishment, without his dreary, meaningless suffering, he might never have made meaning for himself. This fact alone cannot even begin to justify it.



*Political prisoners in the USSR (1982)*

### AND CAN THEY MAKE MEANING FROM THIS?

Some Soviet political prisoners and their crimes (1982)<sup>322</sup>

VYTAUTUS ABRUTIS, *restorer*

Renounced Soviet citizenship, expressed intention of emigrating, met with foreign journalists. Tried under Article 190, Part 1: “Circulating deliberately false fabrications defaming the Soviet political and social system.”

YEVGENY MIKHAILOVICH ANTUSPOV, *historian*

Wrote works “attempting to divide history into periods,” demanded to emigrate, distributed “photographs of a demonstration with

the same demands." Tried under Article 70: "Anti-Soviet agitation and propaganda."

IVAN MARINCHENKO, *driver*

"Attempted self-immolation on Red Square... as a sign of protest against being evicted from his home." Placed in special psychiatric hospital.

NADEZHDA PANTELEYEVNA SIDOROVA, *printer*

Worked for "The Christian" underground printing press. Tried under Article 162, Part 2: "Engaging in forbidden manufacture."

## EDUCATION OF AN ANARCHIST

One more prison story, which we'll tell at far less length than it deserves: Imprisoned for almost fourteen years of his twenty-two-year sentence for attempting to assassinate Henry Clay Frick—the revolver misfired, like the bomb before it and the dynamite cartridge in his mouth afterward, and the dagger was improperly aimed—Alexander Berkman, anarchist and denouncer of "false tolerance,"<sup>323</sup> wrote a long, strange book, and in places a very powerful one. Berkman's character was fundamentally revolutionary—which is to say he was a murderously rigid romantic:

### WHO DESERVES TO LIVE?

The moral calculus of Alexander Berkman (1892)

"The People—the toilers of the world, the producers—comprise, to me, the universe. They alone count. The rest are parasites, who have no right to exist. But to the People belongs the earth—by right, if not in fact. To make it so in fact, all means are justifiable; nay, advisable, even to the point of taking life... I had always taken the extreme view. The more radical the treatment, I held, the quicker the cure."

SOURCE: BERKMAN, p. 9.

But his years of confinement, of monotony, anguish, false hopes and brutality, of stench and darkness and petty cruelty, awoke his capacity to be what Trotsky and Sade never could—an empathetic bridge.<sup>324</sup> Political criminals whom he once scorned as "parasites" became his friends and sometimes even the objects of his passionate erotic love.<sup>325</sup> That empathy never extended to his victim, of course, or if it did, only so far as to allow the contemptuous remark that Frick the "mere man"

scarcely warranted an assassin's trouble:

The Homestead developments had given him a temporary prominence, thrown this particular hydra-head into bold relief, so to speak. That alone made him worthy of the revolutionist's attention. Primarily, as an object lesson; it would strike terror into the soul of his class. They are craven-hearted, their conscience weighted with guilt.<sup>326</sup>

Thus Berkman's act of stupid fanaticism—and we must call it stupid, for not only did it fail by any standard to advance his immediate end, but it also prohibited him from carrying out any other useful labor for almost fourteen years—was meant as proactive self-defense of class, a combination of deterrence, through which the capitalists' "strangling hold on labor might be loosened,"<sup>327</sup> and retribution, a punishment for the Homestead incident, in which Frick's Pinkerton strikebreakers (to say nothing of eight thousand National Guardsmen armed with machine guns)<sup>328</sup> had shot down strikers and a little boy. Most of all, it was as usual an act of aesthetic violence: didactic, propaganda theater. Roundfaced, bespectacled Emma Goldman, then Berkman's lover, muse and confederate, agreed that "a blow aimed at Frick would re-echo in the poorest hovel."<sup>329</sup> This was the decade of international anarchist murders: the King of Italy, the Empress of Austria, the President of France, the Prime Minister of Spain—and, of course, the American President McKinley. —So much for the crime—or, if you prefer, the illegal punishment. Rising up, rising down!



*Berkman*

The *legal* punishment, we must presume, was actuated by precisely the same motives: retribution for the act; deterrence, both of Berkman himself and of other anarchists, from committing similar acts; and propaganda. The judge "spoke of making an example of me. The old villain! He had been doing it all his life: making an example of social victims."<sup>330</sup> (The word "victims" is reminiscent of John Brown and Goering both; they reject responsibility; punishment is oppression imposed on them. But it reminds me of Plato, too, who argued that "correction must always be meted to the bad—to make a better man of him—not to the unfortunate; on him it is wasted."<sup>331</sup> Once again, consider the previous chapter's exposition of deterrence through moderation and the counterdeterrence of excess and desperation. Who is bad; who is a victim? "The old villain" can never know.) Bitterly the prisoner repeated to himself that the sentence was not legal; since Frick hadn't died, he should not have been sentenced to more than seven years—a strange complaint for a martyr-anarchist to make, if he truly believed that all law was nothing but the arbitrary and cynical application of expedient force on the part of the ruling class.<sup>332</sup> It would have been interesting to know whether a more merciful sentence might have softened him *civically*, as it never could Sade. The original meaning of

the nineteenth-century “reformatory” was exactly that. The prisoner was supposed to meditate, repent, become better as a result of commingled kindness and firmness. Berkman was never to find out whether that might be possible. Indeed, in yet another chilling *contrapasso*, his punishment was as stupid as his crime; for retribution never scratches the soul which wears the crystalline armor of ideology, and thereby holds any perception of guilt at bay. How can that armor be cracked? Through “pressure,” as the Stalinists would have said. The pressure brought to bear against him by the state of Pennsylvania included solitary confinement in “the hole” and “the basket”; deprivation of food, exercise, medical care and contact with the outside; beatings, verbal abuse, intimidation, etcetera—a far cry from the methods of the Cheka, but pressure, nonetheless, *deterrence*, in short, and it did not deter; and *retribution*, which might well have followed the local moral-social calculus but which, as with Sade, merely sharpened this criminal’s defiance.<sup>333</sup>

Toward the end of his fourteen years, the warden asked Berkman if he had changed his views. This was what deterrence was meant to do. Berkman replied that he had not.

In a letter which he wrote around the same time to his revolutionary beloved, he said: “Daily contact with authority has strengthened my conviction that control of the governmental power is an illusory remedy for social evils. Inevitable consequences of false conceptions are not to be legislated out of existence.”<sup>334</sup> Yet he had changed a little, disapproving of the assassination of President McKinley because “the background of social” as opposed to personal “necessity was lacking,” even as he continued to justify his own attack upon Frick. Return to Akbar’s epigraph at the beginning of this chapter: *Whatever motives retribution can’t dissolve into repentance, it hardens*. “Magnificent was the day of hearts on fire with the hatred of oppression and the love of liberty!”<sup>335</sup> The only remaining expediency stake which authority had in his imprisonment, namely, propaganda-making, could probably have been served by commuting his sentence earlier than it did. The jail-stretch of Alexander Berkman, then, like that of many of his fellow inmates, was a costly, cruel and above all useless affair. “All soon grow nervous and irritable, and stand at the door, leaning against the bars, an expression of bewildered hopelessness or anxious expectancy on their faces.”<sup>336</sup>

Having said this much against his punishment, I return to social symmetry. For whatever reason, Berkman attacked a fellow human being with intent to kill.<sup>337</sup> Even though his long misery improved him scarcely at all (his developing empathy might have come with experience in any event), I believe it to have been justifiably inflicted. Frick deserved justice, too.

Did Frick get justice? His own complicity in the shooting down of the Homestead strikers rendered him despicable, and worthy of class justice—perhaps even of assassination, should the rigged “legal” justice of which Berkman was so contemptuous have failed—which it almost certainly would have. Berkman’s

*Attentat* was arguably justified by a revolutionary calculus, which contradicts and supersedes the calculus of law. We agreed<sup>338</sup> that rising up against the state is justified when that state's defense of authority aims at permanently excluding or debasing a portion of the governed, when it offers no release from obedience in the event of disagreement with it, and when it invokes more violent power than it needs to in a given case. All three of these conditions applied to the vicious crushing of the Homestead strike.

Berkman, however, acted almost alone. He didn't seek out "the toilers" and fashion his violence into a tool of mass mobilization. His was the self-sufficient calculus of a Julius Caesar or a Raskolnikov. In terms of the power available to him, he was closer to the latter than the former. We've agreed that violence without hope of result lacks justification.<sup>339</sup> He was another John Brown, but farther removed than the latter from any consensual delimitation between authority and liberty of conscience. Many abolitionists supported Brown, and even the president of the United States agreed that slavery was wrong, although he didn't emancipate the slaves until the war required it. Berkman and his anarchists had behind them no influential people to argue their case in the nation's drawing-rooms. Acknowledging no law but his own, then, renouncing the social contract, no matter what his ends, Berkman had no business complaining about his own judgment and punishment, which were arguably proportionate to the injury which he inflicted on Frick. Berkman got not death, but suffering and deprivation. It is easier, perhaps, to spend one's death, as John Brown did, than to waste one's life, like Sade and Berkman.

Any serious consideration of punishment makes one's heart ache. But he who breaks the contract extremely, that is by violence, may well be obligated to pay fearfully, no matter how justified he might otherwise be. (That is one of the reasons why the moral calculus of *Rising Up and Rising Down* is little more than a series of sometimes mutually exclusive lists.) Will he face the price and pay it, like Brown? Then *perhaps* he may be justified indeed. Take punishment away, and we're left with the easy violence of a street thug, a wife-beater, a totally unfettered Sade (whose unexpected kindness to the fallen in no way inclines me to trust solely to that kindness), or even an Alexander Berkman, any of whom could lean on the bully stick of some convenient moral calculus.

#### PUNISHMENT IS JUSTIFIED:

1. When the transgressor agrees to, or belongs to a culture which subscribes to, the rule by which he has been judged, and when he can be proven to have violated that rule. [Alternatively, when the transgressor and punisher accept the same moral values which apply in the given case; and when the transgressor has in fact breached those values such that the law calls for the stipulated punishment.]

2. When its purpose is to prove that a legitimate social contract will be honored by authority.
3. When its penalties are codified into limit and consistency, and respect the rights of the self.
4. When it is proportionate to the original injury.
5. When it helps heal the victim, those who care for him, or society generally.
6. When it is the most practical means of isolating an unregenerate violent offender.

#### PUNISHMENT IS UNJUSTIFIED:

1. By *tu quoque*<sup>340</sup> alone.
2. When the person suffering the punishment does not understand why he is being punished.
3. When the punishment is inconsistently applied to penalize similar acts committed under similar circumstances.
4. When there is no separation of powers among judges, executioners and sovereigns.
5. When proof of guilt is logically faulty, or when the judicial process is dishonest.
6. To the extent that the punishment, which may be just or unjust in and of itself, furthers authority's power beyond the minimum necessary for enforcing the social contract.
7. When deterrence remains possible but has not yet been tried.

## 17.

CONTINUUM OF PUNISHMENT  
(JUDICIAL RETALIATION)

## A. Gandhi

"They should contact the criminals in their homes, win their confidence and trust by loving and selfless service, wean them from evil and unclean habits and help to rehabilitate them by teaching them honest ways of living."<sup>341</sup>

## B. An old prisoner named George

"There is no doubt the law is an absolute failure in dealing with crime. The criminal belongs to the sphere of therapeutics. Give him to the doctor instead of the jailer."<sup>342</sup>

## C. Clara Wichmann, anarchist

"Punishment creates nothing; it corrupts the conditions for development in a better direction, because it clips a person's wings and curtails."<sup>343</sup>

## D. Danny Rolling, serial killer (condemned to electrocution)

"The death penalty has not accomplished anything other than sweeping our dirt under the rug, and the electric chair is inhumane. We don't even electrocute stray dogs... The death penalty is not the answer. It is not even a viable deterrent."<sup>344</sup>  
"Dementia + Possession x Revenge = Murder."<sup>345</sup>

## E. Friedrich Nicolai (1785)

"Frequent executions do not help at all; ... they have become mere spectacles for the people and made them even more unfeeling than before."<sup>346</sup>

## F. Richard J. Evans (1996)

"No one would dream of suggesting ... that someone who runs over a pedestrian in his car and breaks the victim's leg should have his own leg broken in turn."<sup>347</sup>

## G. Robespierre (1791)

"Horror of crime diminishes when its only punishment is by another crime."<sup>348</sup>

## H. Edward Gibbon

"But whenever the offence inspires less horror than the punishment, the rigour of penal law is obliged to give way to the common feelings of mankind."<sup>349</sup>

## I. Cicero (63 B.C.)

"The person of every Roman citizen must remain inviolate."<sup>350</sup>

## J. Lincoln

"Blood can not restore blood, and government should not act in revenge."<sup>351</sup>

## K. Constitution of the Iroquois

"If a lord is found guilty of wilful murder, he shall be deposed . . . , and his horns [emblem of power] shall be handed back to the chief matron of his family and clan."<sup>352</sup>

## L. Plato

"If a man slay his wedded wife in passion, or a woman do the like by her husband, there shall be the same rites of purifying, and the term of banishment shall be three years."<sup>353</sup>

## M. Swiss constitution (1874)

"No death sentence shall be pronounced for a political offense."<sup>354</sup>

## N. Hobbes

"So that every Crime is a sinne; but not every sinne a Crime... [In a Commonwealth] of Intentions, which never appear by any outward act, there is no place for humane accusation."<sup>355</sup>  
 "But in declared Hostility, all infliction of evill is lawful."<sup>356</sup>

## O. Martin Luther

"You are righteous that you may vindicate and pardon the unrighteous, not that you may only condemn, disparage, judge and punish."<sup>357</sup>

"Where wrong cannot be punished without greater wrong, there let him waive his rights, however just."<sup>358</sup>

"Contrariwise, works and the keeping of the law must be so straitly required in the world, as if there were no promise or grace; and that because of the stubborn, proud and hardhearted,



before whose eyes nothing must be set other than the law, that they may be terrified and humbled. For the law is given to terrify and kill such, and to exercise the old man [the original sin we inherited from Adam].”<sup>359</sup>

P. Buddha

“He who deserves punishment must be punished, and he who is worthy of favor must be favored... whosoever must be punished for the crimes which he has committed, suffers his injury not through the ill-will of the judge but on account of his evil-doing... When a magistrate punishes, let him not harbor hatred in his breast.”<sup>360</sup>

Q. Primo Levi

“The act of justice represents only a sad duty towards society which moves even the executioner to pity for the victim [who] should feel around him neither hatred nor arbitrariness, only necessity and justice, and by means of punishment, pardon.”<sup>361</sup>

R. Seneca

“As we apply the flame to certain spearshafts when they are crooked in order to straighten them, and compress them by driving in wedges, not to crush them, but to take out their kinks, so through pain applied to body and mind we reform the natures of men that are distorted by vice.”<sup>362</sup>

—*But*—

“He who does not remit the punishment of wrong-doing is a wrong-doer. It is a fault to punish a fault in full.”<sup>363</sup>

S. Rousseau (1755)

“It is in order not to be the victim of an assassin that a man consents to die if he becomes one.”<sup>364</sup>

T. Plato

“The convicted offender [premeditated murderer] shall be put to death [by any who wishes to avenge the deceased], and shall not receive burial in the land of his victim—for that would add insult to impiety.”<sup>365</sup>

## U. Jefferson

"Whosoever committeth murder by poisoning, shall suffer death by poison."<sup>366</sup>

## V. Antiphon, speech for the prosecution in a murder trial

"I shall exact vengeance for my father and for your laws."<sup>367</sup>

## W. Newsletter of the German National People's Party (July 18-22, 1919)

"Only white terror can bring order [against red terror]. If the death penalty is abolished, criminality will no longer know any bounds."<sup>368</sup>

## X. Taira Kanetada [Heike]

"Killing the enemy of one's parent is sanctioned by the Way of Heaven."<sup>369</sup>

## Y. Ted Nugent, rock star, bowhunter, and Second Amendment champion

"I believe in a death penalty at the scene of the crime."<sup>370</sup>

## Z. Clarence Darrow (ironically)

"If the imprisonment of men tended to awe others into obedience to law, then the old ideas of penal servitude are the only ones which can be logically sustained. A prison should be the most horrible, grewsome, painful place that can be contrived. Physical torture should be a common incident of prison life."<sup>371</sup>

## AA. Senate Republican Majority Leader Locke Burt, after faulty wiring caused a condemned man's face to burst into flames during the electrocution

"A painless death is not punishment. I think it's important that there is a deterrent and a punishment element."<sup>372</sup>

CHAPTER 24

LOYALTY, COMPULSION,  
AND FEAR

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*...if you bid me plunge my sword in brother's breast or parent's throat or womb of wife great with child, I will do it all, though with unwilling hand...*

LAELIS, TO CAESAR, ASCRIBED BY LUCAN (A.D. 66)<sup>1</sup>

*With the present Socialist machinations, it may happen that I shall order you to shoot your own relatives, your brothers, or even your parents—which God forbid—and then you are bound in duty implicitly to obey my orders.*

KAISER WILHELM II (1891)<sup>2</sup>

“THE ISSUE OF ILLEGALITY  
COULD NOT ARISE”

Otto Ohlendorf, who commanded Einsatzgruppe D on the Eastern Front, succeeded between June 1941 and June 1942 in liquidating ninety thousand Jews,<sup>3</sup> which works out, if my arithmetic is correct, to slightly less than 250 murders per day. At Nuremberg he admitted that “of course” he had scruples about those orders.<sup>4</sup>

“And how was it that they were carried out regardless of these scruples?”

“Because to me it is inconceivable that a subordinate leader should not carry out orders given by the leaders of the state.”

Ohlendorf had long since committed that not unduly dexterous act of self-maiming called *willed ignorance*. The context of his orders need not be considered by him; indeed, he was better off not caring. Those subordinates who want to be thought of as effective achievers, ruggedly reliable cutting tools, first-rate fellows, do well to save themselves from thoughtfulness! So it has always been. To Martin Luther, for instance, ignorance truly was bliss: As long as a prince's subjects cannot know whether or not he is in the wrong, “they may obey without peril to their souls.”<sup>5</sup> It follows that the soul is better off, when one closes one's eyes to wrongness.<sup>6</sup>

“Was the legality of these orders explained to these people under false pretenses?” demanded the prosecutor.

“I do not understand your question,” Ohlendorf replied; “since the order was issued by the superior authorities, the issue of illegality could not arise in the minds of these individuals, for they had sworn obedience to the people who had issued the orders.”<sup>7</sup>

### “OBEDIENCE IS A HOLOCAUST”

A sign of Ohlendorf's times had been the S.S. motto: *My honor is my loyalty*. Loyalty can indeed build a magnificent kind of honor—especially when directed toward dependents and peers—and its absence facilitates coldbloodedness<sup>8</sup>—but, as we know,<sup>9</sup> it is crucial to attach one's honor, hence one's loyalty, to the proper object.

The French Jesuits in seventeenth-century Canada vowed obedience to much better aims than Ohlendorf; and their ideological and military situation in the Canadian wilderness shaped them into better than unsympathetic figures. They occasionally did good, they died bravely, and the grave harm they inflicted on native societies was partially extenuated by indirection, and nobly intended: they saw the Indians as fellow human beings with souls to be saved, worthy of civilizing and intermarrying with the French. (It could even be said that they gave them loyalty, however misguidedly.) Knowing their Bible, they did not kill, not with their own hands.<sup>10</sup> In his classic letter on obedience, their brave, obsessive soldier-founder Saint Ignatius offers only two “outs” to order-following, one of them a passing subordinate clause in this citation from Saint Bernard: “Whether it be God or man, his vicar, who orders you whatever, he must be obeyed with equal care and respected with equal reverence, *as long as man does not command things against God.*”<sup>11</sup> How do we decide what is against God? By reference to the Decalogue? Having exhorted total subordination of the will “except in sinful matters,” Ignatius grants the following “representation”:

This, of course, does not change the fact that, if you saw something different from the superior, and after having prayed, it would seem to you to be convenient, under the Divine Will, that you should represent it to the superior, if you could. If you wish to proceed, however, without any suspicion of self-love and judgment, you must remain indifferent before and after making the representation, not in the relation to the execution of doing or not doing the thing in question, but also so that you may feel more happy and consider better whatever the superior orders.<sup>12</sup>

Obviously such an instance would, as Ignatius lays it out, be extremely rare.<sup>13</sup> Ordinarily one must offer total obedience, not only in following the order, but also in willing to act. In a phrase ironically apposite to Ohlendorf's case, the saint goes on: "every true obedient person must lean to see things the way the superior sees them. And this is true, for *obedience is a holocaust* in which the whole man, without denying [the giving up of] anything of himself, offers himself in the fire and charity to his Creator and Lord by the hand of his ministers; this is a total surrender of oneself."<sup>14</sup>

Ignatius says nothing about offering other people to the holocaust.

But obedience is indeed a holocaust in quotidian life, the proctologists, policemen, deckswabbers, bomb-droppers and judicial executioners doing what they might willingly leave undone, but for duty's sake. Time-servers and resentful weaklings will dwell on the aspect of compulsion, entrepreneurs will be governed by profit, but those to whom obedience means dedication rather than constriction or expediency command admiration. They exemplify the Ignatian sentiment, a beautiful statement of which, though prouder and worldlier, in keeping with the more secular profession of soldiering, is expressed by Colonel Kottwitz in Heinrich von Kleist's play *The Prince of Homburg* (1821):

Shall I pour out my blood into the dust  
 For you in battle for a fee of money,  
 Or for a fee of honors? God forbid!  
 It is too good for that. I have my joy  
 Apart and free and independently,  
 Derive it from your excellence and grandeur  
 And from the growth and glory of your name.<sup>15</sup>

Hence Ernst Röhm, head of the S.A., wrote six years before he was purged and executed by Hitler that "the wife of a soldier in my company, whose political convictions were far removed from mine, said to me on one occasion: 'In the heart of my husband, his captain takes the first place; there is nobody to outrank him. Only then come his mother and I.'"<sup>16</sup> The soldier had a superior to pour out his blood for—and in this case, others' blood, too. That is the danger of the holocaust of obedience into which I lovingly hurl myself. Fueled by my soul's cordwood, those

flames loom high, indifferent to any distinction between me and my neighbors. The glitter of light on the buttons of my uniform becomes one with the shining within the crematorium door at Dachau. If I truly do not know “what is against God,” then God help me.

By Ignatian obedience, when the actions ordered are not in glaring conflict with one’s moral code, they must be carried out. Ohlendorf’s reply to his cross-examiner is so disquieting because he does not assert any moral code.<sup>17</sup>

### COMMONALITY AS RACE

Jesuits took an oath of obedience to the Pope. And had the Pope commanded murder? An almost absurd question—not entirely absurd, alas, when we consider certain epochs of the Inquisition.<sup>18</sup> How to recognize evil orders then? Carl Schmitt, the infamous Nazi jurist, proposed *commonality* as a safeguard, namely

an unconditional similarity of racial stock between leader and followers. The continuous and truthful contact between leader and followers and their reciprocal loyalty rest upon this racial similarity. Only this can prevent the leader’s power from becoming tyranny and despotism; only this makes it essentially different from the domination of an alien-structured will, no matter how intelligent and well-intentioned it may be.<sup>19</sup>

The insidiously gentle tyranny of Julius Caesar over his fellow Romans immediately disproves his case—and so does Schmitt’s own career as a loyal tool of one of the most despicable tyrannies on earth. But his call for “continuous and truthful contact between leaders and followers” is of ancient vintage,<sup>20</sup> and even reasonable—far more so than the use to which he put it (for in the Third Reich, the Schmitts and Ohlendorfs marched confidently forward under Hitler’s inclusive banner, creating *exclusion* and repression for others). *Rising Up and Rising Down* defines legitimate authority as requiring consensuality.<sup>21</sup> Schmitt’s idea of consensuality, his Decalogue, was his Aryan phenotype.

### COMMONALITY AS FAITH

Any kind of commonality *must* almost tautologically promote harmony between ends and means. The more central to a follower’s ethical identity the value which he shares with his leader, the less likely it can be that a given order will set him against his conscience.<sup>22</sup> Thus in the *Tale of the Heike*, that gruesome relation of clan cleavage and parochial loyalty,<sup>23</sup> whose commanding and obedient lives flash by us like the painted scrolls and screens of Heike-Genji battles, every character whom violence finds asserts in his dying breath the sacredly personal tie he’s lived for.

(Was it really like that? Probably not, replies many a scholar.<sup>24</sup> I think of the Japanese military affairs clerk who forced his fifteen-year-old brother to volunteer for World War II because “I had to send men to the front”: “He cried and said, ‘I don’t want to go.’ But I told him he must. I brought out this very table and a razor and made him cut his finger and write a petition on the finest paper to volunteer in his own blood”—a mode of application which had been traditional almost as far back as *Heike* times.<sup>25</sup> The brother, selected for kamikaze duty, survived only by accident.)<sup>26</sup>

No matter; let’s indulge the *Tale’s* didacticism, whose ethic one of the highest-ranking Heike, Munemori, states most eloquently of all. Calling hundreds of his most trusted servitors before him, he says to them:

You are not my casual retainers for a day or two, but my hereditary retainers. Some of you are related to me by blood. [Carl Schmitt would like that.] Some of you are bound to me by love, the love aroused by your sense of gratitude for a great many favors received from our house from generation to generation... Is it not time that everyone of you should repay these favors?<sup>27</sup>

Moved to weeping, the men respond that they will follow him “even to the end of the sea and sky.”

Love is the key.<sup>28</sup> (Not quite three percent of all Japanese homicides committed in 1995 will be motivated by “obedience-flattery.”)<sup>29</sup> In the eighteenth-century Korea of Lady Hygeyong,<sup>30</sup> the favor of the sovereign, by increasing one’s outer honor, fills the soul with pride. Thus inner honor can benefit, too, and thence comes affection. At Lady Hygeyong’s presentation to the court as a child bride, His Majesty offers her father a goblet of wine, which the latter, in keeping with a precept of the Book of Rites, pours upon his sleeve.

His Majesty turned to me, saying, “Your father understands proper ritual.” My father was moved by this royal grace and his eyes shone with tears of gratitude. Later I was told that at home Father summoned the family and recounted this story. Then, in tears, he burst forth, ‘Now that we are bestowed with such royal grace, we must pledge that, from today, we will repay his kindness with a devotion that transcends death.’<sup>31</sup>

This code is admired and respected even by the Genji, because it mirrors their own. And anyone with a heart who reads the *Tale* cannot but admire the warriors who, knowing that the Heike are in decline,<sup>32</sup> nonetheless choose to fight for them to the death. Understanding this, we gaze in sorrowful awe upon the Genji white-toothed and white-pennanted, the Heike black-toothed, face-painted in courtier style and red-pennanted, horsemen galloping across flat plains of shining gold, waving curved swords forged by prayers, secret recipes and a month or more of labor of master-smiths, then tested in the flesh of hapless commoners living or dead.<sup>33</sup> For

the sake of their loyalty we see them approaching spidery lakes, riding down cliffs, glaring, scowling, leaping, raising shining blades to decapitate each other, while in the background deer go running, or barefoot loyal retainers carry away palanquins with frightened court ladies inside.<sup>34</sup>

Most of all I remember how the righteous Shigemori, eldest son of the patriarch of the Heike clan, overcame his filial devotion—that is, his obedience to the lesser leader—to the extreme extent of warning family retainers that he would punish them for following any brutal orders given by his father,<sup>35</sup> but when it came to an emperor, no such moral assertion was necessary or even permissible, because “Japan is the land of the gods. The gods do not permit irreverence. Therefore you must believe in the cloistered emperor’s good will.”<sup>36</sup> (There were, in fact, excellent reasons not to believe in it: the cloistered emperor was a vicious schemer who meant the Heike no good.<sup>37</sup> No matter. This work, like any Stalinist novel,<sup>38</sup> is a moral tract.) Shigemori’s loyalty may seem self-serving, its premise being simply that the ruler raised his family from nothing and can easily cast them back into nothing:

When I think of the greatness of the imperial favor, it outshines the brilliance of a thousand or ten thousand clusters of jewels. When I think of the depth of the imperial favor, it is deeper than double-dyed vermilion. Therefore I must defend the Cloistered Palace.<sup>39</sup>

This borders on hymnalistic praise. The cloistered emperor, like Schmitt’s Führer, is enlightened, celestial, hence tautologically cannot compel his followers to commit crimes.<sup>40</sup> What he orders is by definition legitimized. He and his adherents (at least the righteous ones such as Shigemori) subscribe to a common standard with such conviction that no one will utter a word about escape clauses.

The social contract must always be reaffirmed by swearing allegiance to authority. (And not just religious armies, but all the others continue in the same tradition.) For Shigemori and his Heike in their squat, brilliant-colored pyramids of cord-armor, that submissive affirmation equals defense of honor and of creed.

After Shigemori’s death, the governor of Higo Province, who had received many favors from the Heike, proceeds to Kyoto at his own risk: the Heike armies have already abandoned it, and their enemies the Genji approach, their bowl-shaped helmets lacquered red, to make their faces appear more fiercely ruddy.<sup>41</sup> The Heike are clearly finished, and the expedient thing would have been to change sides. Instead, the governor arranges to have Shigemori’s bones dug up in order to protect them against any possible desecration from the hooves of Genji horses (for the Heike themselves had mercilessly liquidated their defeated enemies and defiled their tombs).<sup>42</sup> He casts the dirt of the tomb into the river and sends Shigemori’s bones to Mount Koya for safekeeping.<sup>43</sup> If you will, his loyalty was his honor—a very different thing from the S.S. slogan.



## COMMONALITY AS LAW

Still another commonality might be the one of secular law. Arendt cites the distinction between order and law; in the latter case what is commanded remains in force forever, like an echo, unless rescinded by another law; whereas an order is merely a specific command at a specific time. When an order conflicts with law, then law takes precedence, although an unscrupulous leader might blur this ("I have battles yet to fight / And I demand obedience to the law").<sup>44</sup> In any epoch of dynamism, revolution, war or collapse, the great tree of law, its roots weakened, totters and crashes down, leaving behind the local saplings of vassalage, personalized obedience, commander's orders. A trade-unionist once a member of Hitler's party wrote: "Those whose origins lay in the constitutional monarchy approved of parliamentarism and parties and opposed only the degeneration of these institutions. For most young people, on the other hand, parties and parliaments were simply the outgrowths of a system which itself was degenerate. Their ideal was the Free Corps in which leaders and followers interrelated through soldierly discipline and mutual loyalty."<sup>45</sup> No reason to denigrate such tribal groupings—provided that their enactments are just.

## COMMONALITY AS NECESSARY EXPEDIENCY

In his comments on my moral calculus, Professor Trigger writes: "There is one important issue here. One reason command structures exist is [because] some things that must be done (to counter an attack, stop a dike breaking, etc.) have to be done so fast [that] there is no time for explanations. Can it be claimed that obedience to orders, or giving commands without justifications, is in all cases bad? Whenever possible, there should be reasons given, and some orders are so bad they should never be obeyed, but there seems to me to be a gray area, where the responsibility lies mainly with those who give the orders except in cases where followers are so fanatical they are prepared to do whatever they are commanded without any moral reflection. The problem here is that few societies have a clearly defined moral code that can give clear direction concern what to do and not do in critical circumstances. The problem has been with us since Electra."<sup>46</sup>

To address this problem I propose the following: *Violence by command and without explanation is justified only by imminence. In the case of an order which seems to be evil and cruel, whoever carries out such orders ought to use his reason and his conscience to see whether imminence can possibly apply. If not, he must refuse to carry out the orders. If so, he may carry them out, and the command which issued the orders without explanation becomes morally liable for the acts consequently committed.*<sup>47</sup>

In other words, imminence may create commonality. Commonality alone, however, can never create imminence.<sup>48</sup>

## OHLENDORF RECEIVES NO ORDERS FROM HIS HEART

Whatever his own mind's foundation of commonality might have been, Ohlendorf never said. His bond of obedience was transparent, flavorless, impossible to get at. Commonality ought to generate its own honor.<sup>49</sup> Ohlendorf expressed neither system nor rules from his own heart, nothing which would have permitted him to determine whether exterminating large groups of civilians might be wrong.

Not that any such cross-check upon obedience infallibly produces decent results—think of the committed Nazi joyously receiving the command from his S.A. leader to “spontaneously” smash the windows of Jewish shopkeepers: he would have done it spontaneously anyhow! A post-war trial reports: “Defendant Lt. Czhal, who, prior to shooting [six unarmed American airmen] in the back, informed the fliers that they would be left unburied, offered as his sole defence the fact that he was acting under ‘superior orders.’”<sup>50</sup> The sadism of announcing his policy of the open grave recalls the passion of Kleist's prince, who's been told to wait for orders. “For orders?” he cries. “Kottwitz, do you ride that slow? / Have you not yet received them from your heart?”<sup>51</sup> The prince didn't link his feelings to any evil deed—for that matter, Joan of Arc could have uttered identical words, which demonstrates that what's bad is neither zeal itself, not the feeling of the heart that inspires it, but—in certain sad cases—the heart itself. Lieutenant Czhal clearly had received orders from his.

Czhal in his enthusiasm and Ohlendorf in his obedience committed the same crime—murder. No, a corrupt heart cannot guard against the effects of corrupt orders. But we can say this much: Ethical identity between leader and led may be necessary for justice, but not sufficient.

## WILHELM KEITEL

**I**n the same room in which Ohlendorf gave his testimony, Dr. Otto Nelte, counsel to Field Marshal Wilhelm Keitel, now rose to cross-examine his client on the subject of soldierly obedience. Nelte was the one who in his futile closing plea for leniency would admit that “the defendant Keitel did not hear the warning voice of the universal conscience.”<sup>52</sup> Subtle distinction: Keitel was *deaf*, not *disregardful*. Was it true? The four judges did not rule on that. Nelte, perhaps himself longing to understand him, perhaps merely calculating, in a professional spirit, that “inner revelations” might touch the judges' pity, turned to Keitel and asked: “But you are not only a soldier, you are also an individual with a life of your own. When facts brought to your notice in your professional capacity seemed to reveal that a projected operation was unjust, did you not give it consideration?”

Keitel was no Ohlendorf, to take refuge in the cold shrugs of legalistic incom-

prehesion.<sup>53</sup> He did accept responsibility (all he would ask of the court was to be honorably shot rather than hanged,<sup>54</sup> a favor which the court refused). But to Nelte's question he replied:

I believe I can truthfully say that throughout the whole of my military career I was brought up, so to speak, in the old traditional concept that we never discussed this question. Naturally, one has one's own opinion and a life of one's own, but in the exercise of one's professional functions as a soldier and an officer, one has given this life away, yielded it up. Therefore I could not say either at that time or later I had misgivings about questions of a purely political discretion, for I took the stand that a soldier has a right to have confidence in his state leadership, and accordingly he is obliged to do his duty and obey.<sup>55</sup>

This answer is the same as that of one of his codefendants, Jodl, who said: "It is not the task of a soldier to be the judge of his Commander in Chief. May history or the Almighty do that."<sup>56</sup>

### SOLDIER-CITIZENS, SOLDIER-TOOLS

Keitel and Jodl were more than half correct. We've mentioned the routine obedience to duty of proctologists and deckswabbers. In a soldier, that trait becomes an essential virtue—not only because it is good in the Ignatian sense, and the human anthill requires it, but out of reverence to defense of war aims.<sup>57</sup> Hence Frederick the Great boasts in his eighteenth-century "Military Instructions for the Generals" that among his Prussian troops,

Obedience to the officers and subordination is so exact that no one ever questions an order, hours are observed exactly, and however little a general knows how to make himself obeyed, he is always sure to be. No one ever reasons about the possibility of an enterprise and, finally, its accomplishment is never despaired of.<sup>58</sup>

After all, were every man on the battlefield to decide for himself what was right and what was not, there would be chaos.<sup>59</sup> Field-Marshal von Manstein, who was arguably the Third Reich's most effective general, made a similar argument for refusing to countenance assassinating Hitler: There would have been "an immediate collapse of the front," and disorder at home in Germany.<sup>60</sup>

We've fallen very far here from the ancient Greek notion that the soldier was a full citizen, hence a political debater and decider. When Spartan or Athenian hoplites disagreed with their general, they might simply refuse to fight. Achilles in the *Iliad* emblemizes the old code when in anger he throws his gold-studded scepter down on the ground, shouting to Agamemnon: "What a worthless, burnt-out coward I'd

be called, if I would submit to you and all your orders."<sup>61</sup> Then he withdraws to his tent, to weep and sulk over the slave-girl Briseis. All war aims he disdains.

In Roman times, discipline tightens. Caesar's legionnaires express fear of the Germans, whose blue eyes glare too terrifyingly keen, they say. Caesar "indignantly ... reprimanded them, first and foremost because they thought it their business to ask or consider in which direction or with what purpose they were being led."<sup>62</sup> Nonetheless, as his own career proves, the subordination of the military as a whole to the supreme command (assuming that in republican Rome there could be such a thing) remains incomplete: any military leader can transform himself into a political leader and vice versa. That produces unhappy results: disturbances, usurpations, extortions from an already overstrained public treasury as the routine cost of nominal loyalty, murders of just counselors, assassinations of Roman emperors just and unjust: Pertinax, Alexander Severus, the joint emperors Maximus and Balbinus, Gordian, Philip, Gallus, Aemilianus, Gallienus, Aurelian, Florianus, Probus, Carinus... The involvement of an army in political, hence ethical affairs can be as sinister as blind obedience.

Finally weariness and helplessness prevail; and, until the time of Diocletian, the election of emperors gets entrusted to the military itself, in the sometimes utopian hope that it would not strike down its own choice.<sup>63</sup> The soldier might obey out of habit. He might be wheedled, tricked, used. He is not yet, like Keitel or Ohlendorf, a perfect tool.<sup>64</sup> I hope he'll never become one. But from time to time we'll meet the perfect toolmaster: Caesar, Napoleon, Hitler.

In his *Mask of Command*, John Keegan explains that from Clausewitz's time onward,<sup>65</sup> politicians concerned about such Bonapartism ("I represent the army!" Napoleon had sneered before his coup, "yes, I represent the army, and the Directors know whether the army is at this moment powerful in France!")<sup>66</sup> sought to protect themselves by limiting the responsibilities of their officer class to military affairs exclusively.<sup>67</sup> Bonapartism? We might equally call it Caesarism! If war was "the continuation of politics by other means," they, the leaders, would decide when that continuation ought to occur; the generals, the Keitels of the world, were only to carry it out. A century later, Hitler depended on generals like that.<sup>68</sup> Of each soldier who serves under him one might say, as Lucan does of Caesar's suicidally courageous centurion, Marcus Cassius Scaeva: "Unhappy man! with such enormous valour you bought a master!"<sup>69</sup>

## THE TOOL EXPLAINS ITS FUNCTIONS

"Of course," said Keitel, "if I wanted to get technical about it, I could have said that paragraph 47 in our military law specified that it was a crime to execute orders that are given with criminal motivation. I did not execute such orders—I merely *transmitted* them. But after all, that is only a legalistic technicality, and there is no use trying to dodge the issue on such petty argumentation."<sup>70</sup>

### “THAT IS MY FATE”

Tocqueville's wife's relatives were all guillotined during the French Revolution. Did Tocqueville hold the executioner guiltless? Perhaps. Sanson (or, as he was sometimes called, Samson), that famed high priest of the Paris guillotine, officially styled “Avenger of the People,” is quoted as saying that he was but an instrument. (A holocaust of obedience? Yes. One satirical etching shows him alone, surrounded by the heads of everyone else in France; he lies down upon the wooden bed and guillotines himself.)<sup>71</sup> A soldier ought to be an instrument. As Moltke remarked, “what policy can do with his victories or defeats is not his business.”<sup>72</sup> Keitel was an instrument. Had the Führer not been so evil, Keitel probably wouldn't have done evil, as I keep saying; hence it was a matter of historical chance that he ended up in the dock instead of Sanson, whose striped trousers, tricornered hat, and dark green redingote were imitated by the jaded.<sup>73</sup> Let us quote Moltke again:

The army commander who is about to launch an enterprise the consequences of which are never certain, or the statesman who has to conduct high policy, will never be deterred from action by the fact that they may have to face a court-martial on the one hand or a civil court in Berlin on the other.<sup>74</sup>

Hitler, of course, faced no judgment save his own, narrowing his consequential future to but a moment's pang when he killed himself at Eva Braun's side.<sup>75</sup> Keitel blamed Hitler for precisely this desertion when he himself stood accused in court. (A medieval Japanese warrior would have felt equally traduced.) How could his commander in chief, upon whose initiative these reprehensible orders (which Keitel had treated as neutral) had been issued, now leave him holding the bag? Over and over we hear just this complaint from the other Nazi war criminals.<sup>76</sup> Unlike so many of their Japanese counterparts, who took full responsibility at their trials in order to avoid embarrassing the army,<sup>77</sup> these Germans usually presented themselves as “little men” who shouldn't be made to hang for trusting in their master. Many were wicked; some only did wicked things in a state akin to sleepwalking. These latter made the *moral* mistake of operating on the basis of wicked expediency; then they made the *expedient* mistake of assuming that what was condoned and approved of under Hitler they wouldn't be arraigned for. Hence their indignant apologetics.<sup>78</sup> One can easily imagine anyone, even Sanson, had he been called to account in the Restoration, as saying what Keitel did in his closing statement to the court: “It is tragic to have to realize that the best I had to give as a soldier, obedience and loyalty, was exploited for purposes that could not be recognized at the time, and that I did not see that there is a limit even for a soldier's performance of his duty. That is my fate.”<sup>79</sup>

## THE TOOL IN ACTION

Those purposes *could not be recognized?*

Keitel to Admiral Wilhelm Canaris, responding to warnings that the Nazi policy against Russian prisoners of war was against international law: "The objections arise from the military concept of chivalrous warfare. This is the destruction of an ideology. Therefore I approve and back the measures."<sup>80</sup>

### "I WAS NEVER PERMITTED TO MAKE DECISIONS"

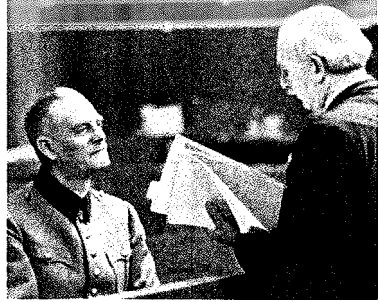
Keitel's memoirs, handwritten with great speed in his Nuremberg cell, and interrupted by the rope, certainly do project a sense of professional impotence. "Although nothing was more foreign to my nature than jealousy," he says brightly, "nothing would have been less feasible than for me to have insisted on retaining control in my own hands: I was never permitted to make decisions."<sup>81</sup> Unlike Ohlendorf, Eichmann, Höss and suchlike loyalists of more perfect obedience, he claimed to have occasionally argued with his chief, but always lost, in the process enduring acidulous verbal abuse. His colleagues had a difficult time remembering those arguments. They called him "the nodding ass." He writes—again with perfect reason—"Gradually I was becoming fed up with being the target of everybody's obloquy, as though I was to blame every time Hitler found that the face of this or that general did not fit anymore."<sup>82</sup> —Not fed up enough, however, for he didn't quit...

His cavilling about paragraph 47 was true: Keitel was no executor, only a transmitter. Hitler never informed him or "any of us soldiers" of war strategy until the eleventh hour, when everything had been decided, to use one of the Führer's favorite words, "unalterably." The *Anschluss* with Austria, the invasions of Czechoslovakia and Poland, the campaigns against France, England, Norway and Russia, the crushing of neutral Holland and Belgium—in all of these cases, the war aim flared up suddenly, commandingly; there was no getting around it. "The Führer always made the important decisions himself," he reiterated to the U.S. Strategic Bombing Survey.<sup>83</sup> If anyone objected, Hitler lied, bullied, asserted, dismissed: The Allies would back down; there'd be no World War II; there'd be no two-front war. As for the Soviet Union, "kick in the door and the whole rotten edifice would come tumbling down." Keitel signed and transmitted the orders. These signatures would help get him hanged.<sup>84</sup>

### "THERE IS NOTHING IN MITIGATION"

These words appear in the sentence of death pronounced upon him at Nuremberg. "Superior orders, even to a soldier, cannot be considered in mitigation where crimes as shocking and extensive have been committed consciously, ruthlessly."<sup>85</sup>

Arendt insists, addressing the executed Eichmann's ghost, that "in politics obedience and support are the same."<sup>86</sup> What would Eichmann have replied? Most likely he would not have understood. Always he breaks down into incoherent and mechanical self-justifications. But Arendt's maxim is true when the obedience is willing, like Keitel's. Is that the crux? Had Keitel's military obedience become political obedience, his political support, once Hitler set him to political tasks (such as ordering atrocities), and was that the basis of his condemnation? This question is an almost impossible one. Joachim Fest in his otherwise brilliant work on the Third Reich can get no handle on it, speaking only of the limits of obedience in "supralegal standards."<sup>87</sup> "My honor is my loyalty." Does it matter whom we are loyal to? Keitel was loyal to his commander. Field Marshal von



*Keitel and Nelte (1945)*

Manstein, who prosecuted an unjust war "consciously, ruthlessly," although he probably didn't commit war crimes directly, was loyal to his subordinates. "As I said at my trial: 'No senior military commander can for years on end expect his soldiers to lay down their lives for victory and then precipitate defeat by his own hand.'<sup>88</sup> That was why he refused to take part in the plot against Hitler. What if he had been as complicit in the Third Reich's atrocities as Keitel, but for this very different reason, should he have been judged any differently? "Superior orders cannot be considered in mitigation." What about care for one's dependents—in this case, care for the honor in which all of them were presumed to share? Well, "in politics obedience and support are the same." If that is true, then there can indeed be no mitigation.

Ignatian obedience is intelligent and humane; Mansteinian obedience might be, a little, for at least it pays lip service to the human tools with which it executed its directives; Keitelian obedience shows no honor in its loyalty. Ignatian obedience asks no reward for itself; Keitel was rewarded by Hitler with high dignities. At least one must grant him that he *acknowledged* that obedience in the court of the victors, and died bravely when his time came.

### OBEDIENCE'S REWARDS

Shall we come out and say the obvious? Keitel participated in an unjust war. If we follow Aquinas's scheme,<sup>89</sup> we must conclude that only one out of the three requirements for a just war had been met: It was ordered under the authority of a sovereign (Hitler). There was no adequate *casus belli*, and the intentions displayed in the war—to conquer, dominate, enslave and exterminate—were evil. The Nuremberg prison psychologist summed him up: "He had no more backbone than a jellyfish."

If we bear no responsibility for our behavior under state authority, then we are

in fact deifying that state, which is but a work of men, and thereby as susceptible to imperfection as we are. If we then blind ourselves to any of those errors while founding our identities upon the legitimacy of the state, then we must answer for the state's failures as if they were our own—because they *will* be. Keitel's obedience had become a monster, perhaps because he knew that he could be more recommended for it than for any great strategic ability (which is why he has been compared to Napoleon's innocuous Marshal Berthier).<sup>90</sup> In his memoirs he says that, embarrassed by his undeserved promotions, he only wanted to be a farmer, that his wife and duty egged him on.

Following the victory over France in 1940, he was promoted to field marshal, a rank hitherto reserved for front-line heroes. Keitel of course was an administrator. "I would be lying if I denied that inwardly I was pleased by the honour, but I would also be lying if I denied that inwardly I was downright ashamed of myself." The holocaust of self burned with merry expediency.

Officiating over the French surrender was the proudest day of his life, he wrote later, by implication praising and thanking Hitler; and in a note to his counsel at Nuremberg, on the subject of how and why critical thinking is bred out of the soldier case, he remarked: "Nothing is more convincing to a soldier than success."<sup>91</sup>

#### "AN HONEST, STRAIGHTFORWARD CHARACTER"

"Hitler ... needed his aloofness to be mediated by" men with some connection to the front-line soldier, writes John Keegan. "He signally failed to surround himself with anyone of that sort. Keitel, his principal subordinate, wobbled with the pounds of easy living and mindless sycophancy."<sup>92</sup> Another assessment: "A man of no character and a thorough-going admirer of Hitler."<sup>93</sup> Another: "The Fuehrer has great regard for the personality of Keitel, but doesn't think much of his ability. But at least he is satisfied that he is an honest, straightforward character."<sup>94</sup> General Guderian, who himself rarely hesitated to stand up to the Führer about operational if not moral matters, is more sympathetic to an old comrade, but his judgment amounts to the same thing:

Field-Marshal Keitel was basically a decent individual who did his best to perform the task allotted him... He preserved his Lower Saxon loyalty until the day of his death... The Field-Marshal exerted no influence on the course of operations... It was Keitel's misfortune that he lacked the strength necessary to resist Hitler's orders when such orders ran contrary to international law and to accepted morality... He paid for this with his life at Nuremberg. His family were not permitted to mourn at his grave.<sup>95</sup>

Hitler himself repeatedly termed Keitel "as loyal as a dog." That is why he last-ed to be hanged. Hitler loathed and feared anyone of non-doggish qualities.<sup>96</sup>



Even at Nuremberg Keitel's admiration for the Führer cannot be suppressed. Remarking on the crises on the Russian Front in 1942, he writes in his memoirs that "the way in which we averted disaster can only be attributed to the willpower, steadfastness and unrelenting severity displayed by Hitler throughout."<sup>97</sup> His very name the other officers sneeringly corrupted to *Lakeitel*, which means "lackey." He was friendly to his colleagues, or aloof, depending on his perception of their standing with that same master.<sup>98</sup>

Here is Keitel in Rastenburg in 1943, listening while Captain Winrich Behr, straight from the front, tries to bring Hitler to reality and get him to understand the desperate position of the Sixth Army at Stalingrad. The supply airlift is falling into enemy hands. "Hitler seemed puzzled," one historian writes. "As Behr shook his head, he noticed Marshal Keitel furiously wagging a finger at him—like an irate schoolmaster scolding a schoolboy for talking back to an elder."<sup>99</sup>

Fittingly, he headed the Court of Honor which degraded from the ranks those officers who'd tried to liberate Germany by assassinating Hitler in 1944. (Speaking of honor, I quote again the maxim derived from Napoleon's career: *Collective honor ought never to be its own justification.*)<sup>100</sup> Having been cashiered, those men were, in keeping with historical precedent, remanded to the secular arm. Their slow strangulation by piano wire was filmed especially for Hitler's pleasure.<sup>101</sup> I wonder if Keitel was called in to watch it, too?

It is written that in the last hour of his life, Keitel made his bed and left his cell as neat as could be. I imagine him as carrying out Hitler's directives with similar care, signing documents which were to bring death to thousands. Keitel's career is a warning for every child (I use the word in a moral sense) who believes that all he has to do to be good is to submit and "be good."

### "BACK TO WORK!"

And now let us consider more specifically the crimes in which that "honest, straightforward character" proved so fatally complicit. It is sad that his loyalty brought him to the hangman's noose, and sadder still that it led him to disseminate *and vigorously prosecute* orders which caused the death of hundreds of thousands—often for the sake of deterrence. In his death cell, Keitel gives passing mention to Hitler's brutal invasion of Yugoslavia. "Now he intended to make a clean sweep in the Balkans—it was time people got to know him better. Serbia had always been a State prone to Putsche, so he was going to clean her up; and so he stormed on."<sup>102</sup> To this menacing, hideous war aim,<sup>103</sup> which refused to allow from Yugoslavia even unconditional surrender, "there was no further discussion," reports Keitel. We may be sure none came from *him*. "There remained only one thing for all of us, and that was: 'Back to work!'" The invasion itself he calls "an outstanding performance."<sup>104</sup>

Reading his account of German actions in Eastern Europe reminds me of the

matter-of-fact horrors told by Thucydides: "The Athenians reduced Scione. They put to death the men of military age, made slaves of the women and children, and gave the land to the Plataeans to live in."<sup>105</sup> In Yugoslavia, perhaps as many as seven thousand males were executed in a single act of reprisal "under a directive from Field-Marshal Keitel"<sup>106</sup>—when all the men were "used up" the murderers had to march in



*Keitel surrenders (May 1945)*

schoolboys from their upper forms. The result was in fact to deter the Chetniks, who were willing to collaborate with the Nazis; but also to encourage and inflame the Partisans.<sup>107</sup> The directive was thus not only *morally* but *expediently* ill-conceived; thus the Nazi story. Yes, it is Keitel's story.<sup>108</sup>

"You had a non-aggression pact" with the USSR "and somebody must have broken it?" asks the interrogator ironically.

"I can't tell you that," replies Keitel. "This is purely political."<sup>109</sup>

He also signed the *Kommissarbefehl*, which commanded that all Soviet commissars be shot out of hand whenever they fell into the Wehrmacht's power.<sup>110</sup> He signed the *Nacht und Nebel* decree, by which European civilians who'd acted against the German occupation were authorized to disappear into the night forever.<sup>111</sup> He was "responsible for encouraging German civilians to lynch captured Allied airmen."<sup>112</sup>

About these decrees Keitel unapologetically writes that they were "designed to emulate the enemy in his most degenerate mode of warfare, which could, of course, only really be appreciated in all its ferocity and effect at my central office into which all these reports flowed." (In other words, stop complaining and leave this matter to the experts.) "When ... faced with methods like these the only one to keep his head is the one who least shrinks from exacting the most ruthless reprisals... [That] 'Terrorism can only be combated with terrorism' is a point which seen in retrospect people may be right to dispute." Then Keitel continues with one of his rare displays of sarcasm: "All good Germans should learn to let the house catch fire around them before they start to sniff for smoke."<sup>113</sup>

## WAS IT LOYALTY OR COMPULSION?

When Dr. Gilbert, the prison psychologist, pushed him to state his responsibility, he replied:

"Whether it is guilt or the working of fate, it is something that one cannot say; but in any case it is impossible to let the subordinate take the blame and deny one's own responsibility."<sup>114</sup>

It was clear that this was his main argument for making Hitler take the blame

for him, just as he had to take the blame for things done on his order. I put the question bluntly, "Do you feel then that Hitler was the real murderer?"

"Yes, of course," he replied emphatically with a wave of both fists,—"but that doesn't mean that I too should be branded a murderer! I can only say that I passed on his orders. As Sir David Maxwell-Fyfe gave me the opportunity to say, there were many things that I did not approve of—the shooting of hostages, the mistreatment of Russian prisoners, the shooting of escaped British fliers ... but what could I do? I might have committed suicide, but then somebody else would have come in my place anyway. I thought I would prevent the worst things even if I did not prevent much that was bad."<sup>115</sup>

Well, what did he prevent? A good six weeks before the invasion of the Soviet Union, who had gone out of her way to maintain the alliance, and against whom Hitler had as cause for complaint only some disagreements over future spheres of influence, and the supposedly inalterable divergence of respective ideologies (from an expedient point of view, they cooperated quite well), the Führer summoned all his senior commanders to a conference. Keitel of course was ready for anything. In his memoirs he says that "here too Hitler was again absolutely justified"<sup>116</sup> and uses the phrase "preventive attack."<sup>117</sup> But at the conference, which took place at the Reich Chancellery, the business turned out to be the planning not merely of pre-emptive aggression, but also of mass murder. Hitler announced, as we have seen, that all commissars were to be shot out of hand, and that there would be no punishment for any atrocities committed by German troops in Russian territory, at least not until it had been "pacified." "Nobody openly raised his voice in protest," writes Keitel; "he rounded off this unforgettable address with the memorable words: 'I do not expect my generals to understand me; but I shall expect them to obey my orders.'"<sup>118</sup> Shades of Julius Caesar!

Keitel considered the orders "dangerous" and "questionable." But the good tool does not question. "What was I to do? When Hitler personally gave me such instructions during his war conferences, was I to answer in the hearing of twenty-five people 'My Führer, that is nothing to do with me ... tell your Secretary what it is you want?'"<sup>119</sup>

#### THE MORAL CALCULUS OF WILHELM KEITEL (1933-46)

##### Why did I follow evil orders?

"But what could I do? There were only 3 possibilities: (a) refusal to follow orders, which naturally meant death; (b) resign my post, or (c) commit suicide. I was on the point of resigning my post 3 times, but Hitler made it clear that he considered resignation in time of war the same as desertion. What could I do?"

Yes—a reasonable question. What was he to do? That's every henchman's question. In ancient China, Wei Liao-tzu advises the ruler that soldiers should be combined into squads of five. If a squad loses members without capturing or killing a greater number of the enemy, then the remainder of the squad will all be killed, "and their families exterminated."<sup>120</sup> One can hardly blame the squad's conscripts for killing enemy civilians under such circumstances. The wickedness they do is extenuated by imminence.

But in Keitel's case, self-defense under compulsion does not hold up if the only result of disobedience would have been to get sacked. General Halder, for instance, quarreled with Hitler openly over strategic matters, and lost his job, but lived to tell the tale even though it later came out that he had been in correspondence with the men of 1944 who plotted to kill Hitler.<sup>121</sup> General Guderian, who also disagreed with Hitler on occasion, was placed on "six weeks' convalescent leave" and survived.<sup>122</sup> General Rommel actually burned the Commando Order which Keitel, that moral disease-vector, transmitted above his own signature. Couldn't Keitel have done the like? Early retirement? Medical leave? Neither strategy would have endangered his life. We read that an S.S. man who refused to participate in an execution would simply have gotten expelled from the S.S.<sup>123</sup> I repeat: Keitel could have excused himself.

#### POSSIBLE RESPONSES TO EVIL ORDERS

(in increasing order of heroism)

1. THE KEITELIAN SOLUTION: Obey the orders unquestioningly.
2. THE ROMMELIAN SOLUTION: Participate in the cause, but disobey the orders. (Rommel burned the infamous "Commando Order.")
3. THE "HONG PONGHAN" SOLUTION:<sup>124</sup> Argue with the orders from a standpoint of "loyal opposition," and get sacked.
4. THE LUTHERAN SOLUTION: "Outrage is not to be resisted, but endured, yet they should not sanction it, nor serve or obey or follow by moving foot or finger."<sup>125</sup>
5. THE GANDHIAN SOLUTION: Lovingly refuse to obey, and report with calm pride for punishment.
6. THE "WHITE ROSE" SOLUTION:<sup>126</sup> Speak out, resist and die.

*The compulsion defense is not justified when what gets defined as compulsion is in fact only a requirement for achieving an end.*<sup>127</sup> Keitel's ends: outer honor, sterile pufferies and dignities, emoluments, a self-satisfied wife...

#### THOUGHTS ON THE MILGRAM EXPERIMENT

The truth is that Keitel was simply, like most of us, malleable. He had a potential to be many different things. His I.Q. was 129.<sup>128</sup> Without the leaders and circum-

stances that found favor in the Third Reich, who knows what he would have become?<sup>129</sup> (Goering called him “not tough enough,”<sup>130</sup> which I take to be a compliment. Perhaps a civilian career would have befitted him. General Warlimont, who was his junior colleague in the OKW<sup>131</sup> and despised him from the standpoint less of morality than of professional competence, concluded that Keitel possessed “neither the ability nor the character to be military Chief of Staff to a man like Hitler and ... allowed himself to be degraded immediately and unresistingly to the position of *Chef de Bureau*.”)<sup>132</sup>

Does identity predetermine moral culpability? Arthur Koestler describes a train journey he took through Spain a couple of years before World War II broke out—an unhappy trip, to be frank, chaperoned by two guards deputed to escort him from one prison to another. He is well aware that they would have executed him “with complete sang-froid” had they been ordered to—or, had they been his fellow prisoners, they would have shared their last cigarette with him. He realizes “how ridiculous it is that we place so much importance on the personal character of a man; how little depends on what a man is, and how much on the function which society has given him to fulfill; and how limited a field is left to him in which to develop his natural propensities.”<sup>133</sup>

Such a one, we saw, was Ohlendorf. Another was Eichmann,<sup>134</sup> who exemplified the now banal “banality of evil.” In my own country, I remember the famous Milgram experiment, in which ordinary people were asked to administer what appeared to be lethal shocks to other human beings; almost all of them did. From behind the wall, a voice cries out, then falls silent. The experimental subject hesitates to flick the switch. But the white-gowned authority figure tells him: “The experiment must continue!” Orders are orders. —Ordinary people—yes, they were us, and it was merely their luck, not their virtue, that the switches did nothing.<sup>135</sup>

Arendt remarks on “the odd notion, indeed very common in Germany, that to be law-abiding means not merely to obey the laws but to act as though one were the legislator of the laws that one obeys. Hence the conviction that nothing less than going beyond the call of duty will do.”<sup>136</sup> This is actually not so odd, at least not to Kant, Ignatius and Kleist. “For orders? Kottwitz, do you ride that slow? / Have you not yet received them from your heart?”

## TWO PHOTOGRAPHS FROM CELJE

We see a courtyard in Celje, Stajerska, Yugoslavia—oh, I’m not saying Keitel was there! Just because he’d signed a few orders didn’t mean that it had anything to do with him!—a courtyard of varying textures and shades: clumps of cobblestones, and then greyness of earth, whiteness where earth has been scuffed away. The photographer is looking down from a second or third story. We see a windowed wall, a narrow doorway, a drain. Drawn up along an axis extending from the doorway stands a

double line of German soldiers, men who were just following Keitel's orders, just as he was only following Hitler's. Their shallow, upturned steel bowls of helmets gleam upon their heads. They extend almost entirely across the left-hand side of the courtyard. The reproduction is not of very good quality, but I think I count twenty-six of them. In the doorway I see another man's silhouette—observer, not conscience. On

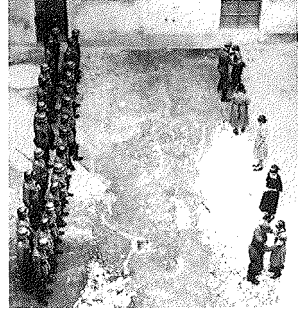


*Keitel on trial*

the right hand side of this photograph we find five women—no, Keitel wasn't there! He probably never even knew about it! Two soldiers help them almost courteously, as if they were bestowing medals upon them or buttoning up their evening gowns; positioning them, adjusting their arms, probably tying them—hard to distinguish. The women's black blindfolds are already on. I keep thinking: twenty-six plus two makes twenty-eight; you'd think that official numerology would require thirty or some other round number of murderers... In Keitel's death sentence, the Allied justices refer to his remark that "human life

was less than nothing in the East."<sup>137</sup> Yugoslavia, I suppose, is East—homeland of subhuman Slavs. Almost one-seventh of Yugoslavia's population perished between 1941 and 1944.<sup>138</sup> No, their hands are not tied. One girl has hers at her sides; another wrings hers in front of her. Blindfolded and disoriented, all five face in slightly different directions. One lady, second from the rear, is actually turned sideways, toward the soldier who is preparing her companion. Perhaps she has not been attended to yet, and so she stands gazing toward the soldier as she might have once stood in a postal queue, waiting to be served, anxious not to waste the official's time when he is ready for her. So that is how they are in that upper photograph, the glittering double line on the left, and the sparse and wavering line on the right. In the lower photograph, the double line has pivoted in the other direction and has already started to break up, the order having now been successfully carried out. A man remains silhouetted in the doorway. Pairs of men in black (which, since this is not a color photograph, could really be blue or any other dark hue) are carrying the coffins into deployment. Now we see why the components of that wavering line were originally spaced so far apart: to make it convenient to place coffins in between! This is the mark of people who know what they are doing; one can't say they're amateurs. One member of the line lies on her back, almost natural and relaxed, her legs out straight, but her hand is over her face. Did she just fall that way, or did some panicked instinct impel her, ostrich-like, to cover her blindfolded eyes when she heard the order? (A Japanese war criminal rotting in a Chinese dungeon will finally understand that from this woman's point of view, it doesn't matter whether the riflemen fired with or without orders.)<sup>139</sup> The woman beside her lies with one knee drawn up and dark blood running out of her head, whereas the woman in the foreground is on her side, half-curved, her fists tight against her breasts, her legs sharply bent, as if she might have kicked and convulsed a little when she was shot. The dress of the woman who had

been turned sideways has worked up to her hips; there is blood under her high heels. Two men have just set her coffin down beside her. At her head, two civilians are shoveling up dirt from under the wall, maybe for hygienic reasons, to spread upon the stained execution ground. The fifth woman's coffin is already waiting beside her. A German is bending over her, to make sure that she is dead. Well, you have to take what's coming to you if you help the Partisans. Heil Hitler!<sup>140</sup>



*The execution in Celje (I)*

### KEITEL'S BEHAVIOR DURING A FILM OF NAZI ATROCITIES

"Keitel wipes brow, takes off headphones... Keitel puts on headphone, glares at screen out of the corner of his eye... Defense attorneys are now muttering, 'for God's sake—terrible.'... Keitel now hanging head... Keitel and Ribbentrop look up at mention of tractor clearing corpses, see it, then hang their heads."<sup>141</sup>

### KEITEL AT DINNER THAT NIGHT

"He appeared to have forgotten the film until we mentioned it. He stopped eating and said with his mouth half full, 'It is terrible.'"<sup>142</sup>



*The execution in Celje (II)*

### “A GOOD LEADER JUST THE SAME”

When Waffen-S.S. Colonel Peiper was condemned to death for shooting American POWs, “Keitel said that regardless of this murdering of prisoners, which of course he never condoned” (although the Commando Order which Keitel had passed on made “this murdering of prisoners” mandatory), “Peiper was a good leader just the same.”<sup>143</sup>

### “I AM STILL THE SAME AS BEFORE”

Many other defendants pretended ignorance. Keitel, as we’ve seen, pretended more compulsion than was actually the case. But during his defense he frequently admitted damning facts, explaining: “The only thing that is actually impossible for me is to sit there like a louse and lie... I would rather say, ‘Yes, I did sign it.’”

I am reminded of what Manès Sperber wrote about a dying S.S. man who begged (and was refused) forgiveness from a Jew:

If the young SS man was guilty, yet he differed from the organisers of the extermination camps and the accomplices of genocide. By his obedience to his criminal leaders he augmented the guilt which he had incurred by putting himself politically and unconditionally at their disposal. There is no question of that, but it is none less true that in the end he brought the accusation against himself. As an accused person he is condemned in our eyes and rejected, but as accuser he placed himself among the victims.<sup>144</sup>

This too is Keitel, for whom I cannot but feel a little sympathy. Shriven of his deceitful honors, condemned to what he considered a disgracefully unsoldierly end, he seemed to discover that he was not infinitely malleable after all. “I don’t blame you for standing at a distance from a man sentenced to death by hanging,” he told Dr. Gilbert. “I understand that perfectly. But I am still the same as before.”<sup>145</sup> Was this only a reflex of a soldier’s ego, or did he indeed come to understand that the self has limits, that other people do not necessarily have the power to make us good or bad? If, degraded to pay the criminal’s penalty, he refused to put himself completely beyond the pale, could there have been some backbone in him? But what a strange backbone it was.

In a photograph we see him signing the instrument of Germany’s surrender (a task less pleasant for him, no doubt, than was his previous commission of that nature, when five years since he’d accepted the surrender of France), his chest ornamented with twin rows of insignia, his collar-tab bearing an image which might be oak leaves, a trumpet-vine or a half-melted machine gun. His sleeves are starched



almost to metallic stiffness. His hair is short and white. He frowns benignly down at the pen so black and shiny in his white hand.

An eyewitness reported: "When asked his name he answered in a loud sharp tone, 'Wilhelm Keitel!' He mounted the gallows steps as he might have climbed to a reviewing stand to take the salute of the German Army."<sup>146</sup>

## THE JEWISH CALCULUS (I)

**T**hus the phrase "I was only following orders" has become a bitter laughing-stock, subject to history's most cynical commentaries. "There is nothing in mitigation." History sneers, weeps, turns disgustedly away from such worms now wriggling on the hooks of their own evil. But to assert the universal mendacity of this dreadful defense—to claim, in other words, that *every* soul who complies with wickedness must have armed himself with the austere-willed blindness of an Ohlendorf, or else in Keitellian fashion stopped up his ears against his victims' screams, plugging his organs of perception with the honey of emoluments, honors, promotions, would be to overlook real compulsion and fear. Thus one participant in Joan of Arc's infamous Trial of Condemnation pleads:

I was forced, in that business, to act as notary, and I did it in spite of myself, for I would not have dared to go against the order of the lords of the King's council. And the English pursued this trial and it was at their expense that it was prepared... As for the assessors and other councillors, I believe that they would not have dared contradict, and there was nobody who went not in fear.<sup>147</sup>

Some held out just the same. Two dissenters found themselves threatened with drowning, one actually being imprisoned. So was the old Bishop of Avranches, who had expressed unhappiness that Joan's appeal to the Pope had been denied.<sup>148</sup> As to the ones who voted for burning, call their moral accountability unproven, though at best they were cowards. For a starker case of pure compulsion, consider Rabbi Joel Sirkes and his Jewish calculus.

## VAMPIRES

From the Diaspora until the birth of the State of Israel in 1948, the Jewish people were a stateless minority wherever they dwelled, subject to the revulsion of those who insisted that "they killed our Lord"—sermonized against, preyed upon by extortionists in return for a precarious, contemptuous tolerance which could mercurially transform itself into violent terror.<sup>149</sup> We turn to seventeenth-century Poland, where Jews owned sufficient good fortune to find themselves "a source of

excellent tax collection income," hence, says Rabbi Sirkes's modern commentator, "generally treated fairly by the kings, though often persecuted by the populace."<sup>150</sup> In other words, they remained pawns of the pogromists.

Ever since the thirteenth century,<sup>151</sup> Gentiles in Eastern Europe had preached their "blood libel," judging and executing judgment in defense of creed, race, homeland, everything. Blood libel, stuff of nightmares, brought nightmare to the Jews. Thus once again that tired mechanism of violence by which the aggressor persuades himself that he's the victim. To be precise, blood libel fueled outraged righteousness's fitful spontaneity in the service of an aim which varied and shimmered, hatred's jewel, confidential or undreamed of or unfulfillable until Keitel's era, when "a few freight trains, a few engineers, a few chemists vanquished that ancient scapegoat, the Jews of Poland."<sup>152</sup>

Blood libel swears to the accuracy of the following facts: Jewish religious rites are literally satanic. And why should we expect otherwise? For the Jews are vampiric parodies of human beings, driven by the needs of an alien biology. (Need we add that in this epoch, vampires enjoy credence throughout Europe, their existence being attested by scholars, travelers, the provincial nobility and even imperial commissions?<sup>153</sup> If our own fathers whom we love can return from the grave to menace us, what might *Jews* be capable of?) Believe this: They menstruate, men and women alike. They must drink Christian blood in order to stay alive.<sup>154</sup> We all know that Passover matzohs are made with the blood of Christian children. Since they devour the very flesh and life of God's people, it goes without saying that out of hatred they pervert the material substances of Catholic ritual. They burn waxen images of bishops, in order to sicken them. The very Host itself—they stab it and prick it with pins, in order to wound the body of our Lord.<sup>155</sup>

Thus the anxious delusions of those who've been wounded themselves—by cold poverty, by ever-unfathomable death, by jealousy, malice, ignorance...

## UNKNOWN WRITINGS

As a matter of fact, folk magic did thrive in the Jewish ghettos of eastern Europe—as outside them. (Gentiles, themselves quite magic-crazed, knew that any recipe for black magic would generally require a pair of blessed candles, a sprinkle of holy water or the like.) Within the riverine forests and on the plains, surrounded by churches, cathedrals, city walls, eyed by unfriendly tower-points, crosses, steep house-roofs which squatted together within tower-jointed walls, guarded by Christian banners and flags,<sup>156</sup> Jewish magic preserved its uniqueness—which is to say, for the Gentiles, its hateful alienness. Pentagrams emblazoned cradles. *Mezuzahs* on doorposts kept demons away. Amulets on parchment or deerskin were hung in houses or around the necks of children, studded with six-pointed stars, crossed drumsticks, devil-horns (or so they might appear to Gentiles)—all written, of

course, in long lines of Hebrew characters, whose squareness and angularity, made as if for carving into stone, invoked archaicism, even primevalness—and surely, for an unlettered Gentile, eeriness. And what did the strange figures amidst the letters mean? Not even the wearers knew. Rabbi Judah Löw ben Bezalel of Prague had created a golem, a monster of clay. Weren't the Jews terrifying, dangerous, dreadful? Even the Pope said so.

All this seems to make the slaughter of innocent Jews over the centuries explicable, if not excusable; but when the medieval reverence for the Mass gave way to the nineteenth-century adoration of capital, the accusations adapted, and Jews abandoned red blood for green money, became financial vampires, debasers of money, manipulators of governments and stock exchanges.<sup>157</sup> The conclusion we ought to draw is that anti-Semitism has rarely been either personal or rational, that its twin wellsprings are the easy self-empowerment of bigotry, and naked, selfish expediency. "If the Jew did not exist," says Sartre, "the anti-Semite would invent him."<sup>158</sup>

## KALISH

So much for the context. In the year 1620, a Polish Jew was tortured and executed by the Gentiles for stealing the Host. As the magistrates led him away, he managed to give his purse to his father-in-law, the *Shamash* of Kalish. Did the arrested man entertain the pathetic hope of being able to return for the money someday, or was his action in effect a bequest, providing for his wife and family in the only way he could? Furthermore, did this deposit of his property out of reach of the Gentiles' thieving hands actually doom him, since now he couldn't ransom himself? Such questions, unanswerable now, at least remind us to consider the more relevant issue of whether this doomed inmate of the Kalish ghetto did anything ignoble, unjustified, or even imprudent in this matter of the pocketbook. I cannot say that he did. Act II of the anti-Semites' comedy: The examiners, needless to say, found nary a crumb of the Host on the person of their prisoner, who very possibly didn't menstruate, either. Were their convictions, not yet borne out by the prisoner's screams, to be so rudely denied? Commanding their justifications martially onward, they concluded that the Shamash had retained the Host in that purse, and demanded his surrender. The Shamash, deterred by his son-in-law's end, wisely hid. Act III: The authorities gave the Jews an ultimatum: Deliver him forthwith, or they'd unleash their human hounds upon the whole ghetto.<sup>159</sup>

The fugitive, had his heart been stained by the proper sort of nobility, might have come forward then to free his people from this dilemma, this trap of compulsion and fear, into which 326 years later Field Marshal Keitel would pretend to have fallen: *Execute an unjust order whose result might be an innocent person's abuse and murder; or die collectively.*<sup>160</sup> (Who were the real trapped ones? In 1939, the Nazis transformed the synagogue of Kalish into one of their favorite institutions, a prison camp. The

Jews who did not die of bad treatment were sent to the Lublin Ghetto.)<sup>61</sup> The Shamash might have come forward, I said. He did not. Neither would I. Julius Caesar, besieging one Gaulish town in 52 B.C., saw how the men tried to slip away and leave their women and children at his mercy. It did not surprise him, "for as a rule," he said, "in extreme peril fear admits no sense of pity."<sup>62</sup>



*Medieval German anti-Semitic caricature*

And so the Jews turned to Rabbi Joel Sirkes of Cracow, also known as the Bach, and asked him to tell them what to do. By commonality of race, of creed, of law, of legitimate authority's prerogatives, expressions and obligations, not to mention the commonality of imminent collective defense, his leadership stood on transcendently solid foundations. He was, in short, to be their conscience.<sup>163</sup>

## THE RESPONSUM OF SURRENDER

May none of us ever face such a choice! Jewish communities had faced it all too often. Rabbi Sirkes therefore had several Talmudic precedents to go by. Not all of them agreed. In his responsum, he accordingly spoke of difficulties of interpretation, of conditions, references, inferences, cases, objections.

### WHEN SHOULD I GIVE UP MY NEIGHBOR TO MURDERERS?

"CAN YOU PUSH ASIDE A SOUL FOR A SOUL?"

The moral calculus of Rabbi Joel Sirkes [the Bach] (1620)

#### A. RABBINIC PRECEDENTS

1. Precedent of Rabbah: No one is so worthy that he can sacrifice another to save himself.  
*Qualification of Moses HaCohen of Lunel:* But one may be handed over to save the many.
2. Palestinian Talmud Terumot 7:20, Genesis Rabbah 94:9: Hand over a specified Jew to be killed, but all ought to perish rather than deliver an unspecified Jew.
3. Tosefta Terumot 7:20, Genesis Rabbah 94:9: Hand over a specified Jew when he is in danger and the community is also in danger, "so that all of them will not be slain."
4. Palestinian Talmud Terumot 7:20, Genesis Rabbah 94:9: Hand him over only if he deserves death (Rabbi Lakish).

*Or*: Hand him over even if he does not deserve death (Rabbi Johanan).

5. Palestinian Talmud Terumot 47a, Genesis Rabbah 94:9: Persuade the named Jew (whose guilt isn't mentioned) to surrender himself to death to save the rest. [The two sources differ on the worthiness of this.]
6. Genesis Rabbah 94:9: Hand over [kill] the specified Jew to save the community—whether he agrees or not.
7. Genesis Rabbah 94:9: Hand over [kill] an unspecified alien living within the community, to save the rest, whether he agrees or not.

#### B. CONFLATION OF THE PRECEDENTS

Hand him over if:

1. He has been named *and*
- 2a. He is deserving of death *or*
- 2b. He is not deserving of death, but both he and his community are "inside danger" *or*
- 2c. He is not deserving of death, but his community is "inside danger," whether or not if he himself is "outside danger."

Therefore:

"If they demand that he be handed over to them, and it is not known whether they intend to kill him, if, according to their laws he is to be handed over to them, then we may hand him over ... and we rule thusly from the outset."

#### C. FACTS OF THE CASE

1. The Shamash has been named.
2. He is not necessarily deserving of death, but he has endangered his community by accepting the pocketbook.
3. The community is "inside danger," but he is "outside," having hidden.
4. He will not necessarily be put to death—even though his son-in-law's fate suggests the worst.

#### D. DETERMINATION

"If the Shamash took possession of the pocketbook in the presence of the non-Jews, he brought the responsibility of standing in judgment according to their laws upon his own soul and we are permitted to hand him over to them. But if ... another

er one took it, then it is forbidden for us to attempt to persuade or coerce the Shamash to appear for trial."

SOURCE: SIRKES, PP. 4, 6-11, 20-23, 30-31, 34, 36, 37.

### CRAVEN OBFUSCATION OR NOBLE LIE?

As an absolute principle of justice, the Bach's decision must be condemned. In particular, point number four of the facts of the case, like Martin Luther's assertion a century earlier that as long as a prince's subjects cannot know whether he is in the wrong or not, "they may obey without peril to their souls,"<sup>164</sup> *incites the moral actor precisely not to know*. This was our criticism of Ohlendorf's loyalty. A better reaction to evil compulsion would be to seek out as much knowledge as possible, and maybe find a loophole in either the compulsion or the evil—or at least admit what we will probably do regardless: give up the Shamash! Shouldn't we try to find out whether or not they intend to kill him? Experience indicates that they do. "Sirkes totally ignores this charge," returns Rabbi Sirkes's translator and commentator, Dr. Elijah Judah Schochet. "Not only does he fail to mention it in the course of his discussion, he goes out of his way to stress the very opposite; namely, that Jews can receive a fair hearing."<sup>165</sup> In short, the decision is expedient, accomodationist, hypocritical.

The foregoing would apply without reservation, had Rabbi Sirkes been one of the Gentile magistrates to whom the Shamash was bound over. But he was not. He was a Jew, a probationer, a non-victim only on sufferance. We must therefore regard his responsum not only as the *instrument* of cruel compulsion which it admittedly was (and to that extent I do condemn it), but also as a *reaction* to it. "Who can doubt that this particular responsum was written with tears!" says our commentator.<sup>166</sup> As a reply to compulsion, it approaches, though it cannot reach, nobility, because it seeks to preserve some shred of moral choice. Once again I think of Bukharin's confession to the Stalinist court. It won't change anything; he'll be shot no matter what, but that doesn't mean he can't affirm something.<sup>167</sup> Just because a moral choice creates no practical consequence doesn't mean that the choice itself was fictitious. In a ruined car in Bosnia when I believed myself to be in imminent certainty of death,<sup>168</sup> seeing the approach of irregulars whose guns, I believed, had just shot my two friends who now slumped dead and bleeding in the front seat, I thought to myself: There is no hope. (Obviously, I was wrong about that.) I thought: My choice is not whether or not I can avoid death, but whether I'll die well or badly, cravenly or in a manly way. I hope to bear myself proudly, and I hope that it happens quickly and doesn't hurt too much. Rabbi Sirkes's responsum of surrender replies to compulsion in similar terms. The Kalish Jews did not have the choice they wished. Should the Shamash be handed over to an uncertain fate for a nonexistent crime? Obviously not. But that absolute wrong could not be

prevented by force. Almost certainly, he *would* be handed over. He was “out of danger,” granted. But could he hide the rest of his life? Suppose he could. Three options remained to the Elders of Kalish:

1. Refuse absolutely to compromise with this hideous reality. Retain the Shamash, and risk extermination. [The strategy of Masada’s defenders against the Romans,<sup>169</sup> and of the Warsaw Ghetto insurgents at the end.]
2. Acquiesce completely. Give up the Shamash and accede to any other demands. [The strategy of most Jewish ghettos under Nazi rule.]
3. Condone (be an accomplice in) some unjustified sacrifices, but draw a preemptive line against complete acquiescence. [The strategy of Kalish, as recommended by Rabbi Sirkes.]

Michael Walzer once wrote in his book on just wars that it is less important where the line between justice and injustice lies than that there *be* a line. While I cannot entirely agree, I admire Rabbi Sirkes for establishing that line.

Does the line itself please me? On the one hand, Rabbi Sirkes stretches the Shamash’s innocuous error into a liability approaching outright guilt. (“To be ‘deserving of death’ can mean simply ‘liable to be killed,’” notes Dr. Schochet, “and what Jew in the middle ages did not run the daily risk of doing something (however insignificant) that would merit his being deserving of death in the eyes of some authority or other?”)<sup>170</sup> On the other hand, Rabbi Sirkes pretends that the Gentiles will treat the Shamash justly.<sup>171</sup> Both distortions of the facts work toward the advantage of community expedience, and against the Shamash himself. —“I *hate* that!” shouted a Jewish woman to whom I relayed this calculus. And yet, she and I could come up with no better solution. (Martin Luther: “For all the lies and false confessions which such weak consciences utter fall back upon him who compels them.”)<sup>172</sup> She and I both would have done as did Rabbi Sirkes, who bowed to the inevitable, and justified it; for the sake of the others, he was willing to give up a soul; but he left a tiny niche for self-respect: Had the Shamash in fact not accepted the pocketbook or done some likewise “conspicuous” thing, all Kalish must die before giving him up.

The Shamash was delivered into the hands of his enemies.<sup>173</sup> Kalish survived.

## THE JEWISH CALCULUS (II)

Late in the night of October 25, 1941, the officials of the Judenrat<sup>174</sup> of the Kovno ghetto went to their Chief Rabbi, Abraham Dov Shapiro, to ask whether they ought to encourage cooperation with a German roundup order. Rabbi Shapiro, who might have suspected by then what roundups entailed (this being the second year of Poland's Nazi occupation), but perhaps didn't want to believe it,<sup>175</sup> laid down that it was the duty of Jewish leaders to do whatever they could to save whomever they could, even a remnant. Compliance with the order might assist that end. Therefore, the Germans must be obeyed and helped. The commonality between Rabbi Shapiro and his flock was equivalent to that between Rabbi Sirkes and the Jews of Kalish, and loyalty brought about an equivalent obedience: dutifully, the Judenrat posted the summons notices. When the 24,600 Jews of Kovno reported for roll call, nearly ten thousand of them were shot.<sup>176</sup>

Jacob Gens, police chief of the Vilna ghetto, followed the same road, arguing (as three centuries earlier Rabbi Sirkes implicitly had) that noncooperation meant that *all* Jews would be doomed. "With the thousands that I hand over, I save ten thousand," he insisted. Later he said, "To ensure that at least a remnant of Jews survive, I myself had to lead Jews to death; and in order to have people emerge with a clean conscience, I had to befoul myself and act without conscience."<sup>177</sup>

In Warsaw, the doomed historian Emmanuel Ringelblum wrote in his secret diary: "Today news arrived of the deporting of 150,000 Jews from Sosnowiec and Bedzin. *They desire that we carry out this thing, and on condition that we do it, will allow us to save the money of those people.* This is a question of principle. Should we, with our own hands, do such a thing?"<sup>178</sup>

### HOW CAN I AVOID GIVING UP EVERYTHING?

The expedient calculus of Emmanuel Ringelblum (1939-44)

"The tactics employed toward the Others: To say one agrees to the most impossible demands, and later to demonstrate that only a few of them can be carried out, for 'technical' reasons."

[NOTE: "Others" = *Germans*.]

SOURCE: RINGELBLUM, P. 122; ENTRY FOR JANUARY 15-16, 1941.

No one invoked the name of Rabbi Sirkes. Did the precedents have to be examined all over again? Perhaps not. One responsum written during this awful time concluded, as we might expect, that it was ethical to fulfill the extermination quotas only if the deportees had been named and were guilty of something requiring them to be handed over to the Nazis.<sup>179</sup> But the facts of the case were far different now:



## COMPULSION IN EASTERN EUROPE, 1620 AND 1939-44

"How can our age be compared with any earlier one? Is there any comparison between the White Terror of the feudal world and the slaughter of Kiev, or Rostov, where hundreds of thousands of civilians were murdered?"<sup>180</sup>

## FACTS OF THE CASE (1620)

1. The Shamash has been named.
2. He is not necessarily deserving of death, but he has endangered his community by accepting the pocketbook.
3. The community is "inside danger," but he is "outside," having hidden.
4. He will not necessarily be put to death—even though his son-in-law's fate suggests the worst.

## FACTS OF THE CASE (1939-44; known from hindsight)

1. Everybody has been named.
2. Nobody is deserving of death by virtue of having been named.
3. The community is "inside danger."
4. Everybody will be put to death.

FACTS OF THE CASE (1939-44; believed probably through mid-1942)<sup>181</sup>

1. Some people have been named; quotas of other unspecified people have been demanded.
2. Some or all may be deserving of death, by the act of being called for. [Kindred logic to that of the Shamash and his son-in-law's purse.]
3. The community is "inside danger."
4. People who obey compulsion, who cooperate in handing over their neighbors, etc., etc., and who are not named, may perhaps survive. Bribery may help. Therefore, it may be imprudent to ransom somebody else.<sup>182</sup>

Thus dire compulsion<sup>183</sup> forced Jewish communities to give up the explicit principle of specification, and, worse yet, the implicit one of effectiveness.<sup>184</sup> Rabbi Sirkes's ostrich-like optimism about the Gentiles' judicial fairness could no longer be maintained. When German guards stole a sack of potatoes from a Jewish woman, one of the Jewish police asked that the property be returned. They bayoneted and shot him.<sup>185</sup> Soon enough, they were shooting everybody, throwing them out of their

own windows if they didn't come out fast enough, kicking them, shipping them off to be gassed. Yield up the Shamash—and everyone else, too!

This is why many Jewish leaders refused to compromise any longer with compulsion, and, anticipating the Germans, committed suicide instead of “selecting” people for the death camps. In the fall of 1942, Dr. Janusz Korczak, who ran an orphanage, voluntarily accompanied all his children to the gas chamber, although the Gentiles would have let him off for awhile. Ringelblum in his increasingly frantic, cryptic notes describes “the little criminals who must hide in a room for months on end—the face of a child grimacing with fear at a blockade.”<sup>186</sup> Dr. Korczak wished to spare them that. By this time, ninety percent of Warsaw's Jews had already been liquidated, and Ringelblum raged: “Why did we allow ourselves to be led like sheep to the slaughter?”<sup>187</sup>

The answer, of course, is that the murdering had all been done slyly, by degrees. And at each stage, one could still argue, wishfully if not plausibly, that the Jewish calculus was still being followed. (How would it end? A fighter recalls: “The Ghetto was burned down to its foundations. Piles of corpses rolled around in the streets, the courtyards, and among the mounds of ruins.”)<sup>188</sup>

In his incisive commentary to Rabbi Sirkes's responsum, Dr. Schochet speaks of another set of precedents, which the Bach didn't need to refer to, since his decision concerned only the Shamash. We saw that by the precedent of Rabbah no one is so worthy that he can sacrifice another to save himself. But deep in Jewish custom there can be discerned a calculus of human categories. I may not be any better than you, but, *if compulsion forces us to choose*, one kind of person may be invited into the lifeboat before another:

#### TRADITIONAL PRIORITY OF JEWISH LIVES TO BE SAVED<sup>189</sup>

##### MOST WORTHY OF PRESERVATION

The righteous

Rabbis

Teachers

Leaders (sometimes includes rich people)

Fathers

Mothers

Virgins

Family members

Friends

“Defiled” women (deflowered, promiscuous, harlots)

Criminals and outsiders

##### MOST EXPENDABLE

"There were circumstances when decisions just had to be made, where preferences had to be shown for one life over another life. But, in truth, the life to be sacrificed was never expendable in the view of the rabbis."<sup>190</sup>

Meanwhile, the Nazis imposed their own hierarchy of desirability, which seemed to run something like this:

### NAZI PRIORITY OF JEWISH LIVES TO BE SAVED IN OCCUPIED EASTERN EUROPE (1939-45)<sup>191</sup>

#### 1. LEAST EXPENDABLE

These people might hope to live and prosper:

*"Folk Comrades"*

Ethnic Germans

Aryans

#### 2. NOT IMMEDIATELY EXPENDABLE

They might survive as serfs if they were lucky:<sup>192</sup>

*Indigenous Slavs*

Productive workers

Collaborators (e.g., foresters who reported on Partisan groups)<sup>193</sup>

"The masses"

#### 3. EXPENDABLE AS EXPEDIENT

They would all be destroyed sooner or later:

Criminals, leaders and intellectuals

Jews: "productive elements;" rich people who paid bribes; productive laborers and collaborationist officials; families of the same; employees of social and health services; freelance collaborators and "businessmen;" World War I veterans, especially those with medals

#### 4. IMMEDIATELY EXPENDABLE

To be liquidated as soon as possible:

"Unproductive elements"

"Harmful elements"

"Outsiders"

Unemployed Jews from other nations

Less productive workers

Nonworking people  
 Welfare recipients  
 Sick, elderly, young children  
 Hostages

We find this brutal hierarchy recapitulated, on a simplified scale, in the extermination camps: First come whichever cohorts of productive male workers for whom there is space, then productive females as required, then the rest. Of course, as one eyewitness notes, even the luckiest ones at the top of the list “will not escape death, but first they must work.”<sup>194</sup>

But if, like most people in such situations, one simply refuses to believe that, then it may be possible to approach one's doom in dear deluded hope, sacrificing others to the Gentiles as needed, because *categorization can pretend to be specification*. “Never mind—they'll only take the old people.” Those are the ones they called for, so we can sacrifice them. Then maybe they won't call for anybody else. “Nobody will escape. This is Operation Old People... If there's to be an ‘Operation’ in the ghetto—they're the obvious ones to go. They know: their going spells life for those left behind in the ghetto, the younger ones, their children.”<sup>195</sup>

But it didn't. And now we know: Rabbi Sirkes's line of obedience, his “thus far and no more,” is not only moral<sup>196</sup> (Keitel and Ohlendorf should have followed it), it's expediently essential.

### SHOULD WE HAVE OBEYED COMPULSION?

The moral-expedient calculus of Emmanuel Ringelblum (1942)

“Most of the populace is set on resistance...<sup>197</sup> The resettlement should never have been permitted. We should have run out into the street, have set fire to everything in sight, have torn down the walls, and escaped to the Other Side. The Germans would have taken their revenge. It would have cost tens of thousands of lives, but not 300,000.<sup>198</sup> Now we are ashamed of ourselves, disgraced in our own eyes...”

SOURCE: RINGELBLUM, P. 326; ENTRY FOR NOVEMBER (?) 1942.

It was this realization which led Adam Czerniakow, the first chief of the Warsaw Judenrat, to poison himself.

Rabbi Sirkes's calculus was resurrected: No more Shamashes or pocketbooks ought to be handed over. Thus the Warsaw Ghetto uprising.<sup>199</sup>

Emmanuel Ringelblum joined the resistance. On March 7, 1944, an underground bunker containing thirty-eight people was discovered. The Germans executed them all in the ruins of the Ghetto. Among them were Ringelblum, his wife

and his twelve-year-old son.

The Jewish people, however, survived, and founded the state of Israel.

#### LOYALTY-VIOLENCE IS JUSTIFIED:

1. As such, never. It must be otherwise justified.

#### COMPULSION-VIOLENCE IS JUSTIFIED:

1. By true necessity, individual or group salvation, and practicality.
  - a. Violence by command and without explanation is justified only by imminence. In the case of an order which seems to be evil and cruel, whoever carries out such orders ought to use his reason and his conscience to see whether imminence can possibly apply. If not, he must refuse to carry out the orders. If so, he may carry them out, and the command which issued the orders without explanation becomes morally liable for the acts consequently committed.
2. When only the sacrifice of the part will save the whole.

#### LOYALTY-VIOLENCE IS UNJUSTIFIED:

1. When its justification is loyalty alone.
2. When the loyalty derives its only justification from commonality between leader and led.
3. When the loyalty is defined only as a synonym for achieving the political end.

#### COMPULSION-VIOLENCE IS UNJUSTIFIED:

1. When one cannot demonstrate that one would have been severely punished for not committing it.
2. When what gets defined as compulsion is in fact only a requirement for achieving an end.
3. When the compulsion derives from the moral agent himself.

18.  
 CONTINUUM OF VIOLENCE  
 BY COMMAND

NOTE: The question "when is violent loyalty justified?" or "when is violence by command justified?" has already been answered in the continuum for defense of authority.<sup>200</sup>

WHEN IS SELF-PRESERVATION JUSTIFIED?

A. Bakunin

"Every man appears to us at every moment of his life as a being who is absolutely determined and incapable of breaking or even interrupting the universal flow of life, and consequently is divested of all juridical responsibility."<sup>201</sup>

B. Eichmann (1960)

"At that time I belonged to the category of people who form no opinions of their own."<sup>202</sup>

C. General X., Khmer Rouge (1996)

"In that time we didn't know; if they want us to do bad we do bad; if they want us to do good we do good, because we wait for they give the order and we never have any idea at all."<sup>203</sup>

D. Loyalty oath of Gangra municipality (3 B.C.)

"By Zeus, Earth, Sun, all the gods and goddesses, and by Augustus himself, I swear that I will be loyal to Caesar Augustus, to his children and to their descendants all the time of my life, in word and deed and thought, considering their friends my friends and considering their enemies my enemies; that I will spare neither my body nor my soul nor my life nor my children for their interests."<sup>204</sup>

E. *Tale of the Heike* (ca. 1330)

"Even though a parent or child is struck and killed, the Bando warrior rides over the body and continues fighting."<sup>205</sup>

F. Nguyen Van Thich, Viet Cong assassin (ca. 1970)

"After that first killing I had nightmares, anxieties. Later I got used to it... I never had any regrets. I couldn't tell myself who was good or who was bad. Regardless of what a person might be

like, the order came from above and I carried it out. If I didn't, I would have been severely criticized and given a hard time."<sup>206</sup>

G. Hobbes (1651)

"Shall a private man Judge, when the question is of his own obedience?"<sup>207</sup>

H. Field Marshal Wilhelm Keitel (1946)

"To hold a man responsible without any command function—that is the most horrible injustice that there is in the world!"<sup>208</sup>

I. Napoleon

"Nothing is so important in war as an undivided command."<sup>209</sup>

"Caulaincourt, my aide-de-camp, was bound to obey the instructions for the mission [of kidnapping the Duc d'Enghien, whom Napoleon liquidated].<sup>210</sup> It was Ordener's duty to obey the order to pass the Rhine with 300 dragoons and to carry off the prince. It was the duty of the military commission to condemn him, if found guilty. Innocent or guilty, it was the duty of Ordener and Caulaincourt to obey."<sup>211</sup>

J. Panzer leader Heinz Guderian, after World War II (1952)

"An ideal General Staff Corps officer might be described as having the following qualities: sincerity of conviction, cleverness, modesty, self-effacement in favor of the common cause, and strong personal convictions combined with the ability tactfully to present these convictions to his commanding general. If his opinions were not accepted he must be sufficient master of himself loyally to carry out his commander's decisions."<sup>212</sup>

K. Field Marshal Erich von Manstein (1958)

"The soldier in the field is not in the pleasant position of a politician, who is always at liberty to climb off the bandwagon when things go wrong or the line taken by the Government does not suit him. The soldier has to fight where and when he is ordered."<sup>213</sup>

L. Archidamus, King of Sparta (432 B.C.)

"And we are wise, because we are educated with too little learning to despise the laws, and with too severe a self-control to disobey them."<sup>214</sup>

M. Theopompus, Spartan king (late eighth to early seventh century B.C.)

“When someone was saying that Sparta was preserved by her kings’ talent for command, he said: ‘No, rather by her citizens’ readiness to obey.’”<sup>215</sup>

N. The Plataeans, unsuccessfully pleading to the Spartans for their lives (427 B.C.)

“Besides, the faults that either of you may commit ... must be laid, not upon the followers, but on the chiefs that lead them astray.”<sup>216</sup>

O. Paussamigh Pemmeenauweet, Micmac chief, to Queen Victoria (petition received 1841)

“Your Indian Children love you, and will fight for you against all your enemies.”<sup>217</sup>

P. Mubarakshah (Persian, thirteenth century)

“You must not be in a hurry to kill prisoners, but if the king gives the order to kill a prisoner, you must shut his mouth before he is executed, because a desperate man may say anything.”<sup>218</sup>

Q. Lord Yoritomo of the Genji, to a condemned Heike prisoner

“It is far from my wish to regard the Heike as my personal enemies. I ask you to understand that I am simply carrying out the imperial order.”<sup>219</sup>

R. The keeper of Socrates’ condemned cell

“Socrates, ... at any rate I shall not have to find fault with you, as I do with others, for getting angry with me and cursing when I tell them to drink the poison—carrying out government orders.”<sup>220</sup> (Without irony Socrates responds by calling him “a charming person.”)

S. General Matthew B. Ridgway, U.S.A., commenting on the Nuremberg Trials

“To apprehend, arraign and try an individual for the wanton killing—murder, if you please—of prisoners of war, for example, is one thing. To do likewise to individuals who waged war in the uniform of their nation and under the orders or directives of their superiors, is another and quite different thing. I believe



the former is fully justified. I believe the latter is unjustified and repugnant to the code of enlightened governments."<sup>221</sup>

T. Hobbes (1651)

"If a man by the terrour of present death, be compelled to doe a fact against the Law, he is totally Excused; because no Law can oblige a man to abandon his own preservation. And supposing such a Law were obligatory; yet a man would reason thus, *If I doe it not, I die presently; if I doe it, I die afterwards; therefore by doing it, there is time of life gained;* Nature therefore compells him to the fact."<sup>222</sup>

U. Clausewitz

"There is nothing *in War* which is of *greater importance than obedience.*"<sup>223</sup>

V. Cambyses II, to the slayer of his brother (alleged)

"Prexaspes, you have carried out my orders like an honest man, and no blame attaches to you."<sup>224</sup>

W. Law officer, at army review hearing for U.S. staff sergeant Walter Griffen (1968)

"Now, the general rule is that the acts of a subordinate, done in good faith in compliance with his supposed duty or orders, are justifiable. This justification does not exist, however, when those acts are manifestly beyond the scope of his authority, or the order is such that a man of ordinary sense and understanding would know it to be illegal."<sup>225</sup>

X. George Konrád

"No one did dirty deeds unless forced to from on high. As if fear were an excuse for immorality!"<sup>226</sup>

Y. The prosecutor Lysias

"Then, according to your statement, when your opposition was useless, you claim credit for it; and yet since you arrested him and put him to death, do you not expect to pay the penalty to me and to this Court?"<sup>227</sup>

Z. Jacques-Bénigne Bossuet

"There is only one exception to the obedience due to the

prince, which is when his commands run contrary to God's."<sup>228</sup>

AA. U.N. Security Council Resolution (1993)

"The official position of any accused person, whether as Head of State or Government or as a responsible Government official, shall not relieve such a person of criminal responsibility [for war crimes] nor mitigate punishment."<sup>229</sup>

BB. Memoirs of a *conquistadore* (events of 1519)

[The Cholulan Indians, caught preparing to ambush Cortes, admit the deed, but argue that] "it was not their fault, since Montezuma's ambassadors had commanded them to do it, by order of their master. Then Cortes told them that the King's laws decreed such treachery should not go unpunished, and that they must die for their crime... we killed many of them, and the promises of their false idols were of no avail."<sup>230</sup>

CC. Claudius Caesar's freedmen, regarding the accused Mnester

"It mattered not whether he had sinned so greatly from choice or from compulsion."<sup>231</sup>

DD. Gandhi

"A civil resister never uses arms and hence he is harmless to a State that is at all willing to listen to the voice of public opinion. He is dangerous for an autocratic State, for he brings about its fall by engaging public opinion upon the matter for which he resists the State. Civil disobedience therefore becomes a sacred duty when the State has become lawless, or which is the same thing, corrupt. And a citizen that barterers with such a State shares its corruption or lawlessness."<sup>232</sup>

EE. The Ku Klux Klan

"While Law enforcement officials have a "JOB" to do, we, as Christians, have a Responsibility, and have taken an OATH to preserve Christian Civilization. May Almighty God grant that their "JOB" and our OATH never come into conflict; but should they ever, it must be understood that we can never yield our principles to anyone, regardless of his position."<sup>233</sup>

FF. "Junius Brutus" (Duplessis Mornay)

"It is then lawful for Israel to resist the king, who would over-

throw the law of God and abolish His church; and not only so, but also they ought to know that in neglecting to perform this duty, they make themselves culpable of the same crime, and shall bear the like punishment with their king."<sup>234</sup>

GG. Tsarina Alexandra Romanov, to her husband, Nicholas I (1917)  
 "If you are compelled to make concessions, then you are *under no conditions* obliged to fulfill them, because they have been extracted in an unworthy manner."<sup>235</sup>

HH. Bakunin

"All the history of ancient and modern States is no more than a series of revolting crimes; ... present and past kings and ministers of all times and all countries—statesmen, diplomats, bureaucrats, and warriors—if judged from the point of view of simple morality and human justice, deserve a thousand times the gallows or penal servitude."<sup>236</sup>

## WHEN IS COMMUNAL PRESERVATION JUSTIFIED?

A. Martin Luther (*ca.* 1520)

"In Meissen, Bavaria, in the Mark, and other places, the tyrants have issued an order that the New Testaments [in private possession] be delivered to the courts everywhere. In this case their subjects ought not deliver a page or a letter, at risk of their salvation. For whoever does so, delivers Christ into Herod's hands, since they act as murderers of Christ, like Herod. But if their houses are ordered searched and books or goods taken by force, they should suffer it to be done."<sup>237</sup>

B. Rabbi Akiba, on whether one thirsty man in a desert must share his water with another, so that both die: Sacrifice one for one.

"Your life takes precedence over his life."<sup>238</sup>

C. Moses Merin, Judenräte chief in Upper Silesia (1942): Sacrifice one person out of every four.

"Nobody will deny that, as a general, I have won a great victory. If I have lost only 25 percent, when I could have lost all, who can want better results?"<sup>239</sup>

D. Hitler, pontificating on venereal disease (1925): Sacrifice one person for a hundred.

"It is a half-measure to let incurably sick people steadily contaminate the remaining healthy ones. This is in keeping with the humanitarianism which, to avoid hurting one individual, lets a hundred others perish... the incurably sick will be pitilessly segregated... The passing pain of a century can and will redeem millenniums from sufferings."<sup>240</sup>

E. The North Carolina Indians (early eighteenth century, attributed): Sacrifice one person for any number.

"Which shews the Savages to be what they really are, (viz) a People that will save their own Men if they can, but if the Safety of all People lies at Stake, they will deliver up the most innocent Person living, and be so far from Concern, when they have made themselves easy thereby, that they will laugh at their Misfortunes, and never pity or think of them more."<sup>241</sup>

CHAPTER 25

# SADISM AND EXPEDIENCY

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*Right is that which serves the state.*

DR. WERNER BEST, GESTAPO CHIEF<sup>1</sup>

*Right will be in the arm.*

HESIOD<sup>2</sup>

*Everything is getting quiet and better, but people want to feel your hand.  
How long have they been saying to me, for whole years, the same thing:  
"Russia loves to feel the whip." That is their nature!*

TSARINA ALEXANDRA, TO HER HUSBAND (1916)<sup>3</sup>

**D**efine an end as one of Bakunin's shining "beautiful things,"<sup>4</sup> something to rise up for, which itself has already risen like the sun to cast proud luminescence on all. In relation to the end, *all* means are good or bad expedients. But what if the end itself be expediency? Trotsky shoots every tenth man for the sake, so he believes, of class revolution. But what if he'd shot them for the sake of his own aggrandizement? Caesar's war aims, we saw, dwell perilously close to this latter con-

dition. The man goes to war to defend his personal prestige, invoking the rights of a self magnified *by* itself into greater glory-deservingness than any other. At least Caesarism constitutes a forthright end, which may occasion violence but is not itself violent. Being alloyed to honor, it dares not entirely forsake honor's means.<sup>5</sup> Thus his clemency and occasional justice.

Unalloyed expediency, pure self-interest, wriggles itself into eminent imminece. In self-defense against my would-be murderer I'm imminently justified in lying, tricking, hurting or killing him, violating all his rights in order to save my own.<sup>6</sup> Pure expediency does the same,<sup>7</sup> with all the watchful cunning of Mao (and his North Vietnamese pupils)<sup>8</sup> letting "a thousand flowers bloom, a thousand schools contend," or the Spartans calling upon their helots to tell them who most deserves to be freed;<sup>9</sup> or the Romans summoning all their helot hostage-citizens to distribute a golden donative;<sup>10</sup> or Tiberius's assumed hesitancy to take power, so he'd learn who in the Senate was against him;<sup>11</sup> or the sower in Jesus's parable letting the weeds grow up with the good seed until harvest time—then, in all four examples, once the ripening has happened, and the master can tell good from bad, says Christ, "I will tell the reapers, Gather ye together first the tares, and bind them in bundles to burn them, but gather the wheat into my barn."<sup>12</sup> Who was wheat and who was chaff? Expediency coaxed them into revealing themselves.

Thucydides, from whose opus we could squeeze out an immense volume of such parables, and whose overriding bitterness derives its taste, as does gin's from juniper, from expediency's fruit, tells with his customary lack of comment how the Athenian general Paches followed the letter of the war's law. Amidst the ravaged vineyards and ruined olive groves of Greece, hoplites destroyed each other in their homelands and strongholds. Paches wanted to win.<sup>13</sup> So what if his victory bore a cruel stamp?

Paches invited Hippias, the general of the Arcadian mercenaries inside the fortification, to meet him for a discussion, promising that, if no agreement was reached, he would see that he got back again safe and sound to the fortification. Hippias therefore came out to meet Paches, who put him under arrest, though not in chains. He then made a sudden attack and took the fortification by surprise. He put to death all the Arcadian and foreign troops who were inside, and later, as he had promised, he brought Hippias back there, and as soon as he was inside, he had him seized and shot down with arrows.<sup>14</sup>

Expediency loves not only dishonesty, but cruelty, violence untrammelled by moderation because violence's end has not been trammelled. The rights of the victim-self, concerns with legitimacy, and whatever strictures against exploitative force local honor happens to enjoin, all beat against the expedient actor's windowpane like sad moths, unable to reach his evil light even for the vain purpose of immolating themselves. Hence the frequent pairing of expediency with sadism.

## “BUT WE’RE JUST SO BUSY PROCESSING”

We see a terracotta from Roman North Africa. A squat woman, nude but for a loincloth, lashed to a bucking bull, her hands tied behind her, throws back her head in anguish. A leopard has dashed up the bull’s neck and crouches on its hind legs, gripping her belly with its paws, savaging her throat and breasts. Ears laid back, it grins as it tears at her. In the foreground, the executioner huddles alertly behind his shield.<sup>15</sup> Thomas Wiedemann comments: “The emotions which induced someone to keep such a . . . model in his home are not ones that we can easily share, but they should not be dismissed as aberrant. It would have served as a powerful warning to any slave contemplating disobedience.”<sup>16</sup> In short, this is deterrence.<sup>17</sup> After all, expediency always has its reasons. That fact makes it difficult to isolate it from other ends. (For example, I have a goal. The goal may even be justified. Because my own interest is supreme to me, I’ll unjustifiably, expediently, carry out my justified goal.) When does expediency function as an unscrupulous means to an end (in which case the end may possibly be salvaged through repentance, atonement and substitution of methods), and when does the invoked end serve only as an excuse, like Field Marshal Keitel’s protestations of compulsion to justify self-serving criminality?<sup>18</sup>

Who can answer? —Perhaps the victims of expedient or routine bad treatment. If they’ve *suffered*, perhaps they’ve *thought*. In the midst of his prison anguish, whose sharpest pangs are nobly reserved not for himself but for his fellow convicts, Alexander Berkman writes: “Dullness fawns upon cruelty for advancement; with savage joy the shop foreman cracks his whip, for his meed of the gold transmuted blood.”<sup>19</sup> The link between sadism and expediency was never given more sorrowfully eloquent expression. “At the jail it’s not our duty to become personally involved,” explains a woman deputy sheriff in my era. “The women come in so upset. Some are crying. They think we’re so callous and have no human emotion. But we’re just so busy processing that we don’t even have time to get a drink of water half the time.”<sup>20</sup> In its tone of moral abdication this resembles Cicero’s matter-of-fact statement that under Roman judicial process “normally slaves are taken off straightaway to be tortured.”<sup>21</sup> Sadism and expediency both have in common Trotsky’s failing: the lack of an empathetic bridge.<sup>22</sup>

“The carnal nature of man violently rebels,” writes Martin Luther, “for it greatly delights in punishment, in boasting of his own righteousness, and in its neighbor’s shame and embarrassment at its unrighteousness.”<sup>23</sup> This is another link between sadism and expediency. *The joy I take in my own cruelty validates my ends.* This is why the Khmer Rouge had to “smash” people before they annihilated them: Let each prisoner provide his own justification for being punished. Should he refuse, that is a reflection on me, the torturer. In self-defense of my own righteousness I will thus be compelled to torture him all the harder.

## WHICH IS WHICH?

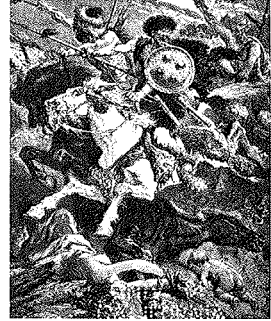
No wonder that strength so often despises weakness. Says the exalted to the abased: You are nothing to me. —Defense of class laughingly or yawningly draws blood, “with savage joy” or else “just so busy processing.” Regardless, the blood comes out. In Shalamov’s stories from the Russian Kolyma camps,<sup>24</sup> based on years of sad experience, we find that prisoners get assaulted in approximate proportion to the degree of body mass they’ve lost to overwork and starvation. Sadism, or simple expediency? Either way, the blood comes out! Criminals beat them for power-pleasure—or to rob them. Overseers beat them to express dissatisfaction with declining work performance. (“These bastards are working worse than before,” explains a knowing official to a greenhorn who permitted a work detail of goners to eat more and better food for once. “An extra dinner just gives them extra strength to fight the cold. Remember this: only the cold will squeeze work out of them.”)<sup>25</sup> Barbers beat them—why? There must be sadism involved. But can we distinguish it from expediency in such a case?<sup>26</sup> And does it matter? Just as expediency fosters sadism, sadism fosters expedient goals, which is why armies may harbor psychopaths, who, like Bluebeard’s exemplar, Gilles de Rais, “though frequently in the armed services during peacetime, as a consequence of disregarding rules and regulations, often demonstrated good initiative and effective combat aggression against the enemy.”<sup>27</sup> After all, soldiers kill, so it is not surprising that people who like to kill may become soldiers.<sup>28</sup> Expediency’s “goal” is a placeholder for any purpose which the aggressor cares to inscribe there.<sup>29</sup> Before the bar of judgment, the issue recedes, leaving the act alone like a naked stinking corpse. The blood comes out.

## “A MATTER FOR SATISFACTION”

Sadism—that is, active satisfaction rather than callous inertia when inflicting violence<sup>30</sup>—derives from the inherent titillation of the power relation. It is pleasure in mastery, just as masochism is pleasure in submission (“serving women was more important to me than sex itself,” writes one “SUB.MAN” who has devoted his life to being women’s unpaid slave).<sup>31</sup> Mastery, of course, often proves itself in the infliction of pain. If you agree to become consensually “mine,” then my mastery over you must be precarious; but if I inflict agonies on you, I can be sure of my power. Mastery deters, punishes, struts and gloats. A very widespread view, indeed almost universal, although we shrink to confess it forthrightly, Thucydides puts into the mouths of the victorious Thebans as they harangue their Spartan allies—successfully, as it turns out—to have almost all of the Plataean men liquidated after their surrender (the women and children to be sold as slaves): “Pity is felt for unmerited suffering; but when people suffer what they deserve, as in the case of the Plataeans, their fate, far from provoking pity, is a matter for satisfaction.”<sup>32</sup> KGB agents were



taught to think exactly the same way: "Agents should be devoted to the party and remember one thing at all times: that they are combating their most bitter enemies whom they should not pity."<sup>33</sup> They, too, no doubt, felt satisfaction contemplating the "enemies" they'd beaten with rubber hoses. When one makes this all's-right-with-the-world argument, then sadism becomes equated with expediency through the (often spurious) linkage of righteousness, like Paches justifying his treachery in the name of victory, or perhaps the U.S. deputy sheriff who was "just so busy processing" that for her, inflicting suffering (much of it probably morally justified for other reasons) became synonymous with simple duty: what we've just done was both good (moral) and necessary (expedient); therefore we ought to take pride in it. In practice, such equivalency is often established as a post hoc justification for sadistic satisfaction.



*The Huns in battle*

"Satisfaction" stands pale shadow to the relish expressed by Genghis Khan in the following gem: "Man's greatest good fortune is to chase and defeat his enemy, seize his total possessions, leave his married women weeping and wailing, ride his gelding [and] use the bodies of his women as a nightshirt and support."<sup>34</sup> A carjacker-rapist would be proud to follow such an example; here again the providential characterization of the reward ("man's greatest good fortune") sketches in subtle moral overtones: the gods are smiling upon the conquering violator. To their chorus, add the hideous gloating of Shalmaneser III (reigned 858-824 B.C.), who inscribes on his monolith what he did to the armies of twelve kings who rose up against him:

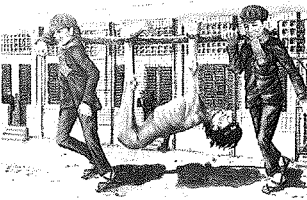
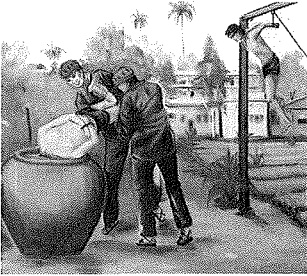
I slew fourteen thousand of their soldiers with the sword, descending upon them like Adad when he makes a rainstorm pour down. I spread their corpses, filling the entire plain with their widely scattered soldiers... I made their blood flow down... With their corpses I spanned the Orontes before there was a bridge.<sup>35</sup>

No doubt such acts are expedient, for pillage and murder, having deprived the violated of his resources for revenge, proportionately increase the victor's power; and the sexual use of the defeated one's women, by humiliating him, damages his status, hence the threat of his future leadership if he is still alive, or that of any escaped relatives if he is not. In short, institutionalized or political sadism may be described as the destruction of individual or collective honor—hence of command capability.<sup>36</sup>

## GOLDEN NECKLACES AND MAGNIFICENT TARGETS

Expound sufficiently on the practicality of such tactics, and the joy of rape can be almost forgotten or denied by the Nazi bureaucrats of this world or by their part-

ners who, all business, “just so busy processing,” might not rape at all, but kill for vocational expediency. I see them among the purchasers of the “low-cost, all weather fire and forget, terminally-guided anti-armor mortar munition for infantry use ... very effective defense against tanks, armored personnel carriers and other armored vehicles”<sup>37</sup>—which may well enjoy legitimate deployment, should the war it is used



*Khmer Rouge prison drawings, by survivor Vann Nath. (See “The Skulls on the Shelves.”)*

in be legitimate.<sup>38</sup> Does the button-pusher smile? Well, why not? His smile won’t hurt the enemy soldiers in their armored personnel carriers; they’re all dead!

A likeminded businessman was the Tsar’s self-styled humble servant, Erofei Khabarov, who in 1650 set out on an expedition to strengthen Russian authority in Siberia. After killing 661 natives in battle, he interrogated hostages (who were “partly old women and the rest young girls”) about the military situation farther up country. They told him what he wanted to know. “And I, Erofei, questioned the prisoners using hot irons, and they made the same statements, word for word, as they had before.”<sup>39</sup> No reason to assume any pleasure on the torturer’s part—why, it was a simple matter of verifying information; any prudent commander would have done the same... Did he rape

them, too? That might have made them talk.<sup>40</sup> “What is called Torture is distress of body devised for extracting truth.”<sup>41</sup> “The purpose of torturing is to get their responses,” explain the Khmer Rouge at Tuol Sleng prison.<sup>42</sup> “It’s not something we do for fun. We must hurt them so they respond quickly.”<sup>43</sup> But maybe fun played a part, too.

“The war was horrible,” says a Viet Cong nurse. “But it excited me too. I liked the adrenaline.”<sup>44</sup> A member of the British Machine Gun Corps in World War I recalls a battle in 1918 which was “probably the most thrilling in which organised machine gunners have ever participated” thanks to “the magnificent targets obtained.”<sup>45</sup> These killers get paid off in excitement, depersonalized carnage-views, congratulations, promotions and bonuses—I mean “career incentives.” Roman legionnaires may be let off the leash to rape and pillage at festival occasions of sadism against particular enemies; otherwise they’ll have to make do with rampart crowns, wall crowns and golden necklaces—hopefully from the Emperor’s hand.

Acts of violence justified or unjustified, purely self-defensive or aggressively cruel, become expedient if committed for the sake of an untipped spear or a silver standard. Honor “advances” the moral actors in life—perhaps even to the imperial throne, as proved by the careers of Aurelian, Probus, Carus, Diocletian, Maxinius; afterward, it makes for a proud memorial tablet.<sup>46</sup>

And if those acts remain unrewarded, well, easy enough to switch sides! Julius Caesar in his history of the Roman civil war tells how the enemy legionnaires of Corfinium, which he's besieging, learn that their commander means to slink away. "The best course, it seemed, was for them to look after themselves"—in other words, to defect to Caesar.<sup>47</sup> Why not? It was all expedient—no principles at stake! Maybe Rome will be worse off. "But we're just so busy processing"—and they'll reward us, too!

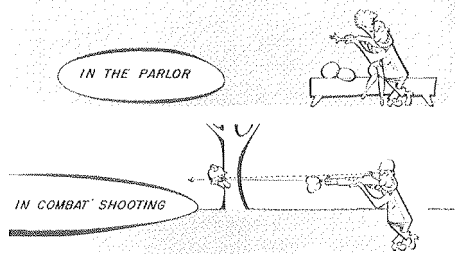
## SADISTIC AESTHETICS

**T**hrilling battles—magnificent targets... Some are ashamed to speak of the joy of war, perhaps because launching mortar-shells or dropping bombs on people who might or might not be behaving as the enemy is hardly something at which to rejoice. War becomes a spectator sport, "a fine sight," says Walt Whitman, watching a considerable procession of cavalry, "a pronouncedly warlike and gay show."<sup>48</sup> The Monk of Gall, born too late to actually see the event, nonetheless describes with sonorous pleasure how the approach of Charlemagne's armies made the "fields bristle as with ears of iron corn."<sup>49</sup> In my own century, a Hindu child watched from a safe distance Muslim houses being set afire in newly partitioned India and felt, as his neighbors did, "a gay mood," "a quality akin to the day of the kite-flying festival at the onset of spring."<sup>50</sup>

And judicial homicide—that always attracted the masses more than ballet! When the anarchist Severino Di Giovanni was being prepared for execution, the renowned actor José Gomez shouted, "Open up in the name of art!" He was determined to study the condemned man's last moments in order to further develop his histrionic skills, and got what he asked for.<sup>51</sup> The next day, Di Giovanni's confederate Paulino Scarfó was also lashed to the execution chair. After he had been shot, and the other prisoners had shrieked and rattled their bars, a reporter from the periodical *Critica* wrote:

The crowd dispersed and we saw for the first time that there were thousands present. Lots of cars streamed by: one, sleek and yellow, contained three women, unescorted. The one at the wheel said to her girlfriends ... "I think the howl that went up today was more impressive, don't you?"<sup>52</sup>

### THE SATISFACTION OF GOOD HOLDING



U.S. army manual (1954)

The woman was a good sadistic spectator, and expedient Gomez was “just so busy processing”: if he gained anything by witnessing Di Giovanni’s dying grimace, or the smoking holes in the man’s chest, he could pass that thing on to a crowd while dyingly-grimacing on a stage. Well, let them all watch, like Romans ogling the arena when Pompey set criminals to battling against eighteen enraged elephants.<sup>53</sup> Pliny says that the spectators pitied those trampled men.<sup>54</sup> Maybe some people laughed; some felt sorry for the elephants. Better that than secret executions walled off by official pretenses.<sup>55</sup>

### A PROCESSION OF HEADS



*Croatian Ustasha with head of Serbian Orthodox priest (1942)*

If you die from sickness, old age or accident, you die for nothing. But die violently, and you die for something, be it the self-interest of a murderer, or for a glorious cause, or—better yet—for José Gomez! A political corpse reifies both means and ends. The lynchpin of political aesthetics, in short, is didacticism: I desire to move hearts, through beauty, love, logical patterns, intimidation<sup>56</sup> or outright fear, to accept my most violent acts. This is why my leaders and agitators invoke your death, creating that empathetic bridge between themselves and their hoped-for supporters, in order to demolish any empathetic bridge between those supporters and the leaders’ enemy.

But aesthetics is something more than directed propaganda. In the time of the Heike, war was more of a stylized contest, not necessarily between equals, but at least among combatants. (Widows, orphans and bereaved parents, of course, must have wept as always.) One Genji general insisted that “at the moment of victory, the greatest joy comes from having made relentless assaults.”<sup>57</sup> In his day, battlefields must have resembled rainbows. A father might wear armor laced with red leather over a blue robe, while his son’s armor might be laced with blue and white patterned leather over a robe decorated with water plantains; their standard-bearer’s armor might be laced with yellow leather over a blue robe; and all of them, of course, would have had horses of varying hues.<sup>58</sup> Warfare itself remained much more than now a matter of individual expression, so that, as we’ve seen, warriors might choose to ride together against literally suicidal odds, in order to obtain postmortem glory.<sup>59</sup> A dead warrior could also provide glory to his killer, and the *Tale* describes how after the battle of Ichino-tani the Genji repeatedly requested permission of the cloistered emperor to parade through the capital the two thousand heads of Heike fighters which they had taken.<sup>60</sup> At first, on the advice of his counselors, he refused, not wishing to mar the high status which had once been conferred upon the Heike, but the Genji insist-

ed, saying, "If we are not allowed to parade them, how shall we be able to fight courageously against the rest of the Heike?"<sup>61</sup> Moreover, they might have added, how shall we be able to gain our sadistic-expedient rewards?—for after an inspection of these gruesome objects, each warrior-murderer received a bounty proportionate to the status of the head he'd harvested.<sup>62</sup> This parade of decapitated heads, in short, would be equivalent in purpose to any other processional event staged by a military in time of war, from the barefoot, widely strutting troops of Haile Selassie's army, dark-cinched at the waist, rifles with fixed bayonets angling high above their heads, marching out of the capital in their doomed campaign against Mussolini's tanks and planes,<sup>63</sup> to the pie-shaped constellations of soldiers at Boulogne, to the tune of eighty thousand men, presenting arms to Napoleon on his birthday and receiving the Legion of Honor, regimental standards raised, while in the harbor lay the French fleet, and beyond it the hungry English ships.<sup>64</sup>—namely, to inspire supporters, to intimidate waverers and opponents and to show itself to itself as courageous, puissant, immortal.<sup>65</sup> A military parade, being a work of art of sorts, follows aesthetic canons, and the heads of the slaughtered Heike were the artists' main materials in that grim oeuvre.<sup>66</sup>

It is easy for those opposed to the use of violence to de-aestheticize it, as that foe of capital punishment Dickens did upon seeing a single head fall during an execution in Italy: "It was an ugly, filthy, careless, sickening spectacle; meaning nothing but butchery, beyond the momentary interest, to the one wretched actor."<sup>67</sup>

And it is hard to imagine that that procession of two thousand decomposing Heike heads, the features of many of which had been known to the spectators in life, could have been in the least beautiful or pleasing,<sup>68</sup> but art may be malevolent, yes? Hence that favorite subject of old European painting, Judith holding up the head of the assassinated Holofernes. Hence the tale of the decapitated bride with her didactic placard: "This is what happens to Vietnamese people who go around with the enemy."<sup>69</sup> King Xerxes, his Persian forces victorious at Thermopylae, similarly displayed the head of Leonidas, king of Sparta, who had delayed and obstructed him with stubborn brav-

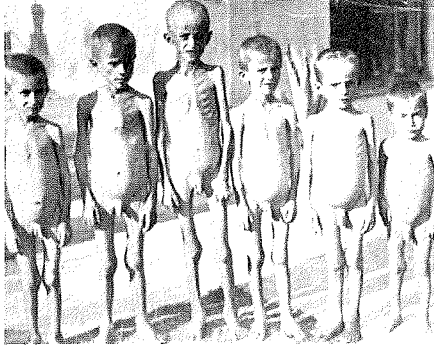


*Serbian heads in Mujahedin base, N. Bosnia (1993). The true provenance of this photo is controversial.*



*Ustasha allegedly sawed off this Serbian man's head.*

ery.<sup>70</sup> When Pompey is assassinated in Egypt at the end of the Roman Civil War, Lucan tells us that “the monstrous tyrant” who ordered his decapitation “wants proof of his wickedness to survive,” in order to show it off to the victorious Julius Caesar. “Then by their hideous arts / the fluid is taken from the head, the brain removed / and skin dried out, and rotten moisture flowed away from deep / within, and the features were solidified by drugs instilled.”<sup>71</sup>



*Serbian children saved from an Ustasba camp*

Note that the key phrase of Dickens’s comment does not apply to the Genji procession: “Ugly,” “filthy,” “sickening” it undoubtedly was; cruel and indecent, too, yes—deliberately degrading to the Heike, in fact (here was the intimidation of waverers and opponents); “careless,” probably not; but, unlike the Paris catacombs, *meaningless* it certainly wasn’t; the Genji were out to make a point or two, and I am sure that they succeeded.<sup>72</sup>

## TORTURE

“**A**t about 10 p.m. we went in to get ready to carry out the torture,” writes a Khmer Rouge interrogator in the logbook. “He started to confess by asking us to clarify what he was to report. We clarified as follows: ‘Please write a systematic account of your treasonous activities from beginning to end.’”<sup>73</sup>

“The hardest thing is torture,” says one Japanese victim of it. “You can’t really explain it with words. I can’t describe it.”<sup>74</sup> Certainly it has been mis-described, ignorantly, sentimentally and maliciously.<sup>75</sup> Call it a means to any one or more of the following eight ends:

### REASONS FOR COMMITTING TORTURE

1. To uncover the truth (as in a Roman judicial case).
2. To deter (to “spread a climate of terror,” as one member of Amnesty International sees the purpose of most late-twentieth-century torture).<sup>76</sup>
3. To inflict retribution (as Hitler applied it to his would-be assassins in 1944).<sup>77</sup>
4. To cleanse a criminal of infamy by means of suffering (a Catholic notion akin to that of Purgatory; rejected by the eighteenth century theorist Beccaria).<sup>78</sup>
5. For rituo-religious reasons (as among the seventeenth century Iroquoians, who dedicated their victim to the sun and believed that they would have evil fortune in their next war if he could not be compelled to cry out in agony).<sup>79</sup>
6. To control and direct behavior (as when the French, having tortured an Algerian

they discovered was innocent, decided to “give him a bit more, so that when he gets out he’ll keep quiet.”<sup>80</sup>

7. To break the will (as was the case in Pol Pot’s Cambodia).

—ignoring, of course, this final purpose, which we’ll get to later:

8. For its own sake (pure power-lust or sexual sadism).

We scarcely need to bother with the justifications for such measures, and instead will merely describe them.

### TORTURE AS TRUTH-SEEKING

The torturer has the right to break the bodies of his fellow human beings, he often says, because as a loyal instrument of authority’s compulsion he must employ *his* red-hot instruments in the cool process of determining the truth. Torture thus remains reassuringly limited, moderated and modulated into justified legality. We find the *ancien regime* in France allowing it as a means of producing evidence only in capital cases,<sup>81</sup> and Justian’s *Digest* cautions: “You should not place confidence in torture applied to [a person’s] enemies, because they readily tell lies”<sup>82</sup>—an aphorism certainly disregarded both by the Khmer Rouge and by men who “prepared” the victims of Stalin’s show trials. Under the sixteenth-century code of Charles V, a woman suspected of infanticide must first be examined by a midwife, and only then, *if* her body gives evidence of parturition and *if* she still won’t confess, can she be legally tortured.<sup>83</sup> In the seventeenth-century *tractatus* of Sebastian Guazzini, we find the following hedges against malignity: “A deaf-mute from birth cannot be tortured, although opinion and practice are at variance on this point. A pregnant woman and a woman giving suck to her children cannot be tortured.” And my favorite: “Torture must be suspended as soon as the victim falls into a faint under its effects, and unless the judge, in the act of such suspension, is careful to reserve a right of renewing torture, the right lapses.”<sup>84</sup>

Under the much older Visigothic Code, the information-gatherers, seeking to eliminate second-order variables, place the accused in isolation, and—in an exact inversion of the later British common law of habeas corpus—in ignorance of the charges against him. That way, if the confession extorted from him by pain matches the accusation, the coincidence will imply guilt. If it doesn’t, then the accuser becomes the slave of the vindicated accused, or, at his discretion, pays him reparations for burns and unstrung joints and sinews.<sup>85</sup>

One of Constantine’s edicts arranges matters still more symmetrically: he whose accusation of another’s treason fails to be substantiated (presumably by torture) will himself be tortured.<sup>86</sup>

A rescript of the Emperor Hadrian shines with kindred benevolence:

THE MORAL CALCULUS OF HADRIAN  
(EMPEROR A.D. 117-38)

When is torture justified?

“Recourse should only be had to the infliction of pain on slaves when the criminal is [already] suspect, and is brought so close to being proved [guilty] by other evidence that the confessions of his slaves appear to be the only thing lacking.”

SOURCE: EDWARD PETERS, P. 215; *DIGEST OF JUSTINIAN*, BOOK 48, TITLE 18, I.1.

In other words, the slave will be interrogated through torture, not punitively, but experimentally, as if he were a certain kind of ore from which fire could extract the truth, he being of no account as a human being. For note this: *The criminal is assumed to be not the slave, but the slave's owner.* But the owner's class will not permit him to be tortured—except in extreme cases:<sup>87</sup> first torture this accused woman's slaves, says Emperor Antoninus in A.D. 217, then “the woman herself may afterwards be put to the question, for it is not inhuman for her to be tortured who destroyed her husband by poison.”<sup>88</sup> (In other words, she is presumed guilty, but Antoninus desires to “make sure” first with bona fide slave information.)

Advances in the scientific method allow us to detect the logical fallacies inherent in most such inquiries: the isolated accused will surely rack his brains before they rack his body, and he may come up with a pretty good guess of the charge against him; the tortured one will speak not the truth but what the torturer wants to hear; fear of torture will motivate the arraigned one to avoid being tortured, etc. Moreover, in rare instances the torturer may meet with a Joan of Arc, who declares: “Truly, though you were to have my limbs torn off and send the soul out of my body, I should not say otherwise; and if I did tell you otherwise, I should always thereafter say that you had made me speak so by force.”<sup>89</sup> Hence the torturer may prefer to force out the desired assertion, then immediately liquidate Joan to prevent her from recanting. In the real Joan's case, of course, intimidation was employed precisely to force her into a recantation afterward, so that she could be declared a lapsed heretic and burned. Hence the second function of torture:

TORTURE AS DETERRENCE, RETRIBUTION AND REVENGE

During the African campaign of the Roman Civil War, Scipio, whose troops have captured some of Caesar's recruits and veteran centurions, offers “to grant you your lives and pay you”—which means to enlist them on his side. A grizzled old centurion offers him a reply of dazzling defiance. Scipio has him executed at once, and commands that the other centurions be tortured to death. (The recruits, not being considered culpable, are spared, dispersed and enlisted.)<sup>90</sup> Did it deter anyone? We



don't know.<sup>91</sup> We might equally put it in the next category:

### TORTURE AS THE EXPRESSION OF ANGER

Sadism appears on both sides of the power relation, as an act of desperate violence akin to retaliation, but blind to its consequences—the angry bloodlust of the soon-to-be defeated, or the vindictive fury of the victor.<sup>92</sup> Thus Lucretius writes in his didactic poem *On the Nature of Things* about warriors who bring in elephants, lionesses and bulls, which become crazed by blood and do harm to friend and foe. “But men chose thus to act not so much in any hope of victory, as from a wish to give the enemy something to rue at the cost of their own lives.”<sup>93</sup> “Molotov almost embraced Kardelj [Tito's second in command] in Paris after the shooting down of two American planes in Yugoslavia, though he also cautioned him against shooting down a third.”<sup>94</sup> Castro in his patriotic revolutionary fervor or fury exclaims that the American Green Berets will be “perfectly useless” when they try to conduct counter-insurgency operations against Communist guerrillas in Latin America. “Their fate—like that of the mercenaries in Viet Nam—will be to die like insects.” The transcript notes: “(APPLAUSE.)”<sup>95</sup>

When the Nazis machine-gunned seventy thousand people in Babi Yar ravine, they first made their victims strip and made them run a gauntlet of beatings. One survivor thought that “the Germans ... seemed to be drunk with fury in a sort of sadistic rage.” (He then continues with an expedient explanation: “All this was obviously being done so that the great mass of people should not come to their senses and try to fight back or escape.”)<sup>96</sup>

Seneca devotes one of his essays to deprecating anger, that “most inhuman lust for weapons, blood and punishment, giving no thought to itself if only it can hurt another.”<sup>97</sup> Anger sometimes revels in the agony of beings still weaker than it, like the starving Ik tribe, who deserve to be memorialized here in another<sup>98</sup> of their anthropologist's hideous anecdotes:

men would watch a child with eager anticipation as it crawled toward the fire, then burst into gay and happy laughter as it plunged a skinny hand into the coals. Such times were the few times when parental affection showed itself; a mother would glow with pleasure to hear such joy occasioned by her offspring, and pull it tenderly out of the fire.<sup>99</sup>

Hence outright torture. During his imprisonment by the Turks, Vlad the Impaler of Rumania occupied himself by crucifying insects.<sup>100</sup> And consider this conversation between the psychotic Prince Sado and his father in 1758, as recounted in the memoirs of Lady Hyegyong:

In his replies that day the Prince said, “When anger grips me, I cannot contain

myself. Only after I kill something—a person, perhaps an animal, even a chicken—can I calm down.”

“Why is that so?” His Majesty asked.

“Because I am deeply hurt.”

“Why are you so hurt?”

“I am sad that Your Majesty does not love me and terrified when you criticize me. All this turns to anger.”<sup>101</sup>

## TORTURE AS PLEASURE

A Muslim journalist in a Serbian-run concentration camp describes such acts of torture as “a guard firing into the back of a defenseless man’s head and forcing every witness to applaud.”<sup>102</sup> Here torture is “for fun,” not for information—to entertain one’s fellow guards, to express anger and administer retribution for non-existent



*Germans cutting off a Hasidic Jew's beard (Warsaw Ghetto)*

crimes, above all to intimidate into subhumanhood the people *a priori* classed as subhumans. When Emperor Constantine, sitting in the amphitheater, commanded that captured barbarian princes be thrown to wild beasts,<sup>103</sup> he may well have been pleased by the shrieks of those gnawed human beings: by becoming tormented flesh, the princes resigned their royal dignity, to the greater luster of his. But maybe he enjoyed it, too.

A pathologist with considerable experience of child abuse cases writes that “although bed-wetting and excessive crying were the most common explanations for the trauma, one group of parents acknowledged pleasure at inflicting bodily harm on their offspring,” including a mother who “acknowledged ritualistic orgies wherein she beat the child to a point of semiconsciousness on three occasions following abandonment by her husband.”<sup>104</sup>

## TORTURE AS POWER

A friend of mine who was hideously tortured in an Algerian jail said that the worst part of it was that every now and then the torturers would approach him privately and say, in effect, “Don’t blame us. It’s nothing personal. We’re human beings just like you.” Their goal was to hurt him, and they expected him to absolve them for it.<sup>105</sup>

Into my head came the tired old utilitarian scenario of the torturer: One man has planted a bomb which will soon kill many innocent people. He won’t talk. (The Theodosian Code, issued in A.D. 437, informs us that torture of brigands can occur even during holy days, “since pardon of the Highest Divinity is very easily hoped for in regard to such action, by which the safety and welfare of many are

obtained.”)<sup>106</sup> And so I wrote my friend a letter and asked him *When, if ever, is torture justified?*

### THE MORAL CALCULUS OF MY FRIEND B. (1997)

When is torture justified?

“Concerning possible excuses for the use of torture, I find it difficult to give you a straight answer, perhaps because of my first hand experience. But I will try.

I remember the first interrogation, when the Chief of the Judiciary Police (a group above control) struck me so hard in the face that I fell backwards together with my chain. He then said: ‘Who am I?’ (rather menacingly) and I answered (still on the floor): ‘You just want me to say whatever you wish.’ He answered: ‘Not whatever I wish.’ And I was taken away, later to be submitted to the hose and bathtub.

This chief was among the best: he never excused himself (like others, whom I accordingly despised); he was known for having been tortured by the French, who cut his penis off but left his balls. This must predispose you, very strongly, to what Pavlov called ‘conflicting stimuli.’

But what is interesting in this little scene is his ‘who am I,’ possibly to be read as ‘do you know who I am,’ or, better still, ‘you should know who I am,’ which I probably (in spite of my somewhat troubled condition) understood sufficiently well in order to reply in such an oblique way.

What is apparent here is that torture is a way of formulating a demand: access to the transparency of the Other. This happens often; just think of what consenting adults can do to each other in the name of pain (or pleasure). But violence can demand many things: submission, conversion (both do not [illegible] the annihilation of the Other), comprehension, or even oblivion (the reverse of comprehension, or the same thing by other means).

As to the water treatment (which cost me most of my teeth, among other things) they behaved more like butchers than sadists, I think (and there is a line to be drawn somewhere). They did kill people that way, I’m sure, because the space where I was confined (a room, actually, in a rather nice villa in the suburbs) was next to the bathroom. I was, of course, always upset, which can make you a bad, or a good, observer.

When I surfaced (in several ways) and the Swedish consul came to see me, he asked whether I had been well treated, whether I got

sufficient food, whether I was allowed to bath[e]... Even without witnesses, I would just have answered 'yes,' as I did. Certain kinds of innocence are as close to comedy as they are to being guilty.

One night, they took some of us (perhaps six or seven) out in the garden, had us stand facing a wall, and staged a mock execution. This was terror, to make us panic, maybe talk. I had nothing to say, because they were mainly after something I didn't know. Terror doesn't need [?] obedience, but generates total uncertainty; it aims less at limiting freedom than at destroying it."

SOURCE: LETTER TO AUTHOR, DECEMBER 5, 1997.

As you see, my friend did not answer the question. For him, the victim, torture is not and can never be justified.

And for me? All I can muster in any hypothetical justification of torture is that old saw, *imminent defense*.<sup>107</sup> Would I torture a certain terrorist to gain the information to save the city from his bomb? Probably. If "ordinary" torture failed, would I apply sadistic measures? Probably. Would I torture a suspected terrorist to determine whether he was in fact a terrorist? Not at present. And if terrorist threats against my homeland became so ubiquitous and imminent as to alter the preconditions for imminent defense? Maybe. What is imminence? What is defense? The hundreds and hundreds of pages devoted to justifications for violence show how slippery those two quantities can be.

Under most practical circumstances, I agree with B.

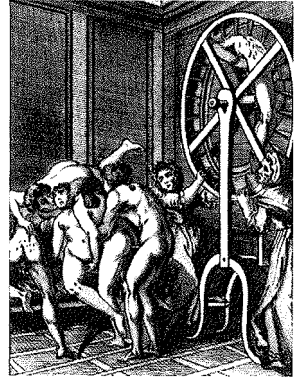
## PERIANDER'S CORNFIELD

And now for Sade again—not Sade the prisoner-victim, but Sade the fantasist of evil, masturbatory dreamer of nonconsensual violence, which after him they called *sadistic*. "Sade's primary figure of pleasure," explains one biographer, "was the coincidence of heterosexual sodomy with passive penetration (or the endurance of pain), wherein a single body became the locus of contrary perversions."<sup>108</sup> —"The more exalted the man, the more refined his pleasures," Mishima has one of his characters say in reference to Sade. "He derives his greatest pleasure from admiring naked women through the arabesques traced by his ancestors' blood on their armor, the blood-rust that can't be polished away."<sup>109</sup> —Both of these summations fall short, getting at the piquancy, to be sure,<sup>110</sup> but avoiding the gleeful malignancy of Sade's art.<sup>111</sup> "In spite of the aberrant, unimaginable horrors it depicts, whoever reads it becomes 'sensually irritated,' and that is where things start to get intolerable."<sup>112</sup> Thus the critic Annie Le Brun.

Enter, then, the realm of sadism *beyond* expediency! "No one is admitted into

this place except slaves and victims,"<sup>113</sup> explains a father who, among other murders, sodomizes his daughter to death. "And the wicked man, pressing his face to that of his unhappy daughter, dares pluck hideous kisses from features twisted by death and reflecting, instead of the graces which used to play there before, only the convulsions of pain ... only the contortions of despair."<sup>114</sup>

Thus Sade with his sexual kingdom of semi-monotonous set-pieces,<sup>115</sup> his dungeons, torture-rooms offering a fine view of the sea, but always (like Sade himself, Sade the prisoner)<sup>116</sup> walled off from the world by door after door, his victims invariably as obedient as wax mannikins; they plead but never rebel. Their unvarying compliance used to exasperate me, until I realized what an accurate exemplar Sade actually is of authority carried to its limits, as in the army or in a prison, where one class has the power of life and death over another—in Sade's realm, inconspicuousness is the wisest policy. ("I need a volunteer for a dangerous mission behind enemy lines," says the sergeant. Volunteer, and you probably won't get home. Try to run away, and you probably won't get home, either—what else does the hangman have rope for?) *Virtue and vice will be equally punished*, for they are extraordinary, and anything extraordinary must be lopped off. A Japanese neighborhood block leader during World War II "pleaded with them not to excel. 'If you are best, we'll have to go all over and show ourselves as examples,' I said... 'maybe third from the bottom would be safest.'"<sup>117</sup> What would have happened to those neighborhood wives had they had to show themselves? Maybe nothing; maybe they would merely have gotten tired having to demonstrate the excellence of their compliances; maybe they would have become the pawns of some propaganda-god who might magically waft them into a danger-zone to perform acts of moral uplift—certainly nothing good would have come of it.



*Nonconsensual sadism  
fantasized by Sade (1797)*

Herodotus, as usual pushing the point further, tells how the Corinthian despot Periander, being instructed by a villain who lops off all the tallest ears of corn in a cornfield, undertakes "the murder of all the people in the city who were of outstanding influence or ability."<sup>118</sup> One only has to recall Stalin's purges of the ablest elements of Party and army in the mid-1930s to free Herodotus, in this instance at least, of the charge of baseless myth-making. Defiance is a crime; it impedes authority's desires—eliminate the criminal! As for helpfulness or obsequiousness, God forbid! Authority does not want to be indebted to anyone, or to establish any relationship except owner and thing; voluntarism implies humanness—the very thing, as we saw in our glance at the ethics of war, that made Antoine de Saint-Exupéry so dangerous. Better that you shut up, please. Hence this eyewitness description of Ravensbrück concentration camp: "A thousand women in striped dresses, all wear-

ing the same white headdress in exactly the same way, showing just the same amount of hair."<sup>119</sup> This is Periander's cornfield. One survivor of Auschwitz describes in a short story how, exhausted by the hot work and harried by the whips of the S.S., he unloads trainloads of people all destined for immediate death (most for the gas chambers, but the weak, in yet another coincidence between expediency and the most fiendish wet dreams of Sade, to be burned alive upon a pyre of corpses). He rushes on and on, helping in his small way to send these people to their end, and finally cries out: "I am furious, simply furious with these people—furious because I must be here because of them. I feel no pity... Damn them all! I could throw myself at them, beat them with my fists." His friend tells him that it's quite natural, that "the easiest way to relieve your hate is to turn against someone weaker."<sup>120</sup> And so he does authority's work, equally enraged by the feeble victims who slow him down and by the quiet, stately woman who looks into his eyes, expresses pity for him and goes on to her death.<sup>121</sup> In another story he describes what it's like to visit the women's block. The women have nothing, not even underwear or spoons. At first he and the other men give them everything they have on them. "But gradually we began coming with empty pockets, and gave them nothing."<sup>122</sup>

In *The One Hundred and Twenty Days of Sodom*, a libertine sneers at his female sexual slaves, whose fate it will be to be humiliated, outraged, tortured, mutilated and murdered: "What, furthermore, might you offer that we do not know by heart already? what will you tender us that we shall not grind beneath our heels, often at the very moment delirium transports us?"<sup>123</sup> —Either the slaves can truly say nothing that he does not know by heart, in which case, indeed, he has little desire to hear them; or else they'll surprise him, which would be worse, since any such occurrence would interrupt that delirium of his. Their communication must therefore remain wordless, though by no means voiceless: they'll scream with fear, grief and above all terrible physical pain, while he screams with lust and satisfied rage.

Strangely enough, it is just this conception which Jean-Paul Sartre employs in his brilliant portrait of the anti-Semite:

However small his stature, he takes every precaution to make it smaller, lest he stand out from the herd and find himself face to face with himself. He has made himself an anti-Semite because that is something one cannot be alone.<sup>124</sup>

If the equation in fact holds, then the victim is to the despot as the victimizer is to himself. And perhaps that is so. Borowski's angry unloader of trains becomes this sort, anxious to send his fellow human beings to death at the standard frenzied tempo of the camp.

"WE MUST DINE WITH HER TONIGHT,  
AND EVEN FAWN ON HER"

What did Borowski know? Survivor of the camps, suicide-to-be (by gas, no less), he tells how the S.S. women in their leather boots sometimes come to the women's block of Auschwitz and ask with pretended solicitousness, even tenderness, if anyone needs to see a doctor or is pregnant. At the hospital they'll get milk and white bread, they say. The pregnant women rush forward, and are led off into the little wood behind which the gas chamber lurks.<sup>125</sup> Half a millennium earlier, Gilles de Rais, after hanging his child-victims from hooks, "would take them down and pretend to comfort them," according to the court documents, "assuring them that he wished them no harm, but quite the reverse; that he wanted to play with them, and in this manner he prevented them from crying out,"<sup>126</sup> after which it was time to rape them, slit their throats, dismember them, not necessarily in that order. But perhaps the assurances were not just expediency but part of the ecstasy. Sade's protagonists, who remind me of the worst of the Roman Emperors,<sup>127</sup> are continually soothing with promises, cunnilingus and all the other treats of affection their boon friends whom they've just resolved to turn upon. "Could I make my escape so long as I was under a husband's thumb?" muses the vicious Juliette in her eponymous novel, part of a greater tract, *La Nouvelle Justine* (1797), which takes up four thousand pages. Time to poison him! "Meditating it moistened my cunt." She attends his deathbed—all part of the game.<sup>128</sup>

But that's mere fiction. True story: In America two centuries later, a man dies vomiting, in terrible pain. His wife has sprinkled arsenic on his tuna fish sandwiches, "only in fun," she says. Only in fun! Later she explains she wanted to make him too sick to go to church choir rehearsals. On his deathbed, the husband had been "emphatic in stating that he and his wife were very close, and that he was certain that she would never do anything to harm him."<sup>129</sup> Did hearing that moisten her cunt? —A woman sprinkles rat poison (arsenic trioxide) on her husband's ham sandwiches and amuses herself in making him sick for a month or so. But only half the rat poison is used up. Finally she empties everything left in the can onto that day's lunch. Didn't he taste anything? Maybe ham salad is a less conspicuous vehicle than wine, which another woman uses to kill her husband; she explains to her daughters that wine turns green when it gets old. The man vomits green, and quickly dies.<sup>130</sup> As for the eater of ham sandwiches, he also strikes the jackpot: vomiting, diarrhea, shock, death, straw-colored fluid in the pleural cavities. The wife successfully argues that she "only" wanted to make him sick, not kill him, and gets life instead of death. The forensic pathologist writes:

It is of human as well as of medicolegal interest that the wife, who was responsible for her husband's illness and death, took him to the doctor and to the hospitals

where he sought futilely to get relief. Did she really want him to get well? Was she sufficiently cunning in her uneducated fashion to use these indications of solicitude as a means of averting suspicion?<sup>131</sup>

Both of these things could have been true. And could she also perhaps have been enjoying the game? —Before putting her hostess and daughters to death, Juliette carries with them, enjoying and pretending to reciprocate their innocent graciousness.<sup>132</sup> Whenever possible, she executes entire families, forcing their members to torture each other in a hideous inversion of their ties of love.<sup>133</sup> Above all, Juliette loathes people who fall in love with her, and murders them whenever possible; she for her part pretends to love, plays the part of love as a sort of foreplay to murder. “We must dine with her as usual tonight,” she and her partner in crime agree about a longstanding companion. “And even fawn upon her.” They lovingly play with the woman in bed, exchange orgasms with her, and the next morning throw her alive into a volcano.<sup>134</sup> Their victim had herself not long ago fondled a thirteen-year-old girl and then had her hanged. More for the gas chambers. Behind the doomed crowds “walk the S.S. men, urging them with kindly smiles to move along.”<sup>135</sup>

The despot Periander, he of the human cornfield, strips naked all the women in Corinth and burns their clothes, in order to satisfy his dead wife’s shade and get information out of her. The humiliation of the living women is a matter of indifference—or perhaps of pleasure.<sup>136</sup> “I removed her clothes,” says Juliette, “I pored over her charms”—she’s speaking of a servant-girl who idolizes her—“to contemplate them in that frame of mind all but slew me with delight. How it thrilled me to be able to say to myself: In three days’ time, this glorious body will be the prey of maggots, and the credit for its destruction shall be mine.”<sup>137</sup>

Recall the case already mentioned of the seventy-two-year-old Japanese farmer who vivisected Chinese prisoners alive, “because in a war, you have to win.”<sup>138</sup> A compatriot who committed similar crimes also employs the vocabulary of expediency. We must give him the credit for being honest about his behavior a half-century after the fact, when he was not compelled to be; he has reflected and learned, admitting outright that he was a murderer—but expediency’s blinkers still lie half upon his eyes. Glaring or shouting, the prisoners are led to the autopsy table by medics whose implements are not stethoscopes but rifles. “You might imagine this as a ghastly or gruesome scene,” says the man complacently, “but that’s not how it was. It was just the same as any other routine operation.”<sup>139</sup> His first patient will at least be anesthetized, after which he will undergo an appendectomy, his arm will be chopped off, his intestines will be sewn up for practice, his pharynx will be opened with a hook. He dies “naturally,” but the other patient they try to finish off first by injecting air into the heart, then by strangling with a piece of string; finally they give him a lethal dose of anesthetic. “I am ready, I will do anything,” the doctor thinks. “This is war.”<sup>140</sup> This rationalization we know; we see it everywhere; it cov-



ers the body of politics like a case of stinking boils. But this is not the most sickening thing. His partners enjoy their work. "The nurses were all smiling," he recalls. "They were from the Japanese Red Cross." When the doctor's prisoner refuses to lie down upon the murder table, one of the nurses, a real-life Juliette who helps hold him down for the chloroforming, persuades him: "Sleep, sleep. Drug give"—in pidgin Chinese. "He lay down," the doctor goes on. As for the Red Cross nurse, "she was even prouder than me. She giggled."<sup>141</sup>

### ON THE LAUGHTER OF THE JAPANESE NURSE

An individual ought to be able to take pleasure in the tools and practice of his trade, without necessarily enjoying the situation in which he employs them, or the consequences. A surgeon who experiences fulfillment at the sight of blood in the operating room need not be a reprehensible person—unlike the fulfilled torturer who likewise cuts open his "client" upon a table. One difference between them is the purpose they serve (it was the failure to understand or value such distinctions which cost the good Nazi soldier Wilhelm Keitel his life). Yet even purpose itself cannot be always paramount; for as it becomes larger in every sense in relation to one caught up in it, he becomes less accountable for its formulation and even for its implementation. That is why the accusers at Nuremberg did not make a habit of indicting individual German infantrymen, bomber pilots, truck drivers, stenographers, factory workers, etcetera, even though they might have aggressively prosecuted the aggressive war for which some of their leaders got hanged. These people truly were "only following orders." It was right not to judge them. A soldier who enjoys the sheen of his cleaned and oiled weapon (or, more likely, the approval—or lack of active disapproval—of the officer who examines it), or an air force jock who feels a sense of satisfaction when he sees that his bombs are on target, is not culpable for that. Neither is an executioner for being pleased that everything is in order on his electric chair. "To be at the head of a strong column of troops," writes Sherman in his memoirs, "in the execution of some task that requires brain, is the highest pleasure of war—a grim one and terrible, but which leaves on the mind and memory the strongest mark; ... to do some ... distinct act which is afterward recognized as the real cause of success."<sup>142</sup> To insist on a divorce between someone's work and someone's emotions is to create an Ohlendorf. And if he does enjoy his work, as long as he keeps it to himself, that makes no difference to the victim. The Japanese nurse neither kept it to herself, nor killed in the service of a justified purpose.

NONCONSENSUAL SADISTIC AND EXPEDIENT VIOLENCE IS JUSTIFIED:

1. Never.

NONCONSENSUAL SADISTIC AND EXPEDIENT VIOLENCE IS UNJUSTIFIED:

1. Always.

[But even here, as with all other motivations for violence, imminent defense or self-defense could conceivably in some rare or extreme case overrule unjustifiability.]

## 19.

## CONTINUUM OF EXPEDIENCY

## A. Deng Xiaoping

"I don't care if it's a white cat or a black cat. It's a good cat so long as it catches mice."<sup>143</sup>

## B. Uno Shintaro, military policeman

"Torture was an unavoidable necessity. Murdering and burying them follows naturally. You do it so you won't be found out."<sup>144</sup>

## C. The Roman Emperor Septimius Severus, to his son (attributed)

"Stick together, make the soldiers rich, despise all the rest."<sup>145</sup>

## D. Napoleon

"In political measures we ought never to recede, never to retrograde, never to admit ourselves to be wrong ... even when in error we ought to persist in it, in order to have the appearance of being in the right."<sup>146</sup>

## E. The KGB

"Any method of fighting, no matter how indecent it might seem to us, the socialists, can be applied to profiteers and the enemies of the people... the only principle in the war with profiteers and enemies of the people is that the end justifies the means."<sup>147</sup>

## F. Göring

"The victor will always be the judge, and the vanquished the accused."<sup>148</sup>

20.  
CONTINUUM OF  
NONCONSENSUAL SADISM

A. Lt.-Col. James "Bo" Gritz (1991)

"Yes, it was true that enemy soldiers had lost their lives who could not be released nor taken with us during the conduct of extremely sensitive and serious missions. I know it is a thin line, but a quick death at the hand of a worthy adversary seems different than deliberate torture when other alternatives are available. War is insane, but there are levels of insanity."<sup>149</sup>

B. Louisiana Act of Legislature (1740)

"In case any person shall willfully cut out the tongue, put out an eye, or cruelly scald, burn or deprive any slave of a limb or member, or shall inflict any cruel punishment other than whipping or beating ... or confining or imprisoning such a slave, every such person shall ... forfeit the sum of one hundred pounds current money."<sup>150</sup>

C. Idrimi, King of Alalakh

"The country of the Hittites did not mobilize, did not march against me, I could do what I wanted. I took prisoners from them, plundered their riches, possessions, and property."<sup>151</sup>

D. Andrew Macdonald's *Turner Diaries*: beating before hanging of "race defilers" (1980)

"understand the value of letting them beat the prisoners as a way of justifying to themselves that the prisoners were their enemies and deserved to be hanged... Of course, we must tighten up discipline a great deal as soon as we can, but for the moment it is better for us to have more political reliability and less discipline among the troops."<sup>152</sup>

E. Sade (before 1789)

"The more pleasure you seek in the depths of crime, the more frightful the crime must be."<sup>153</sup>

CHAPTER 26

SADISM, MASOCHISM,  
AND PLEASURE

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*When your body is defiled do not turn away... Rather accept it with joyous heart.*

PAN PANTZIARKA, HOUSE OF PAIN (1995)<sup>1</sup>

**T**his chapter need not be long. We agreed that among the rights of the self stands the right to dispose of one's person as one sees fit—and of other people as *they* see fit. If this includes suicide and euthanasia, it surely must also include the generally less extreme violence of sadism and masochism—for pleasure or not. Consider the Cambodian woman I know who incises red lines upon her breasts and shoulders with a coin-edge, making long slantwise parallels. Sometimes she does this to her child also. In the United States she might be arrested for child abuse. In Phnom Penh she is known to be a good mother; doing this draws the “bad blood” to the surface when her child has fever. One researcher insists that the sensation is an important aspect of the effect, “the infliction of pain as a part of treatment.”<sup>2</sup>

And pleasure?

### ORTHODOX WESTERN PSYCHOLOGICAL EXPLANATIONS OF SADISM (1964)

“Sadistic sexual behavior ordinarily occurs on the part of the male... A sadist may slash a girl with a razor or stick her with a needle, experiencing an orgasm during the process... Various attempts have been made to explain the dynamics of sexual sadism:

1. ... As merely one expression of a more general destructive and sadistic attitude toward others.
2. ... Associated with intense attitudes toward sex as sinful and degrading.
3. ... Growing out of early experiences in which sexual excitation has been associated with the infliction of pain.
4. ... Growing out of castration anxiety... Many sadists are timid, feminine, undersexed individuals...
5. ... Part of a larger picture of psychopathology. In schizophrenia, manic reactions, and other forms of psychopathology, sadistic sexual behavior and sadistic rituals may occur in psychologically predisposed persons as a result of the deviation of symbolic processes and the lowering of normal behavior restraints...

SOURCE: COLEMAN, PP. 406-08.

I think of the slender, sweet-natured woman I once met who when she began to trust me (or, as I should say, decided to try to begin trusting me, she being very reserved and private) looked into my eyes one morning in a coffee shop and whispered in a low shy voice that she wanted to hurt me. She had recently met a boy from a traveling circus who liked to mutilate himself. He'd let her watch. But in the end, her ecstasy repulsed him. He felt that she was feeding off his blood—which, of course, she was. —“When I tell men what I want, they often run away,” she said so sadly.

I waited.

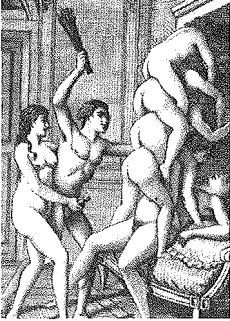
She said: “Will you play with me?”

I was afraid, but deeply attracted to her, and the thought of trying something new thrilled me. I said that I might, but that at least some of it had to be sexual, and that I didn't want her to cause me much physical pain unless and until she loved me. She said that for her, sex was “just meat and potatoes.” I told her that she could think of it as taking out the garbage if she wanted; she could do it to make me happy, and I would do the other to make her happy; hopefully everything would be nice for both of us, if we cared for each other... Later I got beyond that. I *wanted* her to hurt me.<sup>3</sup> I wanted to give myself to her and let her do with me as she pleased. I wanted to be hers, submitting to her and trusting in her, so that I could be close to her.



*Miss Vanessa enjoys the pleasure of self-inflicted pain. (1995)*

She said that as a child she'd suffered a great deal of physical pain, and when it finally stopped she was lonely for it.<sup>4</sup> "People say that pain is the opposite of pleasure," she went on. "That's wrong. I'm not saying that pain is pleasure, but pain takes you on a journey to someplace so far away..."



*Illustration 2:  
de Sade's Juliette*

I was afraid. I didn't know when or how she would hurt me. I had to trust in her, and hope that I could be loving and brave when it happened.

She said that as a little girl she'd always liked movies that showed men struggling through some kind of physical ordeal, especially at the end when they were exhausted and sweaty. That had excited her tremendously, she said. So I understood why she wanted to arrange my ordeal.

She held my hand. I slipped my arm around her waist. I myself was excited. I began to love her for what she was going to do to me.

Sitting across from her at a small round table in a bar whose loud darkness guarded us, I held her hand, and suddenly, seized by passion, touched her finger to my cheek and began very slowly to guide the sharp fingernail deeper and deeper into the flesh. She gazed into my face with glowing eyes, and when it was all over, whispered with wonderful tenderness: "Did it hurt you?"

One day she let me kiss her on the lips. I felt so proud of myself then, so happy.

Was I a masochist, then? I remember the woman who wanted me to bite her nipples until they bled. I did. —"Oh!" she shouted, convulsed in a long, happy orgasm. "It hurts so good!" —Was I happy, too? Happy and sad—happy for her, sad for her, a little anxious not to bite too hard and take the nipple off, excited by the blood because she wanted it to be exciting. For me it was mainly a game, like a new position, a way of pleasing and knowing the other; I am happy when I make others so. Am I a sadist, a masochist, both or neither? How can any of this be wrong?

#### CONSENSUAL SADISTIC AND EXPEDIENT VIOLENCE IS JUSTIFIED:

1. Always.

#### CONSENSUAL SADISTIC AND EXPEDIENT VIOLENCE IS UNJUSTIFIED:

1. Never.

She asked me if there might be anything special that I wanted her to do to me. When I closed my eyes, many things came to me. My heart beat fast. I told her what they all were. I will not tell you. Some of those things embarrassed me to tell, and the humiliation was part of the game. She looked into my face smiling and told me that my ideas were lovely. And again I felt happy for having trusted in her.

I asked her: "If I give myself to you to hurt, will you reward me?"



She held my hand and said: "I'll reward you *greatly*."

That was how it began.

How could it have been wrong if my darling little sadist had wanted to strangle me all the way to death *and* if I'd wanted her to, also? And even if it were wrong, provided that I left no dependents, it would be wrong for no one but the two of us. It would be no one else's business.

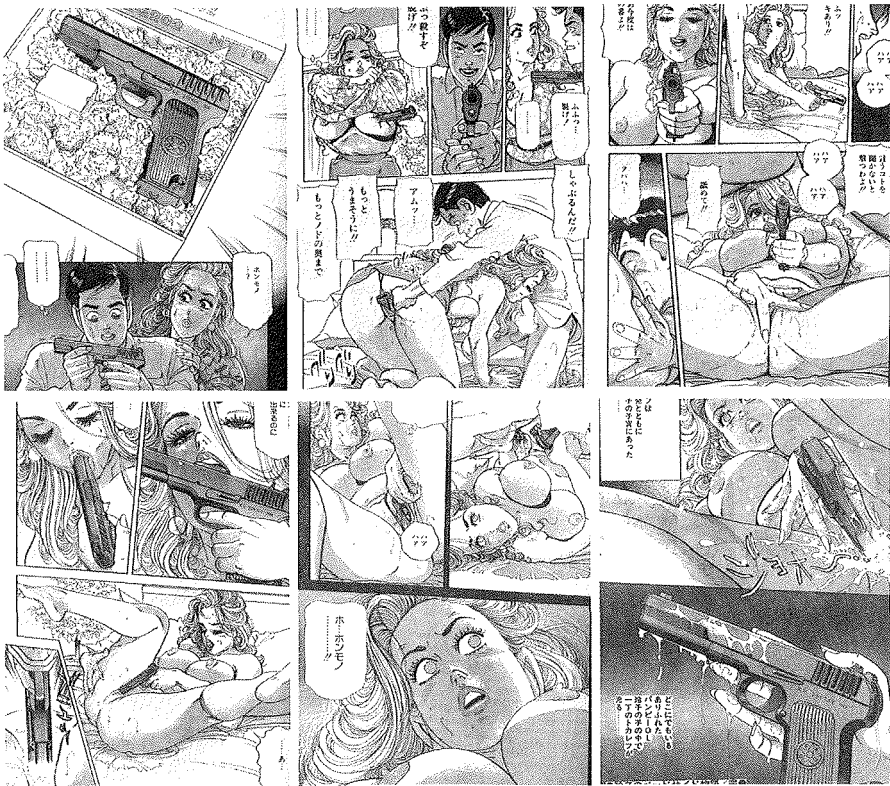
I loved her. I love her still.

THE MORAL CALCULUS OF A DOMINATRIX (1998)

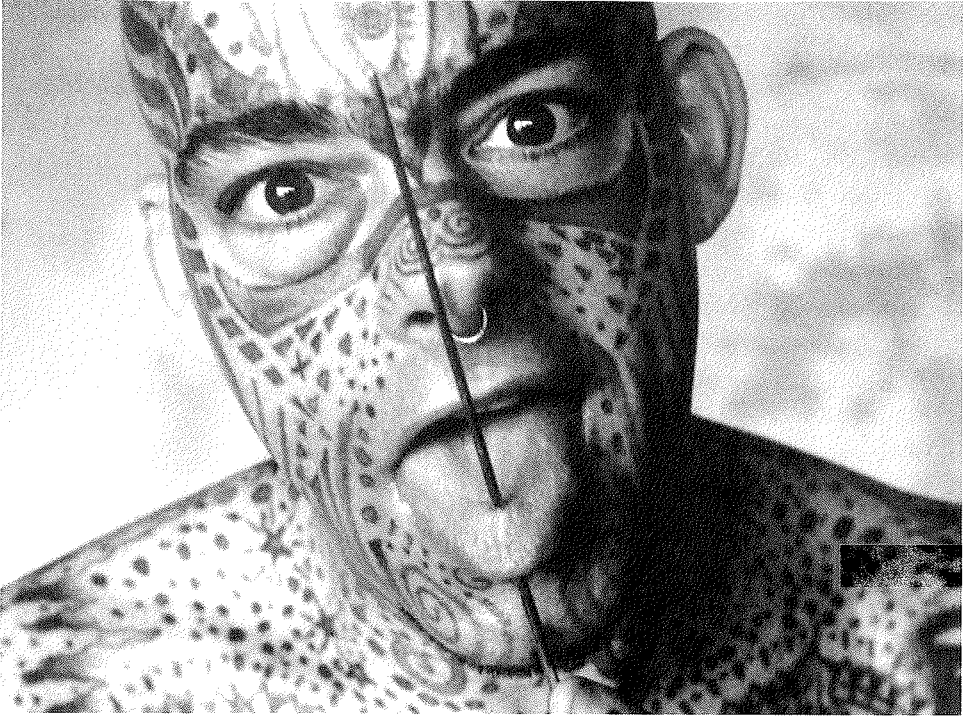
When is consensual S/M violence justified?

"Why should you have to justify what both partners want to do? It's their universe. They're the only ones in it. They want to be there and nobody else is affected."

SOURCE: PERSONAL INTERVIEW.



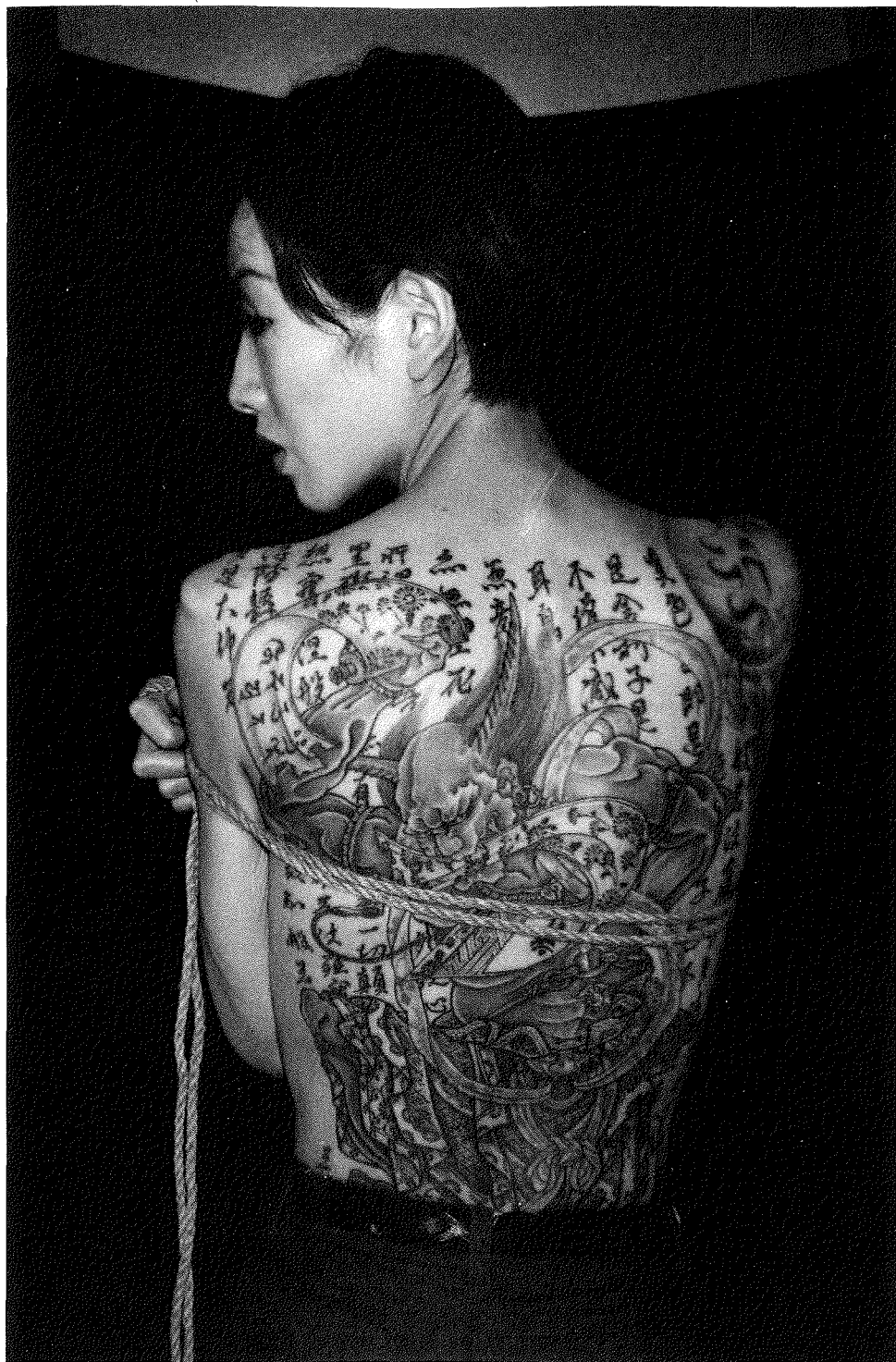
Japanese comic book (1995)



*Tattoo Mike (1993)*



*Annie Sprinkle and Fakir Musafar (1980)*



*S/M performance artist whose act involves tight bondage; she sometimes burns herself. (Tokyo, 1998)*

20.

## CONTINUUM OF CONSENSUAL SADISM AND SADISTIC FANTASIES

A. Diana E. H. Russell, Ph.D., on a depiction of lesbian S/M violence, photographer unknown (1993)

"The pornographer who orchestrated this photograph chose a woman as the torturer. It is quite a common practice for pornographers to have women doing men's dirty work... Once again the pornographer responsible for this picture has eroticized hurting a woman."<sup>5</sup>

B. Alex Comfort (1972)

"Cruelty of any sort ... and the whole Sadie-Mae routine, which to straight couples is simply painful and a turn-off, belong to psychopathology not lovemaking. Bondage as a pleasurable sex game is never painful or dangerous."<sup>6</sup>

C. Pat Califia (1993)

"If it ain't sensual and it ain't mutual, it ain't S/M... Why would anybody want to practice sensuous magic? Because it's very intimate. Empowering. Mysterious. Intimidating... And, most of all, because it's a new and fabulous way to get off!"<sup>7</sup>

D. Jay Wiseman (1996)

"S/M is something you do with someone, not something you do to someone... The main characteristic of a top-quality dominant is trustworthiness... There's nothing 'only' about being a bottom, particularly about being a good bottom."<sup>8</sup>

E. Juicy Lucy (1982)

"I practice S/M... Glory in S/M is more like it... I am tired of being accused by hysterical dykes who beat up their lovers of being a rapist/brutalizer/male-identified oppressor of battered womyn. *I* was a battered womyn for years & claim the right to release & transform the pain & fear of that experience any way I damn well please... I know hets & fags do their own kind of S/M & I couldn't care less."<sup>9</sup>

F. Mistress Lilith Lash (1987)

"The first time I tied up a man, whipped him raw, and fucked him with a dildo, I learned something I had forgotten about myself. I liked it, and it really turned me on... I only hurt men who think it's kind to be cruel... I don't hurt men because I hate them; I hurt them because I love them."<sup>10</sup>

G. Antonin Artaud (1932)

Theater should provide "the spectator with the truthful precipitates of dreams, in which his taste for crime, his erotic obsessions, his savagery, his fantasies, his utopian sense of life ... pour out on a level that is not counterfeit... the theater, like dreams, is bloody and inhuman."<sup>11</sup>

JUSTIFICATIONS

FATE



CHAPTER 27

## MORAL YELLOWNESS

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*Iago very precisely identifies his purposes and his motives as being black and born of hate. But no; that's not the way it is! To do evil a human being must first of all believe that what he's doing is good, or else that it's a well-considered act in conformity with natural law. Fortunately, it is in the nature of the human being to seek a justification for his actions.*

SOLZENHITSYN (1973)<sup>1</sup>

**T**rotsky's colleague Krestinsky once remarked that Stalin was "a bad man, with yellow eyes." After that, Trotsky thought to perceive what he called the *moral yellowness* of Stalin. (Krestinsky, by the way, was liquidated by Stalin, a few years before Trotsky's turn came. And some people might have seen moral yellowness in all three of them—or at any rate moral redness, they being so complicit in the atrocities of "Red Terror" which Lenin launched in 1918.<sup>2</sup> "I plead not guilty," Krestinsky said at the end. "I am not a Trotskyite."<sup>3</sup> He'd thus achieved the distinction of denouncing each of the antagonists to the other.)

Being able to spy out moral yellowness would certainly simplify our task of determining when violence is justified; for that very reason, a misperception of



moral yellowness would be a very serious error. Stalin's belief that he saw it in the class of *kulaks* or rich peasants—for the science of Marxism-Leninism proved that it must be there—gave him the confidence to direct the repression and outright extermination of millions.<sup>4</sup> In my experience *there is almost never any moral yellowness.*<sup>5</sup> (I say “almost” because no one's experience, including mine, is wide enough.)



Hitler (1890)

When I set out to meet Pol Pot, I knew that I would search for moral yellowness in his laughing face if I found him (I didn't), and cast upon some perfectly innocuous trait which in my opinion betrayed and signified his evil. That is the artist's job, and the second-rate journalist's. And, indeed, it's superior to the tasks demanded by mere superstition. In life as in art, beholding commences or continues the search for wholeness, whose aim is to make meaning cohere with appearance. At its highest, this striving is expressed by souls such as the Canadian painter Emily Carr: “Search for the reality of each object, that is, its real and only beauty,” she writes in her journal.<sup>6</sup> With noble obsessiveness she wonders: “What is that vital thing, in ugly as well as lovely things and places, the thing that takes us out of ourselves, that draws and attracts us, that unnameable thing claiming kinship with us?”<sup>7</sup> There is a significance, which we can call spirit, to a British Columbian cedar; and Carr's painting of one of those trees convinces me that she portrayed its outward form in a manner consistent with its inner character—or rather (crucial qualification!) with what she perceived as its inner character; for another painter's rendering of the same tree, successful or not, would be different. Meanwhile, her image owns life and truth because it is *fitting*. Most everybody searches for the secret, the summation, the innerness of things. Watch a child, a stranger in a new place, a person falling in love. The pupils widen; the face thrills, growing mobile like clay worked in the potter's warm hands; the consciousness within exercises itself, straining to identify with what it sees, to bind itself to the world with perception and memory.

“The thing that takes us out of ourselves” need not be happy. If that were the case, one would never find anyone at funerals. Whether the casket is open or closed, the mourners' perceptions surge forth, seeking the dead body inside that they will never see anymore. To reject the pain, turning away from this concentration-point of grief which wounds them afresh, would be expedient but inhuman: the loss must be embraced in order to be understood. Even death is a “vital thing.”

This is how we live, taking in, correlating, organizing our experiences in ways which express our varying personal needs for reference. When violent actors perform before us, whether they be victims, perpetrators or tools, then (if experience or professionalism has not yet made us inhuman) we tend to crave understanding almost desperately, understanding being the offering we lay down on the altar of every force

of power—and in its transformative abilities violence is debatably the most powerful entity of all. Earth falls upon the coffin. Why did the addicted mother's boyfriend drown the three-year-old in the bathtub? Why did my friends have to meet a land mine? Why did Hitler want to kill the Jews? So the searching and seeking goes out, alert and cautious, like fingers toward a naked bloodstained razor—be it Trotsky's razor of terror or Sherman's razor of war or any other variety. Now, the most important part of the razor is the blade. When we face a human razor, we want him or her to have a blade, too, something that reveals itself instantly, something that explains. Many of us expect our mass murderers to somehow look like mass murderers, to glower, to be frightening or eerie in appearance. If only they were truly this way, then we could recognize them and be protected!<sup>8</sup> Or at least we could somehow *know* them, which might spread the balm of rationality upon the shocking mind-wounds they give us. The same need applies to the murderers themselves—oh, not all of them; I've spoken just now of how inhuman it would be to turn away from the funeral of a person with whom one shared a life, but not all bipeds called human from a biological point of view *are* so from any other category; enough to say that *most* of them seek to create categories—especially the ones who justify (and it is, after all, with them that this book is concerned). They want to find a characteristic in their victims which will set them safely beyond the pale. Hence all stereotypes (the one-in-all being the furthest opposite on the continuum from the all-in-one of Emily Carr); hence the stone-throwing and cries of "Monster!" directed at a keloid-riddled girl who survived Hiroshima;<sup>9</sup> hence the laborious reifications of Nazi movies in which all the Jews have shifty eyes and hooked noses, the ideal being to convince the uninitiated that Jews are the murderers, not the other way around; fool, can't you *see* the shining moral yellowness of the Jew?



*Stalin poster (1943). He must be a nice man.*

MORAL YELLOWNESS is the outward appearance of evil or violence in the attitude or expression of a human being.

VIOLENCE BASED ON MORAL YELLOWNESS IS JUSTIFIED:<sup>10</sup>

Never.

VIOLENCE BASED ON MORAL YELLOWNESS IS UNJUSTIFIED:<sup>11</sup>

Always.

*Moral yellowness is the aesthetic handmaiden of violence.* It can never be a worthy justification. Although we may imbibe it unthinkingly, sooner or later, all of us who

actually meet the morally yellow must experience the uneasy sense that they may be grey underneath. From that moment on, we can be said to worship the fiction of moral yellowness *by choice*. Be warned by the career of Field Marshal Keitel, who did Hitler's bidding because that was profitably easy.<sup>12</sup> Loyalty and compulsion—much less inertia—cannot exculpate us from committing acts of injustice. A person is always more than a member of a category.



*Anti-Semitic  
cartoon (1907)*

For such reasons, we very often overtly discredit the whole notion of moral yellowness—nobody owns or is only *one* vital thing! Keitel himself, for instance, reveals as many sympathetic traits as Napoleon: he took care to express “personal esteem” and “sympathy” to the head of the French delegation who surrendered to Germany in 1940,<sup>13</sup> and in 1946 he displayed a textbook stoicism at Nuremberg in the face of a dishonorable death—nor is he evil-looking. How can we believe in moral yellowness, really? —But here it is in Telford Taylor’s famous memoir of the first Nuremberg

trial. This truth-sure jurist reproduces a group photograph of several of the first trial’s defendants, the big fish; and in that image the most striking figure initially is Rudolf Hess, on account of the thick dark diamond-shaped eyebrows in his strange pale face; his chin is squared up, possibly due to clenched teeth, so that his head has become a cube upon that aloof white neck. His arms are folded. He glares into space. Moral yellowness? Taylor thinks so, claiming that the closeup is “accentuating his beetlebrows, sunken eyes, and grim expression.”<sup>14</sup> Beside Hess, but seemingly in another world, is stiff old Ribbentrop, his throat tight as if the trial were already ended and Master Sergeant Woods had applied the noose. He strains, as always in his career, to express resentment and fury. “Ribbentrop as usual has his chin raised and eyes closed,” remarks Taylor. Between and behind those two we find Baldur von Schirach, formerly the leader of the Hitler-Jugend; he’s an ordinary,



*Ho Chi Minh.  
This man looks extraordinarily  
benevolent, and to some people he was.*

pleasant-looking man who gazes down at a pencil in his hands. Taylor is quick to tell us that he “is attending to his own writing rather than the proceedings.” Moral yellowness? If I were shown an uncaptioned photograph of this man alone, I would never think him any kind of criminal.<sup>15</sup> Hess is half-mad and looks it, but as a matter of fact, since he flew to England to try to negotiate a peace, he had no time to accrue much war guilt. Accordingly, he’ll not be hanged, but at the insistence of the Russians (against whom he proposed an Anglo-German alliance) he’ll be kept in Spandau until he finally commits suicide at nine-

ty-three years of age. Even Taylor has to remark: "such long-continued incarceration, especially in a huge prison where he was the sole inmate, was a crime against humanity."<sup>16</sup> That leaves Ribbentrop, by all accounts an eminently dislikable person. And that is how he looks. Can one tell from his expression, however, that he is also morally and politically dislikable, having been involved in the deportations of French and Hungarian Jews? Could the circumstances under which the photograph was taken (on trial for his life, in a court of his victorious enemies) have anything to do with his expression? (On account of exactly those circumstances, Admiral Raeder in the background is covering his face from the photographer.) I say again: There is no moral yellowness. Or, rather: The perception of moral yellowness is learned. "The first time I saw dead Germans they looked just like Americans, except for the uniform," an American soldier recalled fifty years later. "And then you started to think of them as animals."<sup>17</sup> Moral yellowness is visual prejudice, and so is its opposite: the tendency of any given category of humankind to see good in its own image. Thus one American slave boy, who always ran away from white men



*Hitler, friend of  
the children*

when they looked at him, in case it might be their intention to sell him in Georgia, shared the conviction of his fellow slaves that Queen Victoria must be black. "Accustomed to nothing but cruelty at the hands of white people, we had never imagined that a great ruler so kind to coloured people could be other than black."<sup>18</sup> Hence the Nuremberg judges' "gestures of bewilderment, readily explicable," when Einsatzgruppenführer Ohlendorf gave his hideous testimony. Clean-cut and polite, he just didn't look the part of somebody who'd murdered ninety thousand human beings! "No one could have looked less like a brutish SS thug such as Kaltenbrunner," in whom Rebecca West saw moral yellowness, which is why she wrote that he reminded her "of a particularly vicious horse." To me, Kaltenbrunner appears rather bored and neutral in his photograph, not vicious—and what should a brutish thug look like? I have met several. It's not how they look; it's how they act. "Ohlendorf was small of stature, young-looking, and rather comely. He spoke quietly, with great precision, dispassion, and apparent intelligence. How could he have done what he now so calmly described?"<sup>19</sup>

I grant the obvious fact that people's appearance may on occasion reveal their intentions, their emotions, etcetera. The man in the bar to whom I have said nothing, who sneers and glares at me, puts me rightfully on my guard. In that sense there are in fact physiognomies of aggression. But that is only because these souls act out of rage which shines through their flesh like fire behind a paper screen. However, should their moral spectrum be laid out differently than mine, their feelings as displayed by their bodies may be connected to different behaviors than I

might expect. What if it makes the stranger tranquilly joyous to contemplate murdering me? What if, like De Sade's protagonists, they delight in caressing before they destroy? Then their friendliness is what I must fear. Among the indications of antisocial character disorder (in which category Göring has been placed;<sup>20</sup> is this one: "Often a charming, likable personality with a disarming manner and an ability to win the liking and friendship of others. Typically good sense of humor and generally optimistic outlook."<sup>21</sup>



"The Jewish danger" from the  
The Protocols of the Elders  
of Zion (France, 1934)

We read that when Himmler came to Minsk on an inspection tour, *Einsatzgruppe B* demonstrated its shooting skills on a hundred Jews. One of the doomed had blond hair and blue eyes. Himmler was miserable. If, as his ideology insisted, biology justifies all, and if the measure of biology is phenotype (hence the skulls and pickled heads harvested from concentration camp inmates for scientific specimens), then why didn't this boy have a hooked nose? Where was his moral yellowness? Group B took aim. Two women survived the first volley, and Himmler screamed!<sup>22</sup> He longed to understand his violence as much as we do. It seems to me that at that moment his understanding must have been unable to evade recognizing his dishonesty. What did he do afterwards? Did he talk with racial experts who

reassured him with maxims about the cunning mask of the Jew? Or did he retreat into one of his rationalistic metaphors about cleaning, fumigating, sterilizing—all processes which require overkill for their effectiveness to be guaranteed?

The moral is this: Never judge a person solely for what he is. We already know that we ought not judge him solely for what he does: if the defendant is insane, or if he had reasonable cause to believe, mistakenly or not, that the man he shot meant to shoot *him*, we treat the act of homicide differently from the professional or expedient acts of a Himmler, a Bluebeard, an Elisabeth Báthory. Judge him for what he is and what he does together. The insane man who kills not, and the killer who is not insane, each deserve differently from the crazed murderer. Clear—evident—banal. And in discarding moral yellowness we need not deprive ourselves of the concept of manifest intent.<sup>23</sup> Look into those glaring yellow eyes, or those red ones: My Jamaican friend, Pearline, was sure that one "crew" of ghetto men was sinful because their eyes were all bloodshot—probably from ganja-smoking. As a matter of fact, Pearline was not wrong, for at least some of those fellows were gunmen. The red eyes she seized on were a kind of shorthand for moral yellowness—a metaphorically expressed intuition, à la Emily Carr. In this she was poetically justified—justified in every other way, too, for she didn't plan to act on her perceptions. (What do *you* see? *Whom* do you see?)<sup>24</sup> And Telford Taylor would have had every right to remark

on Hess's beetlebrows—had he not been simultaneously working to convict him. Metaphors ought to be left outside both courtroom and battlefield; metaphors and political action (to say nothing of metaphors and violence) make a dangerous mix.

ADDENDUM:

AUGUST SANDER'S PHOTOGRAPHS OF PERSECUTED JEWS

For his immense *People of the Twentieth Century* series,<sup>25</sup> the photographer August Sander, obstructed and menaced but not quite silenced even though his Communist son died in a German prison, quietly continued his project of depicting human types by, among other things, taking photographs of the people very accurately called "The Persecuted." It is 1938, and in an armchair against a grey wall sits old Frau Michel, a Jew, her thinning hair neatly combed back, her eyes half-closed behind the round spectacles on her round face. She grips the curved handles of her twin canes. She gazes at nothing. Her lips are pursed. She is wary, weary, pale and sad. Turn the page and see Herr Fleck—1938 again. All the portraits of persecuted Jews are dated 1938 or *ca.* 1938.<sup>26</sup> 1938 was the year of *Kristallnacht*, remember, when with official sanction thugs and zealots smashed in the windows of Jewish businesses; the following year began World War II, whose course led on greased tracks straight to ghettos and gas chambers. At any rate, Herr Fleck, sallow and professional, folds his palms on his crossed legs and gazes anxiously through his too brilliant spectacles, while shadows crawl on the wall behind him. On the facing page sits Herr Leubsdorf, hale and clean, not fear-expressing like Herr Fleck but definitely pensive. File him under "Aristocrats" and you wouldn't know his case was serious. Frau Oppenheim, fiftyish but still pretty, with her necklace just so, draws her pale arms tightly inward, lowers her eyelids and glares at Sander (and us), her head bowed a little, as if she were awaiting a blow from behind. On the recto page, her elderly husband, his mouth grimacing almost insanely, gazes pop-eyed through his glasses. What has he seen? These two images glow with a pain which seems to be embedded in the very emulsion. Next comes a young persecuted Jewess who looks unremarkable, perhaps a little saucy; she could be refiled under "The Small Town" or "Working Women" or "Painters and Sculptors" and I'd never know, and then we see Herr Doctor Phillip, who on the other hand looks crushed and ruined, as he probably is. We see a plump, submissive girl and a bewildered man (they could both go under "Servants" or "Families"), then middle-aged Frau Marcus in her butterfly scarf, clutching her coat-edges nervously together, then at last Dr. Kahn full-on who stares at us with wet anguish filled with comprehension.<sup>27</sup>

Many of Sander's other subjects, even some of the vagabonds, throw their shoulders back, raise their heads high.<sup>28</sup> The persecuted Jews do not. Did Sander say, "Please, Herr Doctor Philip, I would like to take your photograph," or did he say, "Well, to get right down to it, Herr Doctor Philip, I'd like to use you in my series



*August Sander: Frau Michel (1938)*



*August Sander: Member of the Hitler Youth (1938)*



of persecuted Jews"? Knowing the context would be useful in evaluating the expressions on the portraits. And yet it is fair to say that the majority of these victims resemble victims.

Turning for comparison to Sander's photographs of National Socialists, we first discover a *Hitlerjugend* lad in 1941, dressed in his uniform best, the swastika armband proudly displayed, the black tie almost touching the belt—he stands serious and self-important there in what is probably the family back yard; he's blond and freckled, just a boy, but he knows how to stand with his feet apart in the tall boots, how to look confident. He does not resemble a persecutor. The National Socialist of 1937-38, fat and coarse, might be hard, but not necessarily vicious (I wouldn't have been surprised to see him categorized under the rubric of "The Circus"); facing him we see a portrait of an effeminate blond boy in Nazi uniform who squeezes his hands together just like the persecuted Jews, but his clenched, open-eyed young face inclines toward us in an even-tempered stab at resolution. The next two youths could be anyone, clean-cut, faraway-gazing. (Call them "Students." Recall this: "Ohlendorf was small of stature, young-looking, and rather comely." It's not so easy, is it? It's not that there's nothing there, but that the soul of a likeness is perhaps too complex for these categorizations.) Finally comes a pair of uniformed, swastika'd officials evincing the hardness so fashionable during the period; they have power and are conscious of it, especially the right-hand one, the ruthless-looking chief of Cologne's cultural department.<sup>29</sup> Call them Nazis, to be sure; but Sander's other rubrics of "Businessmen," "Officials" or "Lawyers/Judges" would also have fit—and of course Nazis became all of these things.

What can we say about the National Socialists as a group? Again, they're not really evil; there's no moral yellowness; if there were, then the Nazis themselves, who looked so hard for it, would have found it in the mirror...

CHAPTER 28

# INEVITABILITY

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*It must be thoroughly understood that war is a necessity, and that the more readily we accept it, the less will be the ardor of our opponents.*

PERICLES (A.D. 432)<sup>1</sup>

*It was clear to me that a conflict with Poland had to come sooner or later.*

ADOLF HITLER (1939)<sup>2</sup>

**S**ister to the concept of moral yellowness, and yet more lethal, lurks that sore in the flesh of morality called *defense by inevitability*, whose rationalizations spare actors from making moral choices: the world is mechanistic, and actions are actually reactions whose direction and scope have already been predetermined.<sup>3</sup> We've referred to it often in our discussion of Cortes's defense of ground; it came up repeatedly in our discussion of sadism and expediency; it was of Keitel's defense at Nuremberg<sup>4</sup>—obedience bound me; I was a mere link in the chain of command: what could I do? *I was not the agent of my own actions...*

## DEFENSE OF CLASS AND CREED

We met with it under the rubric of class defense, Bakunin shouting: "No reconciliation between these two worlds is possible. The workers want equality and the bourgeoisie wants to maintain inequality." —Should no reconciliation be possible, well, then, violence must be inevitable! Recall how, invoking defense of class and creed, Molotov justified the "repressions" he'd carried out because "in bourgeois democracies they don't do what needs to be done." —Here is Berkman on Leon Czolgoz, anarchist assassin of President McKinley: "it is at once the greatest tragedy of martyrdom, and the most terrible indictment of society, that it *forces* the noblest men and women to shed human blood, though their souls shrink from it."<sup>5</sup> The dying McKinley, whose last words as an enraged crowd seized the assassin were, "Go easy on him, boys," was neither tyrant nor despot, society "forced" his assassination on no one; martyrdom forced itself on *him*, not on Czolgoz. Meanwhile, Trotsky explains how the counterrevolutionary generals who escaped punishment in 1917 "laid the foundations for the civil war," as a result of which "hundreds of thousands of people were buried, the south and east of Russia were pillaged and laid waste, the industry of the country was almost completely destroyed, and the Red Terror imposed upon the revolution."<sup>6</sup> Imposed upon the revolution! I thought it was imposed *by* the revolution!<sup>7</sup> Evidently the revolution felt quite imposed on, to have to impose it...! This is when the assumptions of historical mechanism become truly despicable.<sup>8</sup>

## DEFENSE OF RACE

Here is John Brown, writing his first letter home from prison after the raid on Harpers Ferry—which certainly no one had forced him to undertake:

I suppose you have learned before this by the newspapers that Two weeks ago today we were fighting for our lives at Harpers Ferry: that during the fighting Watson was mortally wounded; Oliver killed, Wm Thompson killed, & Dauphin slightly wounded, that on the following day I was taken prisoner immediately after which I received several Sabre cuts in my head; & Bayonet stabs in my body. As nearly as I can learn, Watson died of his wounds on Wednesday... Dauphin was killed when I was taken to Anderson.<sup>9</sup>

And all this time, John Brown and his associates were wax dummies, prisoners of the moment, who had harmed no one. A full two years before the event he is writing to H. B. Sanborn: "I have all the Arms I am likely to need: but am destitute of Saddle Bags or Knapsacks, Holsters + [illegible]... I find 124 Carbines, about 2300 Ball Cartridges, all the primers... I paid out \$550 on a Contract for 1000 ... Pikes

as a cheap but effectual weapon to place in the [hands] of entirely unskillful, + unpracticed men"<sup>10</sup>—that is, rebellious slaves—no, John Brown was but a passive victim incapable of premeditation.

### DEFENSE OF WAR AIMS

"Even the disorder of the *Franctireurs* did not delay our work by a single day," writes Moltke, referring to the French guerrilla snipers who menaced his columns during the Franco-Prussian War of 1870-71. "Their gruesome work had to be answered by bloody coercion. Because of this, our conduct of the war finally assumed a harshness that we deplored, but which we could not avoid. The *Franctireurs* were the terror of all the villages; they brought about their own destruction."<sup>11</sup>

Gazing over the corpses of his enemies (who were also his fellow citizens) at Pharsalus, Julius Caesar is said to have remarked: "They would have it so. Even I, Gaius Caesar, after so many great deeds, should have been found guilty, if I had not turned to my army for help."<sup>12</sup>

Tamerlane insists, perhaps not without justice, that his army got out of hand during the sack of Delhi in 1398, because the conquered had rebelled. "The pen of fate had written down this destiny for the people of this city. Although I was desirous of sparing them I could not succeed, for it was the will of God that this calamity should fall upon the city."<sup>13</sup>

### DEFENSE OF HOMELAND

Thucydides in his famous Melian Dialogue makes the Athenian envoys aphorize to the weak homeland-defenders they plan to crush that "of the gods we believe, and of men we know, that by a necessary law of their nature they rule wherever they can."<sup>14</sup>

Following a successful assertion of imperialism in the Ashantee War, Earl Granville joins his fellow Lords "in acknowledging on behalf of the country great services rendered by our military and naval forces whenever unfortunate necessity calls for their exertion."<sup>15</sup>

### REVENGE AND PUNISHMENT

Consider the defendant in ancient Athens who, admitting to slaying his wife's naked seducer, a deed permitted to him by Solon's law, tells the jury that he said: "It is not I who shall be killing you, but the law of the State, which you, in transgressing, have valued less highly than your own pleasures."<sup>16</sup> But of course it was indeed he who killed the man. Depersonalization is the easiest way out.

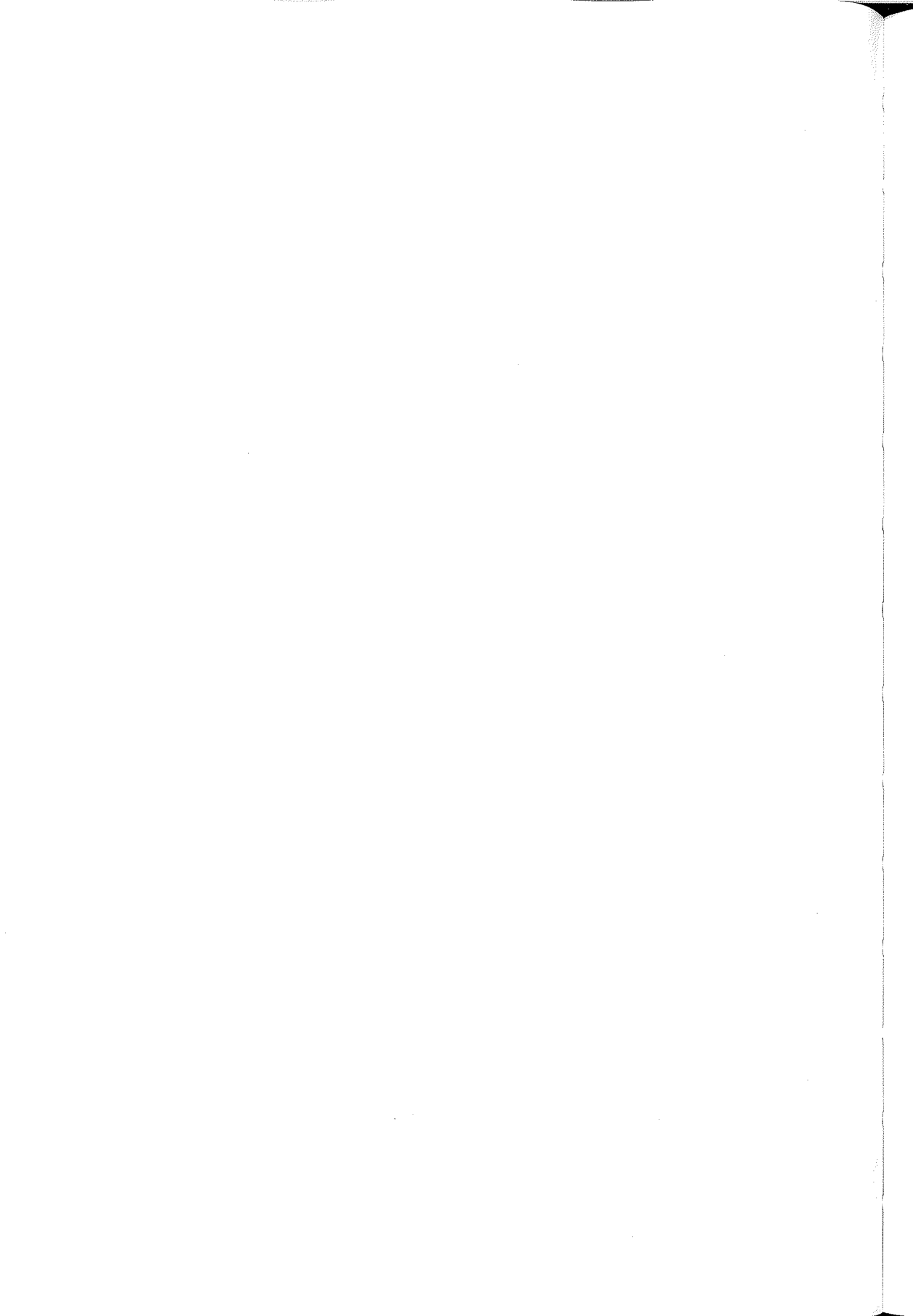
## INEVITABILITY AS JUSTIFICATION

In effect, inevitability becomes a euphemism for the violent goal itself. Senator John Glenn, interviewed for a television documentary on the Korean War, jocularly explained how during that conflict he had been busy performing “nape scrapes”—that is, dropping napalm almost at ground level in North Korea. One South Korean thought Glenn the most despicable individual profiled in the documentary, because “he had no conception or self-consciousness about what he had done.”<sup>17</sup> We have seen the importance of this recognition as a theme in punishment particularly, but it bears upon the entire issue of violence: whenever we kill and do not call what we are doing by its ugly name, we are obfuscating just as much as if we said we *had* to do it.

Inevitability, like moral yellowness, is not, of course, a complete chimera. I am alone in my house, and the robber comes with a gun. I shoot him. I am the state-appointed executioner, and the condemned one is strapped into my chair. I shave his head, tape electrodes to forehead and heart, and throw the switch. Both of these actions are, practically speaking, inevitable. In the former case, if I wish to continue in life, and in the latter, to continue in my career, I must commit the stated homicide. But in almost any role that can be imagined, I retain the right, and the corresponding responsibility, to choose. In this sense, nothing is inevitable. The man comes with his weapon, yes, but I am Gandhi; I look into his eyes, but refrain from imminent self-defense myself. They bring me my condemned victim, but I look into her eyes, and do not flip the switch. They torture me, then push me into my own chair; that is the worst they can do. I may not be strong enough to endure that; I may kill someone I know to be innocent, because I am weak, fearful—but *it was my choice*. I must take the consequences. Nothing is inevitable.

# EVALUATIONS

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CHAPTER 29

## FOUR SAFEGUARDS

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*What signifies the massacre of twenty thousand unfortunates? Twenty thousand miseries less, and millions of miseries saved in advance! The most timid ruler does not hesitate to dictate a law that must produce misery and the slow agony of thousands and thousands of prosperous, industrious, even happy subjects in order to satisfy a whim.*

JOSE RIZAL'S PROTAGONIST "SIMOUN" (1891)<sup>1</sup>

**H**owever useful and necessary it may have been to divide self-defense into categories, we inevitably did violence to the concept thereby—and to events. When Gavrilo Princip took aim at the Austrian Emperor and Empress in Sarajevo in 1914, his bullets were probably weighted with as many motives as grains of gunpowder: defense of homeland for the South Slavs, defense of authority (or against imposed authority), defenses of honor, race, creed, ground and possibly class.<sup>2</sup> But if we subdivide that one lethal instant into half a dozen, we misrepresent it, our verbose analysis failing to respect the taciturnity of the deed. Still, we must categorize: *Why did he do it?*



## OF MULTIPLE JUSTIFICATIONS

But respect the deed too much, privilege one category too exclusively, and you'll risk becoming either a brutal simplifier, like the Stalinists,<sup>3</sup> or else an ineffectual if sometimes admirable reductionist like our meditator-pilot Saint-Exupéry.<sup>4</sup> In his memoirs, the Burmese insurgent Aye Saung describes being tortured with electric shocks administered through his toes. The current literally sears away the vestiges of his



*Aye Saung*

patriotic nationalism. "Henceforth, I vowed, I would recognize only the boundaries of class." In other words, he commits himself to the Burmese Communist Party. The remainder of his autobiography demonstrates (to me, at least) the incorrectness of this decision. Aye Saung's life of struggle, founded on noble inflexibility, continually precipitates its own disappointment. By his lonesome calculus, most of his fellow moral actors prove self-serving: they go to brothels, try to get rich and allow other non-revolutionary topics into their minds. In the hot midafternoon

before the night fair, a lady in an apron is dribbling noodles in her hand from a pan into a plastic bag, and boys are watering the red-earth lanes between stalls while women stand whisking the flies away with spatulas. What are they doing but living and making a living, hoping that politics will pass them by? To the Aye Saungs of this world, such individuals (moral actors in their own right) stand not to the side but near the bottom of his hierarchy of well-intentioned urgency. Incredibly, even after joining the Shan State Army and learning from local Shan how cruelly the Burmese treat them,<sup>6</sup> Aye Saung continues to insist that nationality is nothing, class everything. Isn't he, the token Burman in an anti-Burmese insurgent band, best proof of that? Again, we can't dispute that his position is sincere, well-meant, even self-sacrificing. His years in the SSA will not prove easy ones. He complains of suspicion and persecution, of the humiliations with which the SSA rewards his uncompromising views and his Burmese nationality. Finally he resigns in failure.

Why didn't he take better note of his neighboring insurgents to the south in Karenni State, who, rising up against the Burmese regime's lies, extortions, rapes, corvée labor and village-burnings, embraced national self-defense? In 1994 I saw one of their bases, trenched and palisaded with outward-leaning bamboo like some movie of Africa, and in the front gateway, which was the only gateway, they even had a little barbed wire. Inside it was hot and quiet and almost empty. Five pigs basked in the shade. A woman soldier said that everybody else was out on patrol. Two boy soldiers showed off their Kalashnikovs for me. When their comrades came back, they were all eager and full of fight. They were defending their tormented homeland as best they could. —I don't mean to criticize Aye Saung's objectives, only his narrowness. It is not that defense of class as such was ever an unimportant consideration. Should the Burmese ultimately succeed, as at this writing (1996) they show signs of

doing, in conquering all the hill tribes, their victims will all be in the same boat as oppressed Burmans. Too many of the insurgent groups, forgetting this, have wasted opportunities by fighting each other, while the Burmese gobbled them up. Why couldn't the Shan and the Karenni have better coordinated their resistance? The populations whom they ought to have defended were ill served.

I propose, then, the following rule: *The greater the number of categories an act of self-defense can legitimately invoke, the more justified it will be.*<sup>7</sup> When proactive self-defense also fulfills the dictates of self-defense of race, honor and class, it is more likely to be good and decent than when it doesn't. Aye Saung followed class alone. He became no tree of reason, but a narrow, fragile stick.

The case of Gavrilo Princip's bloody ball of motives might seem to disprove such a principle. Perhaps it does. But was Princip justified? If not, then obviously his self-defense was never legitimate. If so, then he would have been more justified by being *multiply* justified. Does Aye Saung agree by now? I hope so, for the Burmese Communist Party has been dead and hollow for many years.

## OF DIVERSE ACTORS

The second and related rule: *The greater the variety of participants an act of self-defense attracts, the more justified it is likely to be.*<sup>8</sup> Let us briefly consider one more time the case of Lincoln vs. Trotsky.<sup>9</sup> These two men necessarily sat in judgment on others when they undertook to defend their respective systems. Indeed, Aristotle defines citizenship as participation in "judgment and authority,"<sup>10</sup> which strikes me as more reasonable from a descriptive point of view than from an ethical one. Would it be mere circular logic to argue that the authority is legitimate in which one partakes, of which one is a "citizen," a judge? In any event, the *morality* of such a definition does not hold up. Any S.S. *Gruppenführer*, any one of Trotsky's bloodthirsty Chekists could have defended his position by hauling out the tired argument of the Nuremberg defendants that for him it was legitimate merely because he had been appointed or commanded to it! Lincoln would have been in this sense a "citizen" by election and conviction; Trotsky, a citizen by appointment and revolutionary necessity (for which read again "by conviction"). We saw that the two men exercised their mandates very differently. This is why I propose the following equivalent (and more useful) rephrasing of our second rule: Authority (and the defense of that authority) approaches legitimacy when it predicates itself on a commonality between leaders and led, *the led including the group against some of whose members violence is employed.*<sup>11</sup> At the end of the American Civil War, almost everyone was glad that it was over, even if hatred and resentment necessarily remained on both sides, especially the South. Lincoln wanted to include the vanquished in government, avoiding reprisals except against those who would not swear loyalty. But at the end of the Russian Civil War, the losers were simply terrified. They had begun to understand their doom. Trotsky

would have sneeringly replied that *of course* his war communism wasn't legitimate for the Russian aristocracy, nor was it meant to be: they were to be "eliminated as a class." We need not deal with that particular chestnut again. Set the aristocracy aside for now; talk about the peasants. Trotsky wanted to "lead" *them*, at least—under the fraternal guidance of the proletariat. But, as we saw, most peasants ended up hating the regime. "Most peasants" were most Russians. Whom then had the revolution been for?

## OF PRAXIS

The third rule: *Experience alone, and theoretical grounding alone, are insufficient foundations for any moral calculus.*<sup>12</sup> Consider Trotsky's classic distinction between war and revolution: namely, that the latter destroys state power from below, while the former temporarily strengthens it—but then (so he insists) undermines it.<sup>13</sup> Trotsky is speaking from experience: the experience of World War I, which shattered many nations, particularly his own Russia, and weakened the rest. But his experience is inadequate. In spite of his visit to the United States, he had failed to see how war actually consolidated the U.S.'s international power, which in the long run strengthened the country internally. Trotsky has already arrived at his rules, which he pretends to establish on the basis of his experiences. Or again, the fact that the general strike of 1905 brought the Tsarist economy almost to a standstill proves to Trotsky that the revolutionary leadership of the proletariat is "an incontrovertible fact."<sup>14</sup> But after the establishment of Soviet power, strikes were made illegal, and any group who dared to oppose the victorious revolution did not thereby prove itself to be revolutionary, but, on the contrary, reactionary—and the more dangerously so the more successful its disruption.

Mere experience, especially in a doctrinaire mind, produces equally parochial conclusions. Aye Saung's torture-conversion from patriotic nationalism to international class-ism might well be "objectively" correct for a Burmese intellectual. It bears little reference to the realities of a Shan peasant.

## OF CONTEXT

The fourth: *Context must inform the act that we judge, but ought not to predetermine the judgment.*<sup>15</sup> Nor, remembering our maxim that both the perpetrator and the deed must be judged as one,<sup>16</sup> ought we to rush to judge someone's entire career in one brief summation—a case in point being that wholly human, hence less than completely admirable, character Cicero, who revered the divinity of the tyrant he'd vainly opposed and evaded, but later showed himself to be in possession of courage, of true honor and therefore of justification when he spoke out against the new tyranny of Antonius, a deed of anti-violent greatness for which he was wrenched out of life.

Overreliance on context might lure me into the false assertion that the functionary of an evil regime must be evil—or, more vulgarly still, that the “objective” nature of that context allows for only a certain moral decision. Trotsky tells us that he was prepared from childhood to be a revolutionary, simply as a result of seeing around him so much injustice. But his parents, who saw the same things, did not become revolutionaries. Context does not determine; it only contextualizes.

Underreliance might, by limiting my focus only to the functionary’s personal reality, make out his decisions to be more or less justified than they were: How much could he control? What was the institutional standard against which he was being measured? Did a given act actually comprise vacillation, compromise, acquiescence or rebellion? Go back to Cicero’s address to the now triumphant Caesar, by whose war the Republic and Cicero’s own patron lie dead. He flatters him, you remember, with his sagacity, gloriousness, invincibility, mercy. Then he dares to say: “This is the program to which you must devote all your energies: the re-establishment of the constitution, with yourself the first to reap its fruits in profound tranquillity and peace.”<sup>17</sup> Was this heroic? It depends on whether anyone else felt comfortable telling “the deified Julius” the same thing, how brave Cicero himself had been in the past, how pure, good and useful his ends were, etcetera. Without describing and defining people’s moral environment, how can we know enough to characterize them as the crazed dreamers of martial gallantry, the resolute minions of a just cause, or the armed chessmen of *Realpolitik*?

The aesthetics of context are of course closely related to issues of moral yellowness.<sup>18</sup> Djilas describes the case of a “tall, dark-eyed” girl captured by the Partisans; she’d been an Ustasha camp counselor. She refused Djilas’s suggestion to come over to the Partisan side, insisting that “it would be immoral to change one’s views.” It is difficult not to see a sad nobility about this girl; and yet the Ustashi were essentially torturers and murderers whose crimes sicken any decent person. Djilas had given her a chance; she’d refused it; that was and had to be the end of her story. “She stood up for herself bravely,” he recalls. “However, Rankovic later reported that she weakened at her execution, and was weeping and trembling.”<sup>19</sup> Strictly speaking, these details are irrelevant. The dark-eyed girl was an enemy. I do most sincerely believe that ethical behavior as we best construe it ought to be followed by us throughout our lives, even on the last day of life, and that if we have made a bad or even evil choice we are not barred (or excused) thereby from continuing to live the last moments or years given us in whatever way we consider to be most right. Being safely removed by time, space and nationality from the Yugoslav Partisan War, I can in this quiet room of mine which looks out upon the undisturbed darkness of a night street afford the luxury of being a human being and of seeing the dark-eyed girl as a human being, of admiring and pitying her on her journey from the interrogation room to the firing squad to the mound of carelessly shoveled dirt from which her hands and feet probably stuck out. But word-pictures and emotional

updrafts do not change the fact that under the circumstances of imminent collective defense, of justified defense of homeland, however infected that might have been by preexisting ethnic and local sectarianism,<sup>20</sup> of obedience to an order given by the Partisans' legitimate command, *she had to be killed*.

## A WARNING AGAINST DOCTRINAIRISM

Multiplicity of justification, diversity of participation, context, praxis—I freely admit that these and all such qualifications and limitations are the hallmark of someone who can't even be called an armchair revolutionary—rules which come perilously close to washing their hands of reality, like Plato or Pontius Pilate. War, revolution and indeed *most violence quickly produces its own imminence*,<sup>21</sup> as a result of which these four hedges transform themselves into dangerous obstructionism. Consider as an example the class revolutionary type, or at least the class revolutionary public mask. “To her comrades, Res was a model guerrilla. She was organized, industrious, steadfast and firm in her determination.”<sup>22</sup> And shouldn't every guerrilla live and die as a model guerrilla? Che Guevara wrote that “the guerrilla fighter will be a sort of guiding angel who has fallen into the zone, helping the poor always.”<sup>23</sup> What if they don't want to be helped? The Unabomber wrote: “We don't mean to sneer at ‘plantation darkies’ of the Old South. To their credit, most slaves were NOT content with their servitude. We do sneer at people who ARE content with servitude.”<sup>24</sup> Poor contented people! It was they who received his bombs in the mail. And presumably the Unabomber was not sorry. Had he been, he would have stopped. A model guerrilla does not stop. Whenever she became despondent at others' unwillingness to believe in her, Joan of Arc would go aside and pray. Then very often she'd hear a voice which said: “Daughter-God, go, go, go, I shall be at your aid, go.”<sup>25</sup> It is the aim of *Rising Up and Rising Down* to help us decide whether our voices are offering good counsel or not. A true revolutionary will not be much affected by this book. He hears the voice; he knows, believes; he must go, go, go! Woe to the people against whom the voice directs him! He knows that he is right, and he will act accordingly. “And as for the angels,” says Joan to those who will burn her, “I saw them with my own eyes, and you will get no more out of me about that.”<sup>26</sup> Master Jean de La Fontaine, who did as much as any other Frenchman to get her condemned, insisted with equal sureness that the Church Militant on earth, to which he, of course, belonged, was “well-composed” and could not err.<sup>27</sup>

I defend these four rules. I urge violent moral actors to consider them carefully, to avoid falling into murderous excesses of doctrinairism. Perhaps it's not entirely impractical to follow the strategy summed up by the pacifist anarchist slogan “Minimize violence by emphasizing politics”<sup>28</sup>—that is, to treat one's adversaries as human beings who share at least some of the same pains, hopes and goals as ourselves.<sup>29</sup>

# REMEMBER THE VICTIM!

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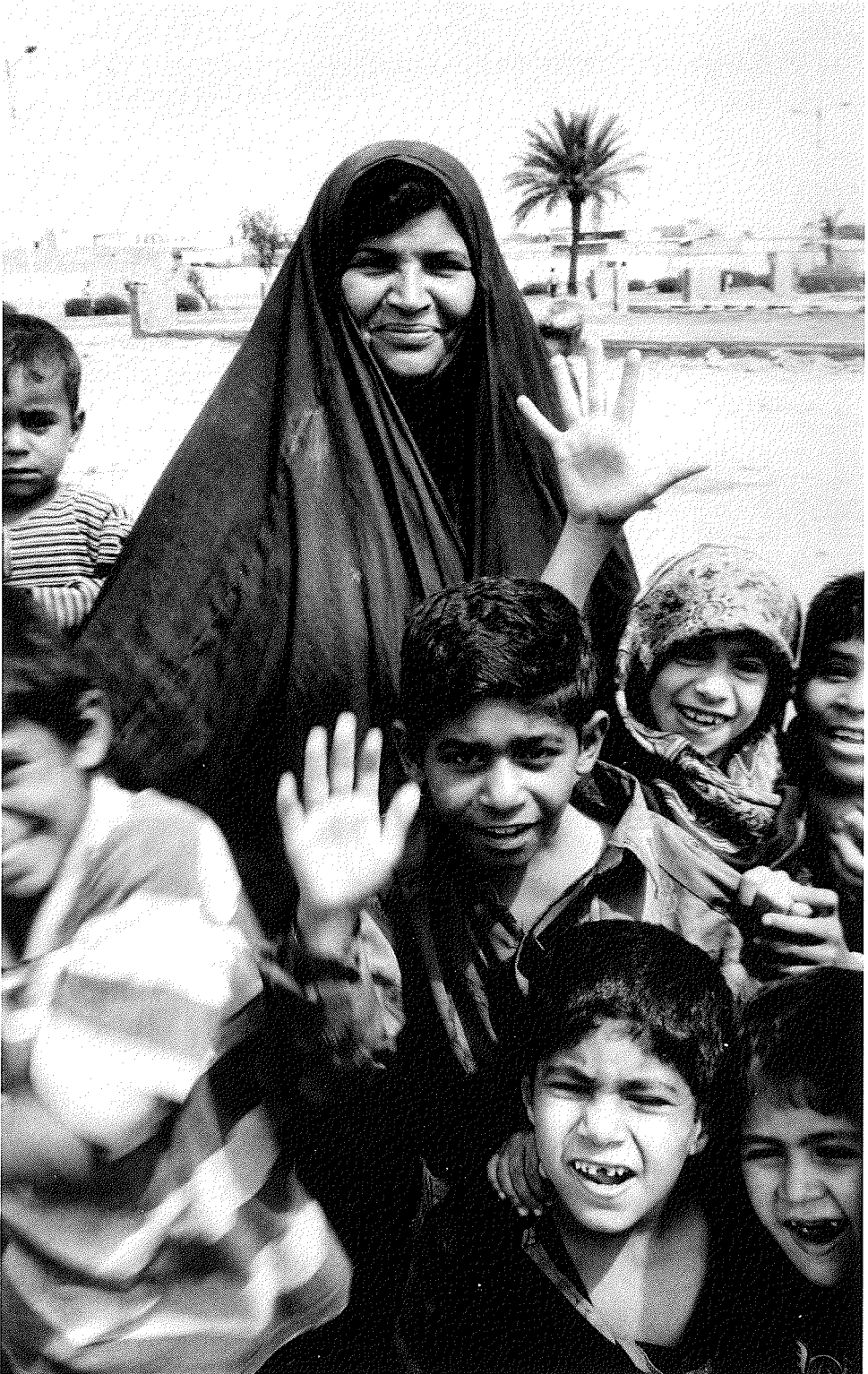
*This portfolio is nothing more and less than some faces of people who have been hurt by what you might or might not call violence. My moral calculus remains at best an abstraction. What these victims feel might teach us more, if we could only know them well enough.*

250. Woman and child in Campo Dos, Colombia, 1999 (see “Weapons and Grief, Weapons and Fear,” pp. 188, 194a, 195a, 195b). The mother had hung up this sign imploring for peace. I can scarcely convey to you how eerie and creepy this place was, with its ruined police station—no new police coming—its factional graffiti, its routine random murders, its fear of saying anything, even of greeting a stranger, because “you never know who is who.” These two human beings were hostages.
251. My friend Will Brinton, killed in Mostar, Bosnia, 1994. He was a good man who had come in hopes of helping war-traumatized children. His death was drawn out and ghastly. This is how he looked after I dragged him out of the car. See the case study “The War Never Came Here,” below.
252. Woman and children in Saddam City, Iraq, 1998. This suburb of Baghdad was especially hard hit by our sanctions, which you may or may not consider justified (see “Is This Violence?” portfolio). They knew that I was American; they blamed my government for their suffering, but they waved to me.
253. Photograph of an inmate of Dachau. It was part of a commemorative display there. I photographed it in 1981. This man’s tortured face has haunted me for many years.













CHAPTER 30

# REMEMBER THE VICTIM!

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*... and Judas said: "If it was prophesied that I should commit the world's greatest sin, is it then my fault?"*

VILLY SØRENSEN<sup>1</sup>

*Did I ever believe that the most terrible ordeal guaranteed the most solemn wisdom?*

MALRAUX, 1967<sup>2</sup>

**T**his book has dwelt, perhaps excessively, on shining or tarnished ends and on their violent means, which hang on the moral actor's wall, subject to all the principles of aestheticizing weapons. The bleeding objects of those ends we've seen in plenty. But each victim is also a *subject*. Violence being inflicted both by someone and on someone, its students often focus on the former, in hopes of understanding and controlling it "at the source." To Freud, violence is but the honesty-loving fellow who strips us naked, baring "the primal man in each of us. It constrains us once more to be heroes who cannot believe in their own death; it stamps the alien as the enemy, whose death is to be brought about or desired; it counsels us to rise above

those we love.”<sup>3</sup> (To rise above them is, of course, to rise down.) He does not see how we can surmount war, only be less disillusioned by it through being willing to face our own deaths and the egotism with which we arm ourselves along the way.<sup>4</sup> — And what about the deaths of others, violent or natural or in between?

In our three meditations on death<sup>5</sup> we began in the catacombs, where death “natural” and “unnatural” reminds us of its universality, then we moved on to overhear the hardnosed jests and bitterly compassionate seeking of the autopsy room, and finally bowed before the immensity of angry grief which deliberate violence inflicts, tearing each wound deeper, hovering over its victims, drinking in their screams. Thus we came closer and closer to the form of pure Violence itself. I spoke in that place of death’s inimical human forms. But what of life’s incarnations—the ones death kills? To put the question another way, what should this book have been about? Should I have devoted 200 pages to one of Stalin’s victims instead of to his agrarian policy? In my “Three Meditations On Death” and my many cameo depictions of victims, I’ve striven sincerely to remember violence’s objects. One reader, Mr. Eli Horowitz, advises me that this chapter “needs a more explicit and direct focus on its own insufficiency. Currently, it seems like almost an afterthought, rather than an acknowledgement of the central counterpoint to the entire book.”

When is violence justified? This is the concern of *Rising Up and Rising Down*. But it is all too easy to answer this question without remembering what violence is: not a shining weapon, but a person loathsomely, deliberately *hurt*. What of violence’s incarnations?

To seek them out, let’s make another journey.

### CLOSER AND CLOSER

“For me, death is irrelevant,” said a Soviet lieutenant wounded in Afghanistan. “While I am, there is no death; when it comes, I won’t be.”<sup>6</sup> Call that the farthest remove—or the extremest numbness—for, after all, he saw death, inflicted it, and half-suffered it. My companion D. had a friend who was a big bug in the police station in Yala City, and since that place lay in Thailand we could wander in unannounced, and her friend came right away, a uniformed old man with a generous helping of “fruit salad” on his chest, bowing, smiling; he seated us at his desk and brought us a stack of the latest multicolored newspapers (on the topmost, a color photo of somebody with a drowned girl in his arms); and a policewoman brought us two chilled Cokes; and every time the phone rang, D. picked it up for her absent friend and answered so helpfully, “*Kaa, kaa, kaa*” (yes, yes, yes); and we waited for her friend to come back to take us out to lunch, not disturbed by the presence of the drowned girl at all. Underneath her likeness was another newspaper proudly bearing a color photo of bloody corpses being dragged out from a smashed automobile. What were we to do about those people? And when we started meeting bomb-wise

and machine-gun-wise killers and interviewing the families of their victims, it felt the same as finding more gruesome images. There *harm* was, and it would go on, and we could not stop it.<sup>7</sup> We might have paid respect by being sad, but then we would always have to be sad. What to do?

Get a little closer, and you may become like my bank teller in Sacramento. In the fall of 1996 a robber ran in and shot somebody dead before her eyes. Shortly thereafter, her branch was bought by another bank, and she and her colleagues moved across the street. Two weeks later, the new bank was hit. No one died that time, but the robber was at her window. I asked her what she had thought and felt as she stood looking into his gun's steel snout. "I just did what he wanted," she said dully. "My husband and I watch thriller movies all the time. We know that if you don't do what they say, they kill you. I just gave him the money and tried not to think about what was happening." Closer still, you'll become the young woman from Sarajevo I met, the girl who had lost so many of her friends to snipers and shelling that she'd become "cold," as she put it; she just wouldn't, couldn't grieve anymore.<sup>8</sup> Emmanuel Ringelblum, the chronicler of the Warsaw Ghetto, writes: "Almost daily people are falling dead or unconscious in the middle of the street. It no longer makes so direct an impression."<sup>9</sup> Six months later the situation is worse, and he writes: "One walks past corpses with indifference."<sup>10</sup> The author of a monograph on military Renaissance art confesses: "We are not to expect that wounds, executions or burials were found 'pathetic' then."<sup>11</sup>

For the year 1340 we read this entry in an Armenian chronicle:

The villainous Emir of Alep, under orders from Melik-Nacer the Sultan of Egypt, secretly invaded the territory of Sis and sacked it from top to bottom, massacring some [outright?], burning the others [alive], and carrying a portion of the inhabitants into slavery. The country of the Armenians, so rich in population, he left an empty waste.<sup>12</sup>

We maintain our distance from the mass grave. The fourteenth century has receded into fabulousness; who can imagine the destruction of Sis, let alone believe in it? A little closer still to the lip of crumbling soil, and we meet Erich Maria Remarque with his empty trench-dawns and rat-riddled trench-nights where soldiers lie with their gas masks on, waiting for the poison clouds. Dead soldiers lie in blood and dirt, their faces smeared with blood and dirt.<sup>13</sup> "We are deadened by the strain—a deadly tension that scrapes along one's spine like a gapped knife."<sup>14</sup> Numbness need not mean indifference; often, it's repression of terror. Listen to my Bosnian friend Vahida, who when I met her during the siege of her home city, almost paralyzed by apprehension and grief, whispered only: "It's too difficult to explain." Four years later she sent me this letter:

Until June '96 I may stay here in Germany, but after that, it's almost certain that

I'll have to go back to Bosnia, back to Sarajevo. On that account I'm very ill at ease. You know already, I don't want that. I have so much fear about going back there to live. This is perhaps difficult to understand. Sometimes not even I myself can understand it... I ask myself what we'll all do, when I come back. No one can make any money there... I don't know if you've sometimes felt this way, that everything is giving way under your feet.<sup>15</sup>

Difficult to explain, difficult to understand—numbness, hopelessness! She wanted to keep violence at a distance; thinking about it made her want to scream... A quarter-century earlier, it was no different for the Viet Cong: "Caked in dried blood and sweat, we dragged our rifles and our dead on our backs... We marched, stunned by exhaustion and despair."<sup>16</sup> But still those soldiers eat, play cards and defecate; they cannot exist in suspended animation; they too must live, numb to the smell of rotting bodies. Some become strangers to pity; others achieve an almost Buddhist freedom from attachment, fighting, killing and dying in a state of shell-shocked silence, madness, indifference or fatalism serene or otherwise. Closer still—don't be afraid!—come meet the *Sonderkommando* of a concentration camp. They pull apart the heap of blue corpses, break out gold teeth, hose the piss, puke, shit and menstrual blood out of the gas chamber, then haul blue flesh to the crematoria. That's all they do—their lives are nothing but death, and for them there's not even a soldier's chance: At regular intervals the entire *Sonderkommando* is liquidated.—What do they think about (aside from food)? How do they feel? I suppose that the key-word must be expediency, as in the case of the Japanese soldier who during the same epoch of worldwide slaughter kicked dying Chinese out of his way. "I didn't harbor any ill feeling toward them," he recalled.<sup>17</sup> And when such people did harbor ill feeling, as recounted in Tadeusz Borowski's concentration camp tales,<sup>18</sup> no matter how personally it might be expressed against some victim, it was in effect merely the accidental expression of an impersonal animus of fear, frustration, hatred, sadness and bitterness—how can mass murder be personal? "Part of our existence lies in the feelings of those near to us," says Primo Levi. "That is really why the experience of someone who has lived for days during which man was merely a thing in the eyes of man is non-human."<sup>19</sup>—Closer still, and you'll see your family die at Hiroshima, which just might make you numb "sometimes within minutes or even seconds,"<sup>20</sup> or maybe instead you'll be packed inside the gas chamber yourself (one person per square foot)—then, when one of the onrushing deaths is indisputably yours, you'll probably be pricked out of your numbness by the needles of terror and agony, but only for a moment; then you'll be numb forever.

## THE SOURCE

It is perhaps *only* aesthetics, the sensual apprehension of the results of violence, which can prevent us from being numbed, like genocidal bureaucrats whose “apparent cynicism,” it has been written, “involves psychic maneuvers ... that permit them to know very well about, and yet never really *feel*, the drastic implications of [nuclear] deterrence.”<sup>21</sup> This is why I, a novelist, took it on myself to write this book. But whatever talent I have should *frame*, not translate, the victims’ speech. Let them speak. They experienced violence. They know. We must respect their knowledge.

One teenage girl, T., who’d been gang-shot at a traffic light in Los Angeles wrote me:

So you may see since the incident everything has turned, and like i’ve been telling everyone since the beginning of the year “This isn’t going to be my year.” You may say that i think negatively but these are the sort of images that i see in my dreams and one thing that bothers me is that they have to come true... And it was so funny when i read your letter and you said “try not to get angry or scared”, because i actually felt really angry. Mostly because for some dumb asses reason i’m paying for the consicuenes [consequences] not him/her. All i’ve wanted to do is finish school and graduate and since this has happened i’ve fallen behind.

More than half a century earlier, a hungry, friendless Soviet citizen who’d served more than one sentence in the Gulag camps and would later be shot was writing in his diary:

They dig up from somewhere an awful evaluation from Vishera, stating in no uncertain terms that I am an incorrigible prisoner... I immediately sense I’m not going anywhere, not now, and not after I’ve served my time either. This new way of lying, this collusion of actions against a man when he is to be destroyed, hit me so hard that I just crumbled psychologically and aged several years, right on the spot. But it is so natural: they sense the truth and can’t forgive us our protests against their violence.<sup>22</sup>

These two paragraphs express identical feelings. My friend T. never knew the gangsters who shot her, nor they her; she suffered what might almost be called an accidental assault. It could have been anyone at that intersection. Citizen Arzhilovsky, on the other hand, happened to belong to the wrong class. His shooting would be equally inevitable—because it happened—and perhaps equally impersonal, although his tormentor-murderers knew him and planned his liquidation in advance; they’d already dekulakized him. The moral ends of the two sets of shooters could not have been more different. And yet these two hopeless, negativistic, bitterly blighted hearts are brother and sister. Means and end—aren’t they nearly always irrelevant to those who must suffer the agony of their infliction?



21.  
GENERAL CONTINUUM: WHEN IS  
VIOLENCE JUSTIFIED?

A. The Talmud

“Belong ever to the persecuted rather than to the persecutors.”<sup>23</sup>

B. The Bible

“You shall not kill.”<sup>24</sup>

C. Marcus Aurelius (*ca.* A.D. 175)

“Suppose that men kill thee, cut thee in pieces, curse thee. What then can these things do to prevent thy mind from remaining pure, wise, sober, just?”<sup>25</sup>

D. Aleksandr Solzhenitsyn (1960s)

“It is not the result that counts! It is not the result—but *the spirit!* Not *what*—but *how*. Not what has been attained, but at what price.”<sup>26</sup>

E. Jose Rizal, Filipino martyr-patriot (1892)

“Success judges things according to results; but whether [my undertaking] is favorable or not, it will always be said that I did my duty and it does not matter if I die while fulfilling it.”<sup>27</sup>

F. Boris Pahor, concentration camp survivor (1967)

“The environment must be changed. It does not help to kill the murderer that the environment produced.”<sup>28</sup>

G. Julia Ward Howe, suffragist (1906)

“The weapon of Christian warfare is the ballot, which represents the peaceful assertion of conviction and will. Society everywhere is becoming converted to its use. Adopt it, O you women, with clean hands and a pure heart!”<sup>29</sup>

H. Abbie Hoffman (1968)

“Although I admire the revolutionary art of the Black Panthers, I feel guns alone will never change this System. You don’t use a gun on an IBM computer. You pull the plug out.”<sup>30</sup>

## I. Buddha

"[Buddha] teaches a complete surrender of self, but he does not teach a surrender of anything to those powers that are evil... Struggle must be, for all life is a struggle of some kind. But he that struggles should look to it lest he struggle in the interest of self against truth and righteousness... Struggle, O general, courageously, and fight they battles courageously, but be a soldier of truth."<sup>31</sup>

J. Julius Caesar (*ca.* 51 B.C.)

"Caesar complained that [the British tribes] had now begun war on him without cause; but he agreed to pardon their ignorance, and required hostages."<sup>32</sup>

## K. Napoleon (before 1820)

"A fortified place can only protect the garrison and arrest the enemy for a certain time. When this time is elapsed and the defences are destroyed, the garrison should lay down its arms. All civilised nations are agreed on this point."<sup>33</sup>

## L. Nietzsche (1886)

"Whoever fights monsters should see to it that in the process he does not become a monster. And when you look long into an abyss, the abyss also looks into you."<sup>34</sup>

## M. Khun Sa, Burmese "Opium King" (1994)

"If you are weak, nobody will listen to you even though you beg them to with your hands clasped in front of you as a sign of homage. On the other hand, if you are strong, people will readily listen to you even though you are sitting on their heads."<sup>35</sup>

## N. Calvin Craig, Grand Dragon of the United Klans, Georgia Realm (before 1967)

"I do not advocate violence, but if you have to resort to it after all else fails, then use it."<sup>36</sup>

## O. Machiavelli (1513)

"You must know there are two ways of contesting, the one by law, the other by force; the first method is proper to men, the second to beasts; but because the first is frequently not sufficient, it is necessary to have recourse to the second."<sup>37</sup>

P. Hernando Cortés, against the Cholulan Indians (as later recounted by his private secretary, 1552)

“He then told the Mexicans how the Cholulans had plotted to kill him, ... and that he intended to punish these vile traitors... He then fired the signal gun... They did their best in such close quarters, and within two hours had killed some six thousand or more. Cortés ordered them to spare the women and children.”<sup>38</sup>

Q. Marx (1872)

“You know that the institutions, mores, and traditions of various countries must be taken into consideration, and we do not deny that there are countries—such as America, England, and ... perhaps ... Holland—where the workers can attain their goal by peaceful means. This being the case, we must also recognize the fact that in most countries on the Continent the lever of our revolution must be force; it is force to which we must someday appeal in order to erect the rule of labor.”<sup>39</sup>

R. Frantz Fanon (1961)

“The naked truth of decolonization evokes for us the searing bullets and bloodstained knives which emanate from it. For if the last shall be first, this will only come to pass after a murderous and decisive struggle between the two protagonists... The native who decides to put the program into practice, and to become its moving force, is ready for violence at all times. From birth it is clear to him that this narrow world, strewn with prohibitions, can only be called into question by absolute violence.”<sup>40</sup>

S. Thucydides (*ca.* 400 B.C.)

“To act in the true spirit of independent men [means] returning good for good and evil for evil.”<sup>41</sup>

T. The Bible

“You shall give life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burn for burn, wound for wound, stripe for stripe.”<sup>42</sup>

U. Captain Say Do, Karen National Liberation Army (1960s)

“The Christian faith tells us to love our neighbors, but how

can we do this when the Burmese Army is burning down our villages and killing our people? If they burn down our villages, we can burn down theirs. Nothing could be easier."<sup>43</sup>

V. Gunman in Rema, a Jamaican ghetto (1997)

"If we doan defend the community, we gotta run away. We gotta stop them by any means necessary."<sup>44</sup>

W. Members of the Crazy Ruthless Kings gang (Cambodian), Long Beach (1996)

Q. "When is violence justified?"

A. "When someone fuck us up!"

A. "When we see a Mexican, 'cause no other choice... They just beat us down. Any Mexican, we beat 'em down."<sup>45</sup>

X. The Bible

"They warred against Mid'ian, as the LORD commanded Moses, and slew every male... And Moses was angry with them... Moses said to them, "Have you let all the women live? Behold, these caused the people of Israel, by the counsel of Balaam, to act treacherously against the LORD in the matter of Pe'or, and so the plague came among the congregation of the LORD. Now therefore, kill every male among the little ones, and kill every woman who has known man by lying with him. But all the young girls who have not known man by lying with him, keep alive for yourselves."<sup>46</sup>

Y. Khmer Rouge General X (1995)

"For himself, he want to kill the people if he do mistake like spy."<sup>47</sup>

Z. Sun-tzu, Chinese strategist (fifth to second century B.C.).

If before the mission has begun it has already been exposed, the spy and those he informed should all be put to death."<sup>48</sup>

AA. Former member of the Tiny Rascals Gang (Cambodian), Long Beach (1996)

Q. "When is violence justified?"

A. "If we know that someone's our enemy, that's his loss. We just beat 'im up."

## BB. Unnamed Spartan woman (before A.D. 120)

"A woman, when she saw her son approaching, asked how their country was doing [in battle]. When he said: 'All the men are dead,' she picked up a tile, threw it at him, and killed him, saying: 'Then did they send you to bring the bad news?'"<sup>49</sup>

## CC. Than Tun, Burmese Communist Party (1960s)

"To win the war and seize political power, it is necessary to use force as the central means."<sup>50</sup>

## DD. Mao Zedong (ca. 1960)

"If you cannot push everything else aside and fight ruthlessly for your goal, then you will not reach it."<sup>51</sup>

## EE. The Unabomber (1995)

"If we had never done anything violent and had submitted the present writings to a publisher, they probably would not have been accepted... In order to get our message before the public with some chance of making a lasting impression, we've had to kill people."<sup>52</sup>

## FF. Kazik, a Warsaw Ghetto fighter (1944, 1981)

"My plan was to set up a large-scale revenge operation and kill a great many Germans, especially S.S. men and Gestapo agents. I was willing to go even further and say that we should take revenge on the whole German nation. In that period we hadn't yet heard of a 'good German,' and I saw the German people as my sworn enemies, willing to do everything to annihilate us."<sup>53</sup>

## GG. Molotov (ca. 1980)

"Stalin, in my opinion, pursued a correct line: let innocent heads roll, but there will be no wavering during and after a war."<sup>54</sup>

## HH. Hitler (1925-26)

"*The right to possess soil can become a duty if without extension of its soil a great nation seems doomed to destruction.* And most especially when not some little nigger nation or other is involved, but the Germanic mother of life, which has given the present-day world its cultural picture."<sup>55</sup>

## II. Sade (1797)

"We cunt-suck each other by the light of homicidal flames my ferocity has ignited, we discharge to the sound of shrill screams coming from a woe and anguish that are my confection; and never has a woman been happier than was I."<sup>56</sup>



# COLUMBINE MASSACRE

## COLORADO, 1999

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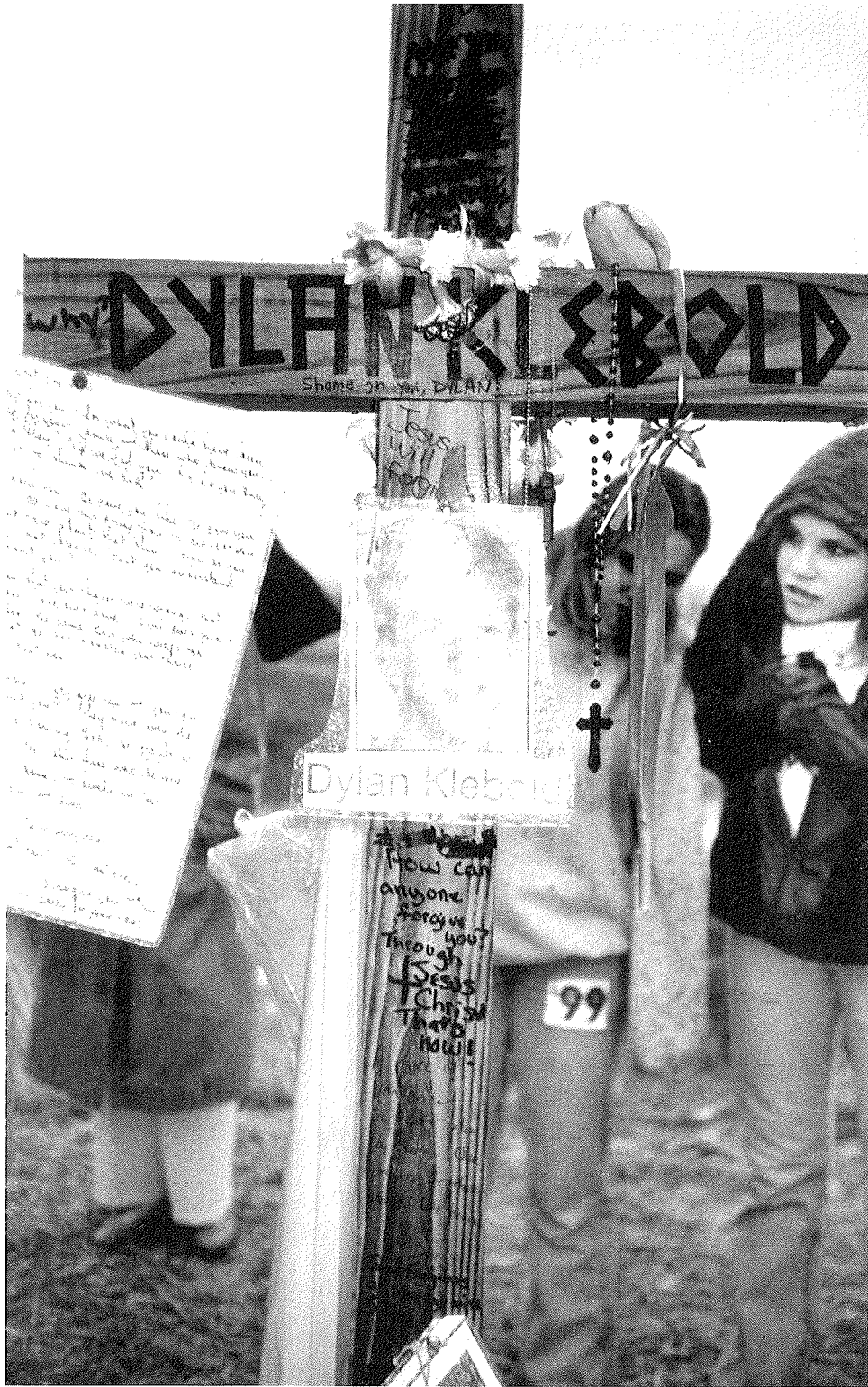
*On Hitler's birthday of that year, two boys gunned down thirteen people at Columbine High School, then pulled the trigger on themselves. Everything is relative: We Americans were appalled, while my friends in Colombia (see "Weapons and Grief, Weapons and Fear") felt almost indifferent, since they suffered such losses quite frequently; and, besides, the U.S. was not their country. In America itself, the Oklahoma City bombing and then the September eleventh affair soon dwarfed the Columbine massacre. Meanwhile, these fifteen human beings are gone forever, gone by violence. When their deaths were "newsworthy," I declined to exploit them, which in my admittedly biased opinion is why the case study "Murder for Sale" was never published until now. Now that the protagonists of Columbine are forgotten, it seems right and decent to offer them, murderers and murdered, this photographic memorial.*

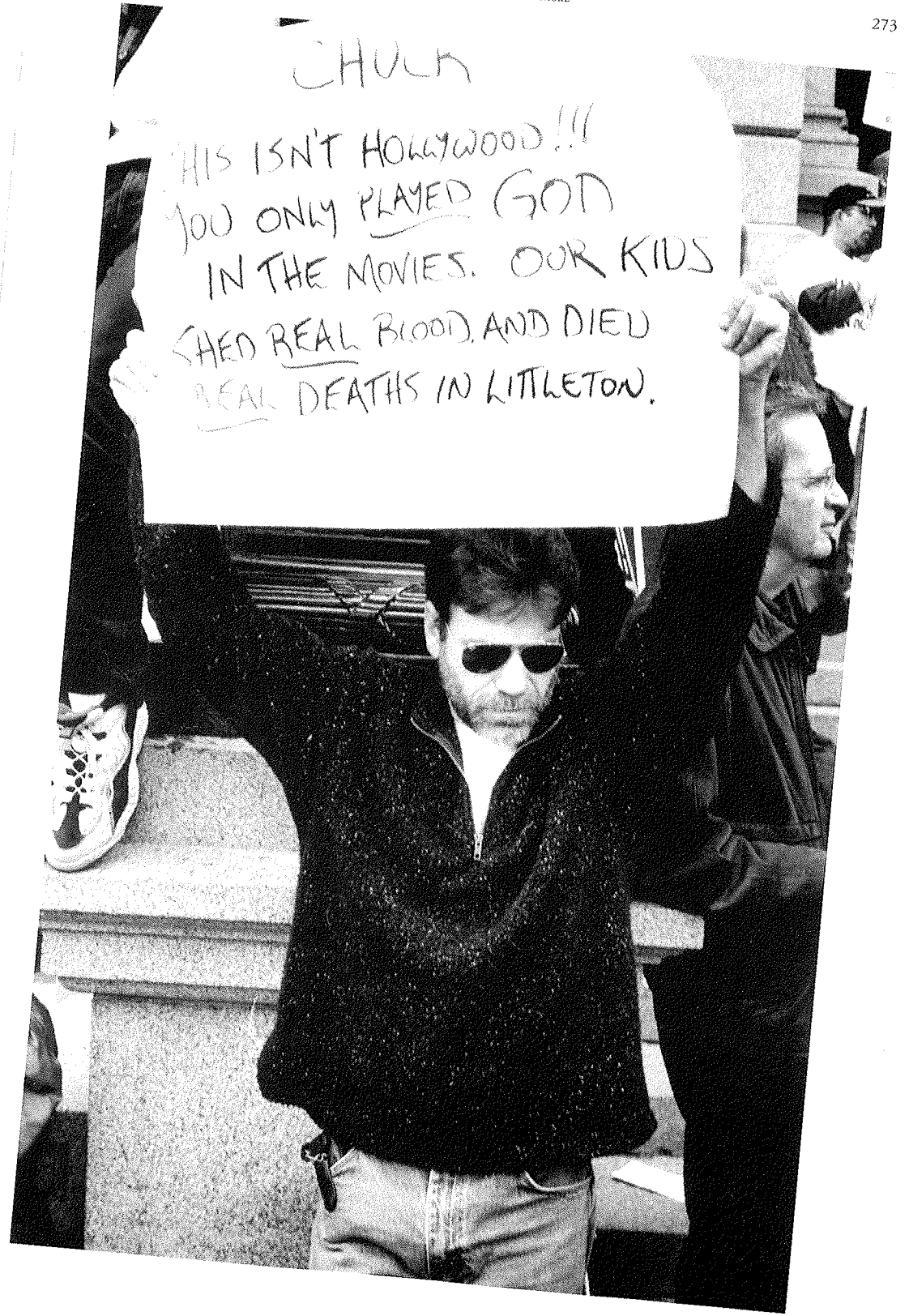
269. Cross for Rachel Scott, victim, Littleton, Colorado.
270. Cross for Dylan Klebold, murderer, Littleton, Colorado.
271. Poem: "I Forgive," Littleton, Colorado.
272. Cross with the message "Who's Toying with Reality?", Littleton, Colorado.
273. The National Rifle Association's annual convention happened to be held in Denver a few days after the shootings, which probably would have become politicized in any event. A vast anti-gun rally was instantly scheduled. The man in this photograph is holding up a message to the actor Charlton Heston, who was at that time president of the NRA. Denver, Colorado.
274. Anti-NRA girl, Denver, Colorado.
275. NRA member, Denver, Colorado.



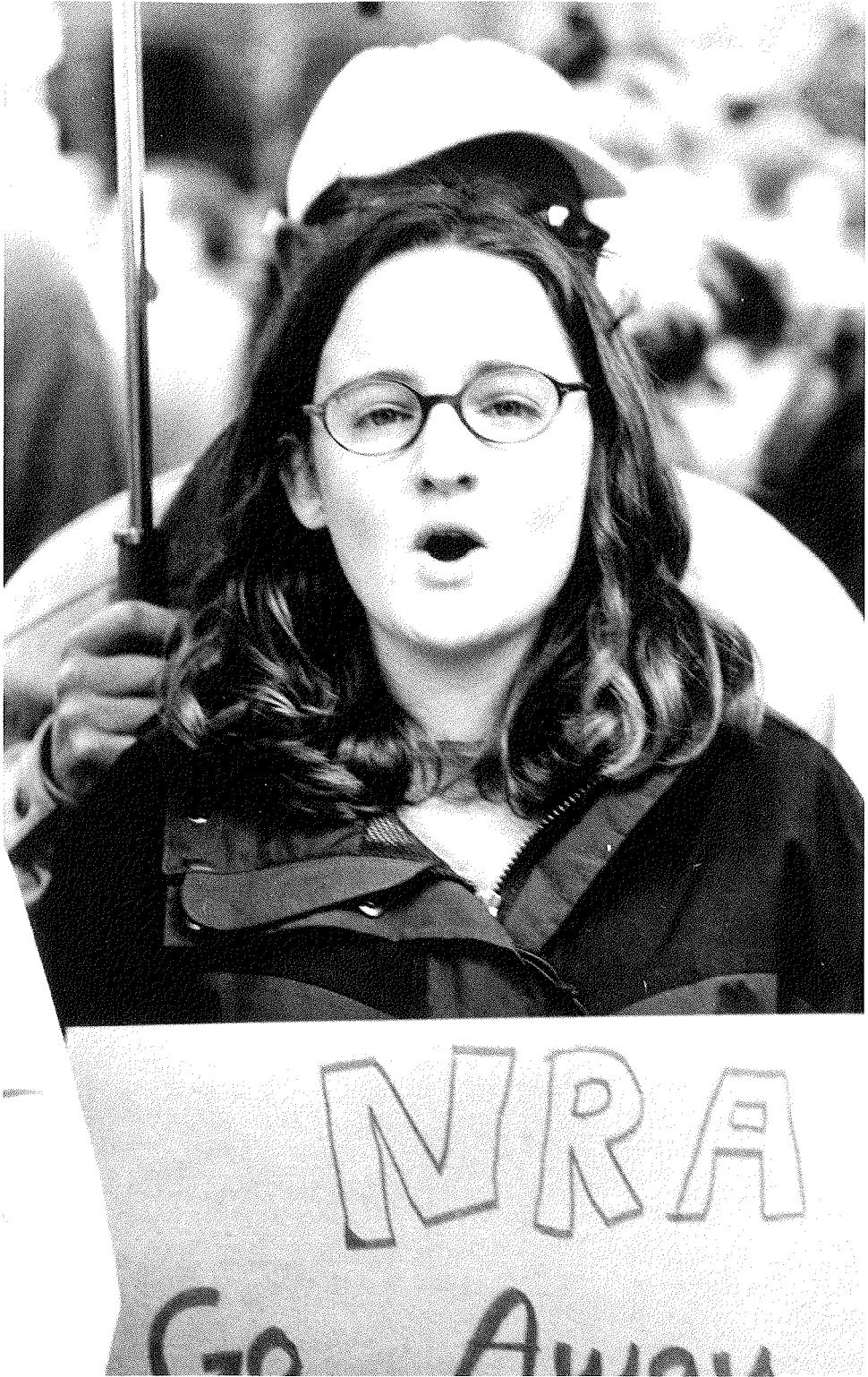
- 276. NRA member on the board of directors, Denver, Colorado.
- 277a. Letter to the two murderers, Littleton, Colorado.
- 277b. Line of people visiting the crosses, Littleton, Colorado.
- 278a. Offerings, Littleton, Colorado.
- 278b. Anti-NRA rally, Denver, Colorado. SHAME ON THE NRA.
- 279a. Pro-gun response: FREE MEN OWN GUNS, Denver, Colorado.
- 279b. HITLER HAD GUN CONTROL, Denver, Colorado.
- 280a. Anti-gun standard bearer, Denver, Colorado.
- 280b. COLUMBINE, YOU ARE IN GOD'S HANDS, attached to the high school's fence, Littleton, Colorado.

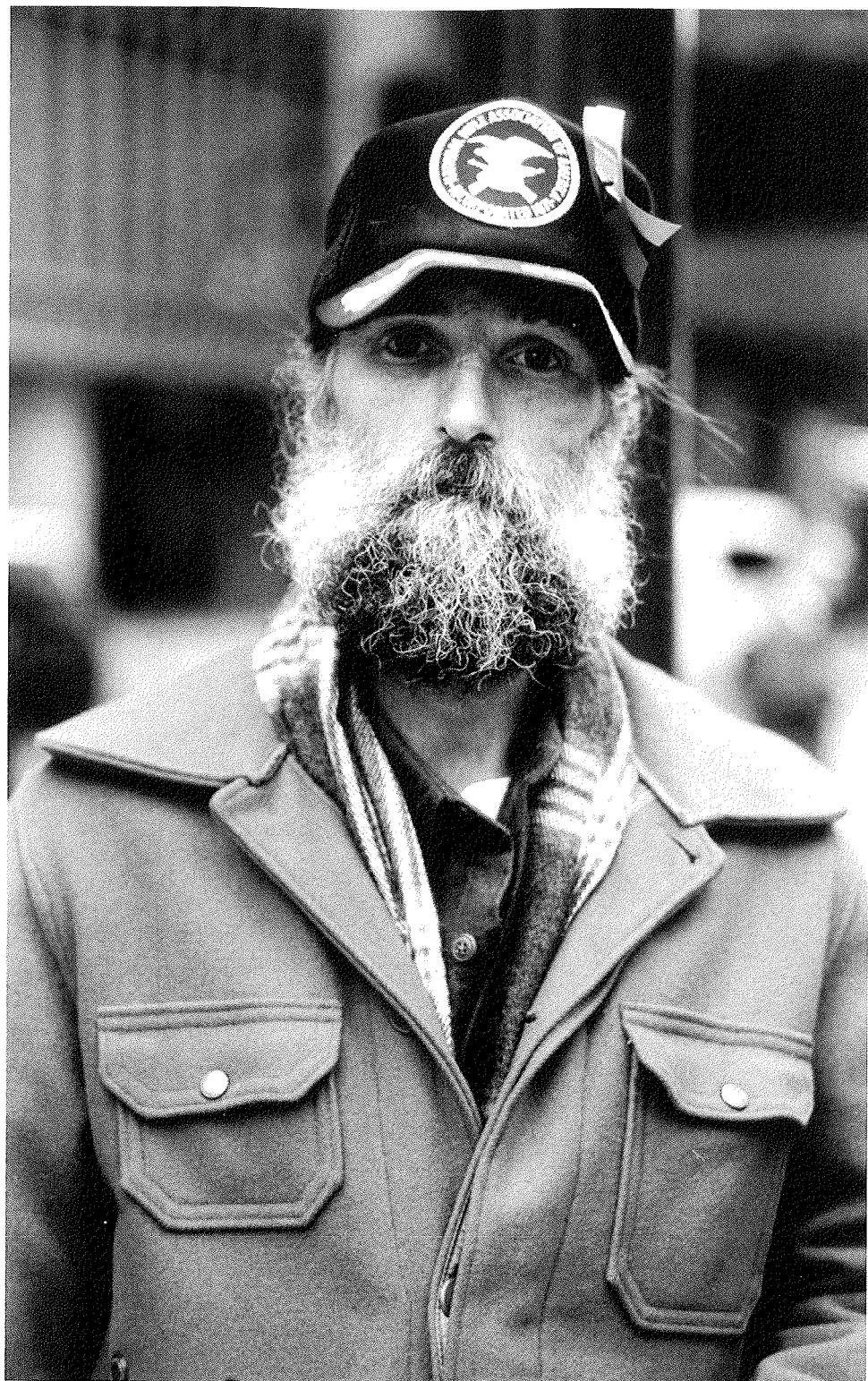


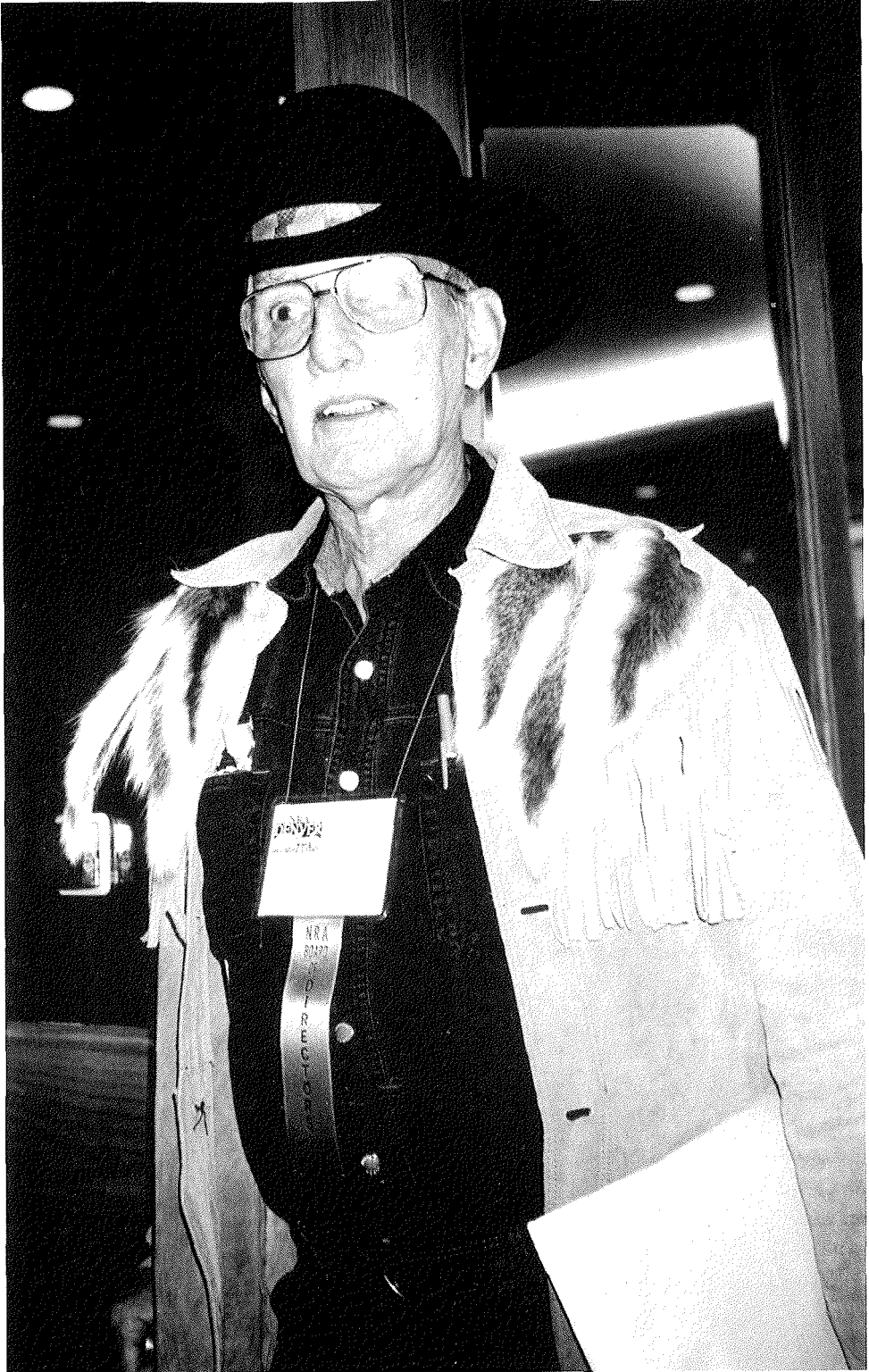


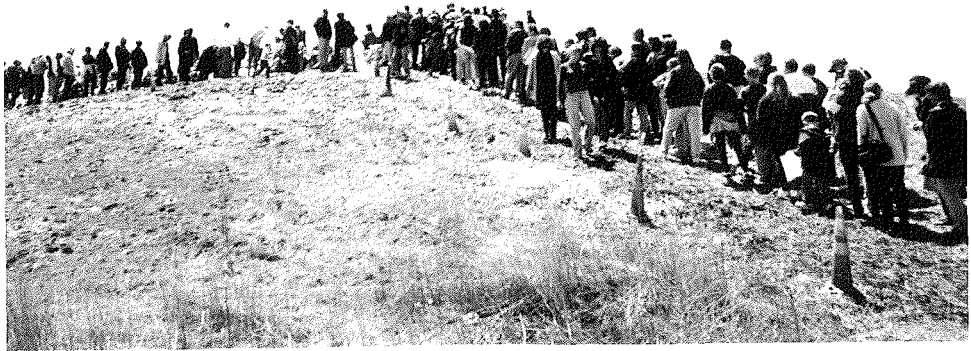
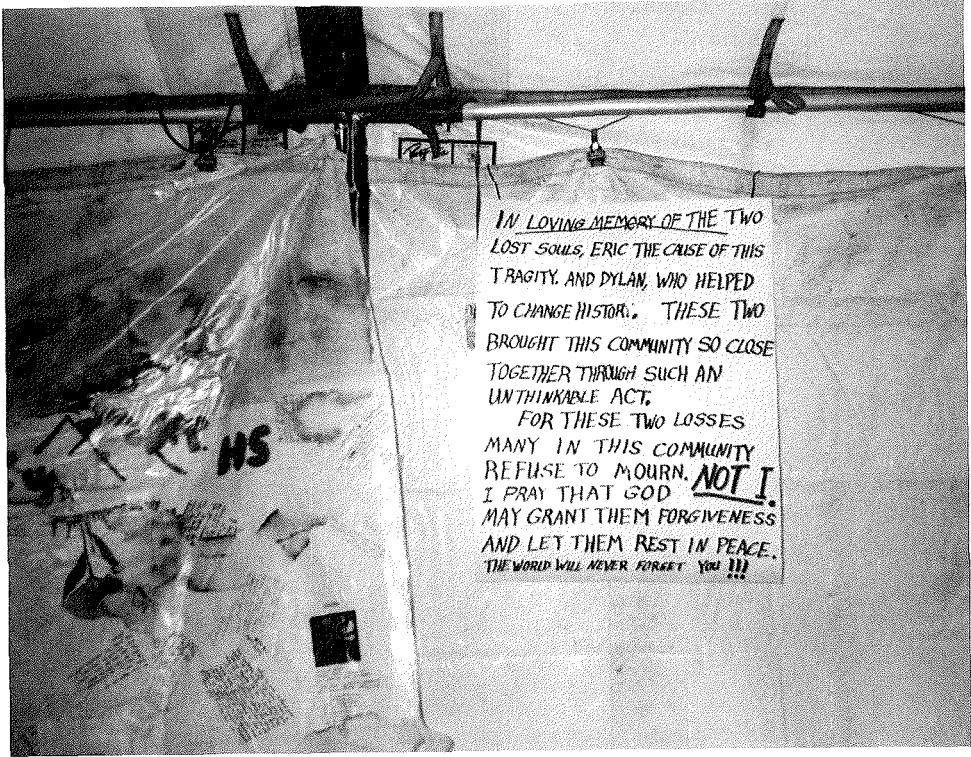


















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NOTES





## FROM RAISON D'ETAT TO REASONS OF SPLEEN

<sup>1</sup> *T'ai Kung's Six Secret Teachings*, in Sawyer and Sawyer, p. 47.

<sup>2</sup> Thucydides, p. 200.

<sup>3</sup> See above, "Defense of War Aims," moral calculus, 5.2.F., 6.2.F.

<sup>4</sup> Moral calculus, 5.1.7, 5.2.F.1.

<sup>5</sup> Hölldobler and Wilson write that "the colony whose foragers arrive first typically wins, because the foragers recruit nestmates, who surround the bait and prevent scouts of competing colonies from sampling the food and recruiting on their own" (p. 398). Human beings might do the same when they stake out a mining claim or otherwise gather scarce resources, thereby creating a class system (see above, "Defense of Class"). As we have seen, this may or may not be justified.

<sup>6</sup> Thucydides, p. 338.

## DETERRENCE, RETRIBUTION AND REVENGE

<sup>1</sup> "Order Concerning the Exercise of Martial Jurisdiction and Procedure in the Area 'Barbarossa' and Special Military Measures," authorized by Hitler; quoted in Taylor, p. 110. This wicked order must be considered still more odious by context, being drawn up before Barbarossa (the invasion of the Soviet Union) began; already collective retribution was being spelled out. See below, "Loyalty, Compulsion and Fear."

<sup>2</sup> Quoted in Taylor, p. 110.

<sup>3</sup> "Villa was the very incarnation of irregularity, and his men took him as a model" (Womack, p. 193).

<sup>4</sup> Call it defense of honor if you like, or even defense of class, defense against traitors, defense of the incipient revolution, symbolic tyrannicide.

<sup>5</sup> Moral calculus, 6.3.A.1.5, 6.3.A.2.2., 6.3.A.3.2.

<sup>6</sup> Tuck, pp. 39-40.

<sup>7</sup> Unlike so many of his colleagues, Rudzutak for whatever reason wasn't pistol-shot in the back of the neck while shuffling down some

basement corridor. He faced a firing squad.

<sup>8</sup> Moral calculus, 1.3.1-1.3.13.

<sup>9</sup> As revealed, for instance, in the memoirs of Djilas, Trotsky and Alliluyeva.

<sup>10</sup> For definitions of these, see above, "Defense of Honor."

<sup>11</sup> Tuck, pp. 156, 160.

<sup>12</sup> Sade (who figures below in "Punishment.") adored the idea of pleasure-murders (although to our knowledge he never committed any); judicial killing, on the other hand, appalled him—perhaps because as a criminal he might have been subject to it. See Lever, pp. 444-445).

<sup>13</sup> Moral calculus, 5.3.A.1.

<sup>14</sup> Moral calculus, 5.3.A.2.

<sup>15</sup> *The Unknown Lenin*, p. 69; document 38: August 20, 1919; coded.

<sup>16</sup> Herodotus, Book Three, p. 262.

<sup>17</sup> Moral calculus, 5.3.A.3.

<sup>18</sup> *Bangkok Post*, March 4, 1995, p. 8. We read that her in-laws even threatened to bury her alive with the body.

<sup>19</sup> Abneth McCabe to Miss Ellen E. Casey, November 5, 1875, in Klasner, p. 141.

<sup>20</sup> Adelson, p. 642.

<sup>21</sup> Callwell, pp. 152-53.

<sup>22</sup> Moral calculus, 5.3.A.1.

<sup>23</sup> *Sacramento Bee*, June 6, 1996, "Metro" section, p. B2.

<sup>24</sup> Garrow, *Bearing the Cross*, p. 43.

<sup>25</sup> Defined above, in "Defense of Authority." See moral calculus, 5.2.C.1., 5.2.C.2.

<sup>26</sup> Moral calculus, 5.3.A.1.4.

<sup>27</sup> Hobbes, p. 210 (I.15).

<sup>28</sup> Tizoc (1481-86). See Hassig, p. 189.

<sup>29</sup> Dmytryshyn, p. 492 (doc. 130: "The Sentences Imposed by the Voevoda...", July 14, 1690). Italics mine.

<sup>30</sup> Loc. cit., p. 493.

<sup>31</sup> In fact his anger was sometimes as broad as his ugly careflessness. His instructions for the trial of the Jewish doctors: "Beat, beat and beat again!"

<sup>32</sup> Ibid, p. 215. Everybody who punishes to improve the transgressor is acting on this premise, although it will usually be stated more mildly than in Cleon's version. Thus many a seventeenth-century Frenchman, like the family friend just quoted, would doubt-

less insist that he was treating his child well when he flogged her for some offense, because proactive deterrence socializes the young into self-disciplined (self-punishing) respecters of authority.

<sup>33</sup> See the moral calculus, below.

<sup>34</sup> John Steinbeck, "We can only think of Augustus Caesar," *New York Herald Tribune*, January 27, 1948; quoted in Snyder and Morris, p. 713.

<sup>35</sup> Djilas, *Conversations with Stalin*, p. 62.

<sup>36</sup> Churchill, *The Hinge of Fate*, p. 358. About this paranoia Churchill comments: "The simplest test is to ask oneself whether anyone has any interest in killing the person concerned" (loc. cit.). Molotov reminds me increasingly of his capitalist, nay, feudalist forbear, Cortes—who was less dour than he, it is true, but equally energetic, single-minded, inflexible in negotiation, ruthless, cautious—above all, cautious (unlike John Brown, who explicitly equated caution with cowardice. Brown wanted to deter his enemies into being cautious, but not to follow that line himself). When Cortes arrives in Cempoala in 1519, he is respectfully and commodiously lodged in chambers so well gypsumed that his men believe them to be silver-plated, but he follows the procedures of Molotov: "Cortés distributed his men among the rooms, had the horses looked after and the guns placed at the entrance—in short, he fortified himself as if he were in the enemy's camp and presence, and ordered that no one, on pain of death, should venture outside. The lord's servants ... provided an abundant supper for our men and gave them beds after their fashion" (Gómara, p. 71).

<sup>37</sup> If we want to further enrich our classical allusions, we may compare Stalin to Constantine, who abolished the praetorian guard's dangerous prerogatives and then, alarmed by other dangers real and imagined, liquidated his too popular son; his wife of twenty years, who'd assisted in the son's ruin; his nephew; and a number of more or less innocent satellites (Gibbon, vol. 1, pp. 257-59). "The ordinary administration was conducted by those methods which extreme necessity can alone palliate; and the defects of

evidence were diligently supplied by the use of torture" (ibid, p. 251).

<sup>38</sup> Trotsky, p. 395. In vol. 3 of Lenin's collected works, a post-Stalinist production which never gives Trotsky a good word, Lenin compares Rudzutak's theses with Trotsky's and concludes "wherever the latter differs from Rudzutak, he is wrong" (p. 474; "Once Again on the Trade Unions, the Current Situation and the Mistakes of Trotsky and Bukharin," January 24, 1921; "Disagreements on Principle").

<sup>39</sup> Deutscher, p. 352.

<sup>40</sup> As for me, I don't need to question Vyshinsky's procedures. I need only quote him. Here he is, instructing the jury at the trial of the Bukharinists: "May your verdict resound as the refreshing and purifying thunderstorm of just Soviet punishment! ... the traitors and spies who were selling our country to the enemy must be shot like dirty dogs! ... crush the accursed reptiles!" (excerpts from *Report of Court Proceedings: The Case of the Anti-Soviet Bloc of Rightists and Trotskyites*, 1938, in Daniel, p. 215).

<sup>41</sup> Deutscher, p. 596. Again, he could have read this analysis right out of Gibbon. Here is the latter author on Tiberius vis-à-vis the Roman Senate: "The servile judges professed to assert the majesty of the commonwealth, violated in the person of its first magistrate; whose clemency they most applauded when they trembled the most at his inexorable and impending cruelty. The tyrant beheld their baseness with just contempt" (vol. 1, p. 33, ch. III).

<sup>42</sup> "The biggest difficulty remains the fact that proceedings of the Nuremberg type are attractive to governments only when the identity of victors and vanquished is conveniently settled in advance." Dear and Foot, p. 827 (article on the Nuremberg trials, by Michael Biddis).

<sup>43</sup> Conquest, *The Great Terror*, pp. 420-21. To this historian, Rudzutak's case was emblematic: failure to plead guilty led automatically to the closed trial and the extreme penalty (op. cit., p. 128). But a guilty plea would have "proved" him equally deserving of it.

<sup>44</sup> For a discussion of political personalization in ancient Rome, see "Defense of War Aims."

<sup>45</sup> Ibid, p. 479.

<sup>46</sup> In "Defense of Authority" (above), we learned about the Bolsheviks' fateful decision, rapidly to be employed by Stalin, that defense of authority could legitimately consist of defense against faction.

<sup>47</sup> Burke, pp. 178, 182, 193.

<sup>48</sup> Quoted in von Koerber, p. 2.

<sup>49</sup> The latter was, for instance, Martin Luther's attitude. "It is always better to let a knave live than to kill a good man, for the world will still have knaves, and must have them, but of good men there are few" (op. cit., p. 382; "On Authority").

<sup>50</sup> See above, "Defense of War Aims."

<sup>51</sup> If we disbelieve unproven allegations of complicity in murder.

<sup>52</sup> Along with his colleague, Burrus.

<sup>53</sup> Seneca, vol. 1, pp. 395-97, "On Mercy," I.XII.4-sqq.

<sup>54</sup> Moral calculus, 6.3.A.1: "Violent deterrence becomes *inexpedient*, although not necessarily unjustifiable, when its severity corrodes loyalty and fear into desperation."

<sup>55</sup> One might prefer to draw a comparison between Stalin and Tiberius, on account of the latter's supposed gloomy and suspicious nature, described so plausibly by Suetonius. Modern historians sometimes say that Tiberius was not as bad as all that. Michael Grant, admitting "a substantial margin of men executed or driven to suicide," still argues that the purges occurred only within the ruling elite and were numerically insignificant "compared to modern holocausts" (*The Twelve Caesars*, pp. 96-97). The Emperor Domitian might be a better candidate. He invited his senators and knights into a black room furnished with tombstones bearing their own names, dismissed them, then sent them gifts instead of suicide commands (ibid, p. 247). This is the kind of menacing humor which would have appealed to Stalin.

<sup>56</sup> Legitimate authority: moral calculus, 5.2.C.1, 5.2.C.2.

<sup>57</sup> Molotov was contemptuous of personal opinions; to Nero, personal opinions were everything. —No matter: their deterrence killed people just the same.

<sup>58</sup> A few years before, the similarly hated

Caligula had been murdered, along with his family.

<sup>59</sup> Moral calculus, 2.4.

<sup>60</sup> Moral calculus, 6.3.A.1.1.

<sup>61</sup> Does this mean that Gandhi was likewise unjustified because he got assassinated? No, since he was nonviolent, and explicitly rejected the necessity for result, which he anyhow achieved. What then about Lincoln, who was assassinated for violently prosecuting a war? Given that his war aims were initially limited to preserving incumbency's authority over the entire United States, and given that he moderated violence wherever he could, I'd call him not guilty. Trotsky's assassination puts him in a grey area, because while he condoned the liquidation of the Romanov family and practiced decimations and "repressions" wherever he could, and because he helped bring into being the very regime of retribution and deterrence which murdered him, he at least seemed to set quotas and limits (shoot one deserter in ten, not all ten).

<sup>62</sup> KGB, p. 20 ("Duties of Political Investigators").

<sup>63</sup> Ibid, pp. 14-15 ("Duties of Political Investigators").

<sup>64</sup> For more on this so-called *tu quoque* defense, see below, this chapter.

<sup>65</sup> Moral calculus, 5.1.1 def.

<sup>66</sup> See above, "Defense of Revolution."

<sup>67</sup> Legitimate revolutionary authority and its rights are defined in the moral calculus, 5.2.C.2.

<sup>68</sup> For the necessity of limits to violence, see the moral calculus, 2.3, 5.1.1, 5.2.C.3, 5.2.D.2, etc.

<sup>69</sup> See above, "Defense of Class."

<sup>70</sup> Moral calculus, 6.3.A.1.2. In other words, violent deterrence is unjustified when its violence does not fall entirely upon those who made the choice to undertake the proscribed behavior.

<sup>71</sup> On June 8, 1934 a law was passed making a "traitor's" family members collectively responsible.

<sup>72</sup> This hideous policy was not, however, administered to the relatives of every individual who'd been "repressed." It was not needed. The wife of one arrested man, herself soon to be



imprisoned under Stalin (and later under Hitler), found that her friends no longer spoke to her. "The dependent of one of the arrested couldn't be recognized" (Buber, p. 6). Solzhenitsyn (vol. 3, p. 448) tells the tale of Avenir Borisov, released from camp in 1946, who finds his face inked out in his friends' photo albums. Conquest tells how Meyerhold's wife, Zinaida Raikh, was found stabbed to death with her eyes cut out. The police did not investigate. "Her death was thought of by prisoners to be intended as a general threat to wives" (*The Great Terror*, p. 307). One word describes this phenomenon: deterrence.

<sup>73</sup> Conquest, op. cit., p. 421. And that is why one bitter, harmless, dekulakized old gadfly whose life had been ruined (and who would soon be shot for conspiracy) wrote in his diary that "no matter what I say, it will all be twisted to mean something bad, everything will be interpreted as an attempt to discredit the party, an assault by a class enemy. They will never allow us to be equal, *and they never will believe that we've forgotten and forgiven everything*. We are damned, from now until the end of our lives" (Garros et al, p. 156; diary of Andrei Stepanovich Arzhilovsky, entry for April 9, 1937; italics mine). Hence the case of Rudzutak.

<sup>74</sup> Churchill, p. 485.

<sup>75</sup> Moynahan, p. 173 (source: Russian State Archive of Film and Photographic Documents, Krasnogorsk).

<sup>76</sup> Chuev, pp. 272-75 ("We Were Diverse Individuals," 1972, 1974, 1977, 1986).

<sup>77</sup> Ibid, p. 417.

<sup>78</sup> Djilas, *Conversations with Stalin*, pp. 69-70. Were he as truly cerebral a being as Djilas implies, then the deterrence and retribution of Stalin might for him have been demonstrations of the sublimest possible didacticism, like this famous koan in the old Chinese Buddhist *Blue Cliff Records*: The monks of the Eastern Hall and the Western Hall, having fallen out of unity, are arguing over a cat. Their preceptor, Nansen, says to them: "If you can give me an answer, I will not kill it." But they cannot answer, and he slices the cat in two (Sercho and Engo, p. 319). —Who can ever know Molotov's aes-

thetic of liquidation? But his politics of liquidation are now all too clear.

<sup>79</sup> Deutscher, p. 597.

<sup>80</sup> Alliluyeva, p. 121.

<sup>81</sup> Indeed, after "de-Stalinization" he had everything to gain by denouncing him—and we certainly know that he was capable of that! His truthfulness is further attested by the fact that in his old age, Molotov had become quite waspish in his criticisms of his own government, as he never could have been in Stalin's day. Molotov's attitude seems at first to be kindred to that of the far more sympathetic Lady Hygeyong, who wrote about her innocent uncle's execution, in a passage I have already quoted (above, "Defense of Gender.") that "despite pain and bitterness, I did not forget that one had to always redouble one's devotion to the state. My public duty demanded that I behave as though I had forgotten my uncle."<sup>82</sup> But there is in fact a difference. Lady Hygeyong was but a pawn, however devoutly stoical. Molotov signed the death sentences.

<sup>82</sup> Lewes, p. 389.

<sup>83</sup> Moral calculus, 6.3.A.5. Caveat: By the necessities of the social contract, deterrence is justified when its main purpose is to overawe people into routine or perpetual compliance with *the laws established by legitimate incumbent [preexisting] authority*.

<sup>84</sup> T.E. Lawrence, "The Destruction of the 4th Army," published in the *Arab Bulletin*, fo. 359-60 no. 106, 22.10.1918, as quoted in Wilson, pp. 556-57.

<sup>85</sup> *Seven Pillars*, pp. 652-53. For an analogous story from the American Civil War, see Whitman, pp. 748-49 (*Specimen Days*, "A Glimpse of War's Hell-Scenes"). The most casual browser through the literature of war could find innumerable other examples.

<sup>86</sup> Practically speaking, it is impossible to separate what Lawrence's irregulars did as retribution (i.e. as punishment) from what they did as revenge; either way, the Turks were just as dead. To some extent, the distinction is up to the definer, as when, referring to the fearful American race riots of 1967, which I would have described as unjustified, if occasionally excusable, acts of revenge, Martin Luther King said: "It is incontestable and

deplorable that Negroes have committed crimes, but they are derivative crimes. They are born of the greater crimes of the white society" (*The Trumpet of Conscience*, p. 8; "Impasse in Race Relations"). As I have mentioned, Gandhi would have condemned the riots far more sternly, taken the guilt of them upon himself and striven to purify himself with fasting.

<sup>87</sup> Keegan, *History of Warfare*, p. 54. In the previous section of this chapter we have already proposed that violent deterrence is unjustified "when directed against persons who have broken no code and are actively or passively loyal to the deterrer's authority. When its violence does not fall entirely upon those who made the choice to undertake the proscribed behavior" (moral calculus, 6.3.A.1.2). And it is arguable that some of the captured Germans, for instance, had not in fact bayoneted wounded Arabs. Under non-imminent or at least regularized conditions, which didn't prevail here, an inquiry would have been made and only the guilty parties punished.

<sup>88</sup> Tuck, p. 183.

<sup>89</sup> *Ibid.*, p. 185.

<sup>90</sup> Moral calculus, 5.2.F.1.

<sup>91</sup> Moral calculus, 6.2.D.4: Violent defense of race and culture is wrong "when it considers alien habits and characteristics to be proof of inferiority or evil, and acts accordingly; when it forgets the rights of the self and the Golden Rule."

<sup>92</sup> Lawrence, pp. 676-79.

<sup>93</sup> *Ibid.*, p. 382.

<sup>94</sup> Quoted in Wilson, p. 814 (letter to Ralph Isham, January 2, 1928).

<sup>95</sup> Homer (Lawrence), p. xii (letter to Rogers quoted in introduction by Bernard Knox).

<sup>96</sup> *Ibid.*, p. v.

<sup>97</sup> For a fascinating exposition of their motivations in wooing Penelope, see Vernant, pp. 74-76.

<sup>98</sup> Homer (Lawrence), p.vi.

<sup>99</sup> *Ibid.*, p. 299.

<sup>100</sup> Odysseus, less ruthless than Lawrence, permitted the suitors' bard and the usher Medon to live, once his son vouched for them. The Turk had no one to vouch for him.

<sup>101</sup> Homer (Butler), p. 309.

<sup>102</sup> Lattimore, p. 329.

<sup>103</sup> Homer (Fagles), p. 449.

<sup>104</sup> Homer (Lawrence), p. 300.

<sup>105</sup> *Ibid.*, p. vii.

<sup>106</sup> Lawrence, p. 683.

<sup>107</sup> Koestler, *The Act of Creation*, pp. 35, 51, 53.

<sup>108</sup> Caesar, *The Civil War*, p. 205 ("The Alexandrian War" 70). For further discussion of this quotation, see above, "Defense of War Aims."

<sup>109</sup> Caesar, *The Civil War*, p. 207 ("The Alexandrian War" 74).

<sup>110</sup> Lawrence, p. 677.

<sup>111</sup> *Ibid.*, p. 682.

<sup>112</sup> *Ibid.*, p. 388.

<sup>113</sup> Indeed, in a number of respects Lawrence's personality was not so different from Trotsky's. Learned, charismatic, driven, occasionally arrogant, he seems to have preferred scorn to debate. Unlike Trotsky, his occasional insufferability was less ideological than personal and capricious. "When in fresh company," he wrote in his magnum opus, "I would embark on little wanton problems of conduct ... treating fellow-men as so many targets for intellectual ingenuity... This pettiness helped to make me uncomfortable with other men, lest my whim drive me suddenly to collect them as trophies of marksmanship" (*ibid.*, pp. 583-4). He was indifferent to his own comfort. He was a man of loyalty, although in Trotsky's case that loyalty was loyalty to an ideology and a leader, whereas to Lawrence it expressed itself mainly towards those who trusted him. Trotsky committed counter-atrocities for a logical reason—to deter. Lawrence committed them, as I said, out of rage. Although I have never come across any references to Lawrence in Trotsky's writings, I suspect that Trotsky would have regarded him as a dupe, an idealist (to a Marxist, this last was a particularly nasty slur) and, most importantly, an agent of imperialism. In all of these he would have been correct.

<sup>114</sup> *Seven Pillars*, quoted in Wilson, p. 410.

<sup>115</sup> Lawrence, p. 24.

<sup>116</sup> "Twenty-Seven Articles," by T. E. Lawrence, August 1917, given in Wilson as

Appendix IV, article 4, pp. 960-61.

<sup>117</sup> Quoted loc. cit.

<sup>118</sup> Draft of *Seven Pillars*, quoted in Wilson, p. 510.

<sup>119</sup> *Ibid.*, p. 578.

<sup>120</sup> *Ibid.*, p. 617 (letter from the Foreign Office's A. J. Clark-Kerr [for Lord Curzon], to R. G. Vansittart, August 21, 1929).

<sup>121</sup> T. E. Lawrence, "Guerrilla Warfare," 1929, excerpted in Chaliand, p. 890.

<sup>122</sup> Wilson, pp. 750-51.

<sup>123</sup> Lawrence, p. 387.

<sup>124</sup> Zahir ud-Din Muhammad Babur, *Memoirs*, excerpted in Chaliand, p. 493.

<sup>125</sup> Moral calculus, 5.3.A.1.3: Violent deterrence is justifiable when it prevents unjustified violence; when it seeks to prevent violence generally.

<sup>126</sup> See "Defense of War Aims," above.

<sup>127</sup> Moral calculus, 5.3.A.1.4.

#### CALCULUS OF RETALIATION

<sup>A</sup> Caesar, *The Civil War*, p. 73 (I75-77); Suetonius, vol. 1, p. 97 (I.LXXV); Appian, vol. 3, p. 307 (II.43).

<sup>B</sup> See "Defense of Race."

<sup>C</sup> Lincoln, vol. 2, p. 484 (Order of Retaliation, July 30, 1863).

<sup>D</sup> Perdue, p. 23. "Because their objective was vengeance, the warriors hoped enemy casualties would equal the number of Cherokees who had been killed. Once they had taken the required lives, they went home."

<sup>E</sup> Kakar, p. 91.

<sup>F</sup> "We always make sure that if Hindus kill two of our people, we should kill at least four of theirs. This is to scare them away" (loc. cit.).

<sup>G</sup> Genesis 4:15.

<sup>H</sup> But in Genesis 4:23-24 Cain's descendant Lamech slays a man who is striking him, and gloats: "If Cain is avenged sevenfold, truly Lamech is avenged seventy-sevenfold."

<sup>I</sup> Herodotus, Book Three, p. 208. This historian has often been called "the Father of Lies," and some of his remarks on Cambyses's purported cruelties in Egypt must be salt-grained.

<sup>J</sup> Quotation in Berger and Neuhaus, p. 125. The quotation is reproduced in full in the third continuum to "Defense of Race."

<sup>K</sup> See Annex G, "Summary of Ethnic

Relations in Yugoslavia during World War II." In his history of the Nazi-Soviet war, Alan Clark quotes an OKW order of July 25, 1941: "For the life of one German soldier, a death sentence of from fifty to one hundred Communists [= Russians] must generally be deemed commensurate" (p. 153).

<sup>L</sup> Hassig, p. 215, following the *Mexican Chronicle*.

<sup>M</sup> Herodotus, Book Three, p. 264.

<sup>N</sup> Herodotus says that "the Persians took the entire population like fish in a drag-net, and presented Syloson [the favorite] with an empty island" (p. 265). I presume that the females were enslaved.

<sup>128</sup> Lincoln, vol. 2, p. 484 (Order of Retaliation, July 30, 1863).

<sup>129</sup> The total number of women and children murdered at Tafas, as we saw, was at least sixty. (Lawrence mentions some old men among the surviving witnesses; there might have been other civilians murdered; possibly, if some of the forty women had had noncombatant husbands and fathers present, the total number of victims could have approached a hundred.) The Turkish column numbered two thousand. His irregulars "cut the column in three," and the third section got away; so assume that Lawrence disposed of more than 600 Turks. The ratio of retaliation was thus 1:10 plus.

<sup>130</sup> Wilson, p. 556.

<sup>131</sup> He describes the survivors as telling "terrible stories of what had happened when the Turks rushed in an hour before," which seems to imply that the atrocity began before the Arabs began to harry the Turks (Lawrence, p. 651).

<sup>132</sup> Lincoln, vol. 2, p. 594 (letter to Edwin M. Stanton, Secretary of War, May 17, 1864).

<sup>133</sup> It has been said that this was "a threat of retribution which in fact he never carried out, and probably never intended to" (Randall, p. 61)—a bit of saber-rattling engaged in more to satisfy his own side's expectations than anything else. I myself believe, however, that Lincoln did in fact mean this as a warning, as he did the Preliminary Emancipation Proclamation—a reminder to the enemy that if this war continued, and especially if it

were unjustly fought, he, too, had weapons. See also Lincoln, vol. 2, p. 266 (private and confidential letter to Maj. Gen. John Frémont, September 2, 1861).

<sup>134</sup> Prisoner-murder is usually a crime of volition rather than need. Should an army be apprised of the fact that its expression of rage upon surrendered, submissive flesh will be rewarded in kind, it may (since liquidation of enemy prisoners rarely benefits it more than their detention) think twice. (This is an example of Clausewitzian leniency. See "Defense of Ground.") An obvious exception would be the case of Lawrence's irregulars, who moreover had little to hope for in the event of their own capture.

<sup>135</sup> Lawrence, p. 652.

<sup>136</sup> See above, "Defense of Honor."

<sup>137</sup> Wilson, p. 559.

<sup>138</sup> Duchesse d'Abrantes, vol. 1, p. 195.

<sup>139</sup> Chanoff and Doan, p. 45 (testimony of Nguyen Van Hoang, Second Lieutenant, NVA, from Hanoi).

<sup>140</sup> Duong, p. 222.

<sup>141</sup> Djilas, *Conversations with Stalin*, p. 54. For various calculi of how to treat the vanquished, see above, "Defense of War Aims."

<sup>142</sup> See above, "Defense of Race."

<sup>143</sup> *Ibid.*

<sup>144</sup> See above, "Defense of Honor."

<sup>145</sup> *Ibid.*

<sup>146</sup> Herodotus, Book Three, p. 238.

<sup>147</sup> See below, "Where Are All the Pretty Girls?" I have heard the same wish and expectation of revenge expressed in Afghanistan. In India, Muslim and Hindu children grew up after the Partition riots of 1947 with similar "scenarios of revenge against those who have humiliated . . . family and kin" (Kakar, p. 39).

<sup>148</sup> *Dénonciation contre DUPIN*, p. 3. Many Southerners similarly wrote to the Governor of Virginia after John Brown's capture, demanding capital punishment for the satisfaction of revenge. An early twentieth-century German jurist objected to the successful insanity plea of a mass murderer. The jurist argued that "an execution was necessary in order to placate popular feeling" (p. 478).

<sup>149</sup> *Ibid.*, p. 4.

<sup>150</sup> Radin, p. 469. Cicero declaims with

momentarily unswerving advocacy that retribution is a virtue, a duty of love and tenderness to the victims now to be avenged. The pre-medieval Japanese ethos venerated revenge as sanctioned by heaven (Varley, pp. 33-34). Darrow, who opposed capital punishment and like any empathetic observer found himself unable to expediently deny the humanity of prisoners and condemned men, the suffering conscious being of them, upon which authority was inscribing its violence, believed that "the state punishes, that is inflicts pain, because it gives men pleasure to know that others suffer" (Clarence Darrow, "The Crime of Punishment," in *The Raven*, no. 22, p. 166). —True, but to suffer for *perceived cause*. (We will take up this point at length in the next chapter.)

<sup>151</sup> UNICRI, p. 44 (van Dijk and Mayhew).

<sup>152</sup> Letter to the editor from Bud Stafford of Placerville, *Sacramento Bee*, October 19, 1996, p. B7 ("Opinion").

<sup>153</sup> UNICRI, p. 327 (Manuel Reverte Montagud, "Victims and Criminal Justice in Spain"). Rizal's *compradore*-corrupter protagonist Simoun proposes revenge as the deterrent remedy to "prevent that others suffer as you have suffered, that in the future there are murdered children and mothers driven to madness. Resignation is not always a virtue; it is a crime when it encourages tyranny" (Rizal, p. 102). Not only expediency, but sanguinary pleasure lurks between these lines.

<sup>154</sup> Borowski, p. 90 ("The People Who Walked Away").

<sup>155</sup> Moral calculus, 5.3.B.4.

<sup>156</sup> Trigger to author, September 14, 2002.

<sup>157</sup> Below, "Punishment."

<sup>158</sup> Moral calculus, 5.3.

<sup>159</sup> Plutarch, *Lives*, p. 789. Plutarch does not himself mention the incident of Fulvia and Cicero's head, but tells an equivalent tale about Fulvia's new husband: "Antony gave orders to those who were to kill Cicero to cut off his head and right hand, with which he had written his invectives against him; and when they were brought before him, he regarded them joyfully, actually bursting out more than once in laughter, and, when he had satiated himself with the sight of them,

ordered them to be hung up in the speaker's place in the forum, thinking thus to insult the dead, while in fact he only exposed his own wanton arrogance, and his unworthiness to hold the power that fortune had given him" (p. 794). For the tale of Cicero and Fulvia during the Cataline affair, see above, "Where Do My Rights Begin?"

<sup>160</sup> For a counterexample, showing the same mechanisms in reverse, consider the tale of one Histiaeus, errant vassal of the Persian king, Darius. He was impaled and his pickled head sent to the king. Darius, considering this punishment to have been wrongful, "gave orders for the head to be washed and tended, and buried with all the honour due a man who had done good service to Persia and the king" (Herodotus, Book Six, p. 398).

<sup>161</sup> That is, Octavian, who would become Augustus. See Plutarch, *Lives*, p. 833.

<sup>162</sup> Ka-Tzetnik, p. 35 ("The Men of Metropoli"). This may well be a normal human case. Here is Bibulus, Caesar's former colleague and now his enemy in the Civil War, capturing thirty of the Caesarians' ships. "He set fire to them all, burning the crews and captains as well, in the hope that the severity of the reprisals would be a deterrent to the rest" (Caesar, *The Civil War*, p. 109. See above, "Defense of War Aims"). The enmity of Bibulus was actually intensely personal. Caesar had excluded, menaced and humiliated him. One suspects that this was revenge as much as politic retaliation.

<sup>163</sup> One ostensible function of modern government (predicated on a supposed social contract) is to mediate between citizens who are equal under the law, in order to provide an analogous deterrence: cross this line and the policeman will shoot, since I'm not allowed to. Thus the unarmed citizen expresses himself, through property law, to the housebreaker; thus, too, the commonwealth to her aggressive neighbor across the border. In both instances, the actual deed of deterrence, should it actually be called for—in which case we must name it retribution—lies in the hands of a professionally violent class: the gendarmerie and the soldiery, respectively. Again, *deterrence is justified when it enforces a*

*legitimate social contract*. The situation of a housebreaking or a war, however, is entirely different from either case in mere potentiality because when the sticking-point comes we are most often our own mediators. The police are absent, and international law unenforceable.

<sup>164</sup> *The Saga of Viga Glum* (p. 34).

<sup>165</sup> Maranan, p. 72 ("Soledad Salvador: On the Perilous Path to Liberation." The song is called "Kung Ako Ma'y Masawi").

<sup>166</sup> Esther 9:5.

<sup>167</sup> We shall consider inevitability's validity as a justification for violence later on (see below, "Inevitability"); for now, let us merely introduce it as an effect of the status quo. As Cortes once remarked in a warning to the Aztecs, "War is easy to stop at the beginning, but very difficult towards the middle and end" (Díaz, p. 323). That cannot be denied: it would have been a simple matter for him never to have begun it.

<sup>168</sup> The Spartans were masters of such tactics. In one stroke of wicked genius reminiscent of Mao's call to let a thousand ideological flowers contend (after which the weeds got uprooted), they asked their helots to bring forward whoever considered himself to have served Sparta best in war. The promised reward: freedom. You see, the Spartans worried about a revolution, fearing the helots' "unyielding character," and they calculated that he who had the pride to identify himself would probably be no quiescent slave. So two thousand promenaded about the temples with garlands of hope and gladness on their heads, "and no one ever knew exactly how each one of them was killed" (Thucydides, p. 313). One imagines that the other helots scarcely wanted to call notice to themselves after that.

<sup>169</sup> The Animal Liberation Front might have another name for it. See above, "Defense of Animals."

<sup>170</sup> Hitler, *Mein Kampf*, p. 57.

<sup>171</sup> This incident is described more fully below, in "Moral Yellowness."

<sup>172</sup> *Ibid.*, p. 55.

<sup>173</sup> See below, "Loyalty, Compulsion and Fear."

<sup>174</sup> See above, introduction, vol. 1, p. 29.

<sup>175</sup> Byock, p. 111.

<sup>176</sup> Sturluson, *Egil's Saga*, p. 64.

<sup>177</sup> In "Defense of Class," above.

<sup>178</sup> Sturluson, *Edda*, p. 174 ("Hattatal").

<sup>179</sup> *Ibid.*, p. 170.

<sup>180</sup> *Ibid.*, p. 197. Perhaps even more tellingly, the kenning, or phrase-trope, for several of the Norse gods, such as Braggi and Vidar, is "avenger of" plus the name of another god (*ibid.*, p. 76; "Skaldskaparmal").

<sup>181</sup> *Njal's Saga*, p. 199.

<sup>182</sup> Njal is one such luckless giver of good advice. For another example of restraint-urging, see *The Saga of Viga Glum* (p. 67), where for once a hothead's kinsman reminds him not of his obligation to be dragged into trouble for others' sake, but of his obligation not to involve others in ruin.

<sup>183</sup> See above, "Defense of Honor."

<sup>184</sup> *Eyrbyggja Saga*, p. 49.

<sup>185</sup> *Ibid.*, p. 117-118.

<sup>186</sup> *Njal's Saga*, p. 295.

<sup>187</sup> Sturluson, *Edda*, p. 110 ("Skaldskaparmal").

<sup>188</sup> *Njal's Saga*, p. 297. This is not so much retaliation as retaliation-business, kin to Napoleon's authority-business which arrays its malice into dragoons sent out to kidnap the Duke of Enghien to his secret trial and his pit.

<sup>189</sup> Another advocate instructs his plaintiff to feign rage should his particular waverer make difficulties (*Njal's Saga*, p. 284).

<sup>190</sup> *Eyrbyggja Saga*, p. 75. A similar but not quite identical use of a murdered man's severed head as a goad is related in *Njal's Saga*, p. 118.

<sup>191</sup> *Njal's Saga*, p. 206. Likewise, old Njal in that same saga stays with his sons when the enemy burns them to death, because, too aged to avenge them, he would have had to live out his life in impotent shame (*ibid.*, p. 267).

<sup>192</sup> For the same reason that we cannot call a given race or culture inferior, evil, etc. For this book's working definition of ethos, see the moral calculus, 5.2.G.2. Remember also (see above, "Defense of Authority.") that absent a system of centralized, potent, legitimate authority, each lonely atom not only can legitimately be but must be his own law.

<sup>193</sup> Sturluson, *Edda*, p. 94 ("Skaldskaarmal").

<sup>194</sup> Thucydides, p. 166. We find in his pages

legions of such anecdotes. In 433 B.C., just before the war began, the Corcyraeans "put all their prisoners to death, with the exception of the Corinthians, whom they still kept in custody" (p. 166), presumably as bargaining chips. In 431, the Plataeans, after promising the Thebans to return their captive countrymen to them should they withdraw without molesting the city, immediately murdered the prisoners as soon as the Thebans departed (p. 127). In the case of the Corcyraeans' prisoners the only justification seems to have been that they were rebels. The Plataeans' moral ground was not much stronger (the Thebans had entered their city illegally to accomplish a *coup de main*, but had not offered violence); and in fact it was in retaliation for this deed that the Thebans would liquidate most of the Plataeans a few years later when Plataea fell into their power. As the war went on, fortunately for bloodthirsty moralists, so many such deeds were committed that it became easy to justify retribution.

<sup>195</sup> Who loved to speak of the "hissing of the Jewish world-hydra."

<sup>196</sup> Kakar, pp. 125-29, 157-158. This detail reminds me of the Yugoslav civil war.

<sup>197</sup> "...The British and American air forces returned upon Germany in 1943-5, many times over, the severity of bombing attack on civilian population that Germany had applied to Poland, the Netherlands, England, and Yugoslavia in 1939-41... Sometimes ["Bomber"] Harris's body-count outreached Himmler's. What differences Saint Michael will see on the day of judgment between burning a baby to death in Dresden, and gassing a baby to death in Birkenau, is a question rather for the theologian than for the historian; but one difference at least is obvious: Germany's cities were heavily defended, so that the aircrew who attacked them put their own lives at risk; very few such resources [as Germany's urban defenses] were available to the victims of concentration camps" (Dear and Foot, p. xvii; introduction). For a modern case of automatic and perpetual retaliation, see "The War Never Came Here," below.

## RETRALIATION AS AUTOMATISM IN EGIL'S SAGA

<sup>A</sup> Sturluson, *Egil's Saga*, p. 30.

<sup>B</sup> *Ibid.*, p. 37

<sup>C</sup> *Ibid.*, p. 104

<sup>D</sup> *Ibid.*, p. 112

<sup>E</sup> *Ibid.*, p. 114

<sup>F</sup> *Ibid.*, p. 147

<sup>G</sup> *Ibid.*, p. 163

<sup>H</sup> Hakon was, like Eirik Bloody-Axe, a son of King Harald Fairhair. Harald had, in the words of the *Heimskringla* (Sturluson, Part Two, p. 82) given Eirik "the supreme authority over his kingdom," and even chosen Eirik's namesake son to be the subsequent king. Hakon, however, was more popular, supposedly because he offered to restore the farmers' land-rights (*ibid.*, p. 84-85). Because Eirik thus "saw himself not nearly strong enough to oppose Hakon, he sailed out to the West with such men as would follow him." After Eirik died, his sons continued to attack Hakon, who finally received his mortal wound in a battle which otherwise went against them. Eirik's sons then ruled Norway (*ibid.*, p. 110-12).

<sup>I</sup> *Ibid.*, p. 210

<sup>198</sup> Walter, p. 176.

<sup>199</sup> Lefebvre, *Napoleon*, vol. 1, 182.

<sup>200</sup> Darrow, p. 77. We find a similar observation in the memoirs of a nineteenth-century British public schoolboy, who, thinking back on the public flagellations he had to watch, concluded: "It is true that the eyes and the nerves soon get accustomed to cruel sights. I gradually came to witness the executions in the Lower School not only with indifference but with amusement" (J. Brinsley-Richards (1883); quoted in Scott, p. 88).

<sup>201</sup> Chevigny, p. 55. Richard J. Evans in his massive history of punishment in Germany has likewise convinced himself that punishment does not deter violent crime (p. 906). Comparing neighboring states of the U.S., some of which mandated capital punishment and others of which did not, the British Royal Commission on the death penalty concluded that the abolition of execution would not increase crime (Royal Commission, p. 322). Is deterrence a chimera, then? But many if not

most crimes—certainly the ones cited by Darrow—are *economic* crimes committed by or for the desperate, crimes which must erupt with or without preventive deterrence.

<sup>202</sup> Caesar, *Gallic War*, p. 387 (VII.4-5).

<sup>203</sup> *Ibid.*, p. 575 (VIII.44). For details on Caesar's treatment of the surrendered, see above, "Defense of War Aims." Caesar's partner Crassus followed the same principle when he decimated his legions for cowardice. "When he had once demonstrated to them that he was more dangerous to them than the enemy, he overcame immediately 10,000 of the Spartacans..." (Appian, vol. III, p. 221; *The Civil Wars*, I.XIV.118)

<sup>204</sup> Caesar, *The Civil War*, p. 147 (III.81). See above, "Defense of War Aims."

<sup>205</sup> Appian, *op. cit.*, p. 345 (II.X.63).

<sup>206</sup> Seward writes that "as a Corsican accustomed to vendetta" Napoleon "decided to respond in kind" because the Duke "was wrongly suspected of having taken part in the plot... All that can be said in extenuation is that Bonaparte genuinely believed Enghien had been plotting against him" (pp. 100-101). Somerset de Chair, the editor of *Napoleon on Napoleon*, contents himself with saying that the Duke "was suspected of heading a royalist conspiracy" and that his execution was "one of the most controversial episodes in [Napoleon's] career" (p. 157 fn.). Lefebvre gives a fuller measured judgment: although Enghien's seized papers provided no conclusive proof of any affiliation with Cadoudal, who was a confirmed conspirator against the regime, "there was proof that he was in England's pay and that he yearned to lead an invasion of Alsace. He was condemned not as a conspirator but as an émigré being paid by a foreign nation to invade France. Had he been arrested on French soil or in enemy territory, the law would have prescribed the death penalty. But by kidnapping him on neutral soil, Bonaparte blatantly compromised the interests of France" (*Napoleon*, vol. 1, p. 182). According to Madame Junot, Napoleon was misled by alarming police reports "proving" a certain tall, haughty man in the company of the conspirators to be Enghien; the man was actual-

ly found to be Pichegru (Duchess d'Abrantes, vol. 1, pp. 36-38).

<sup>207</sup> Seward, p. 101.

<sup>208</sup> Rudzutak's trial lasted, as noted, twenty minutes. Enghien's lasted two and half hours (or, in some accounts, three hours).

<sup>209</sup> Our sympathy for this victim is diminished by his remark to Citizen Charlot, the arresting officer, that "he esteemed Bonaparte as a great man, but . . . , being a prince of the house of Bourbon, he had vowed an implacable hatred against him, as well as against the French, with whom he would wage war on all occasions" (report to General Moncey, March 15, 1804, quoted in *Napoleon on Napoleon*, p. 161). If this paraphrase accurately records the words of that murdered prince, then he too was habituated to retaliation without any immediate cause. Napoleon's consulship had been ratified; at least, it was no more illegitimate than the authority of a Bourbon king; Louis XVI had been legally voted out of office and life by the National Assembly. Enghien's declaration of war seems to have been grounded in little more than his own family claims.

<sup>210</sup> *Napoleon on Napoleon*, p. 162.

<sup>211</sup> Moral calculus, 6.3.A.1.7.

<sup>212</sup> Vigny, p. 53.

<sup>213</sup> *Kruschev Remembers*, quoted in Blum, p. 185.

<sup>214</sup> *Annals of America*, vol. 18, pp. 140-42 ("John F. Kennedy: Soviet Missiles in Cuba").

<sup>215</sup> Moral calculus, 5.3.A.1.2. And hence the following: *Violent deterrence is unjustified when the act deterred remains undefined, when there has been no deterrent warning, or when—the Duc d'Enghien's case—the deterrer's retribution proves to be more severe than was indicated in the deterrent warning* [6.3.A.1.8].

<sup>216</sup> He has not necessarily lost face. Commentators often present the Soviets of the Cold War period as sending out aggressive feelers, testing the will or weakness of the capitalist world, then advancing or withdrawing as opportunism suggests.

<sup>217</sup> Kuznetsov, p. 178. At that time, 400 civilian hostages, rounded up at random, would be shot for each act of arson. A successful example, which seems to validate the Nazi case for expedient violent deterrence,

occurred in 1997 when Israel countermanded its extradition request for a suspected terrorist from the Palestinian group Hamas. "Putting Mousa Abu Marzook on trial in Israel would have posed a constant threat of retaliatory attacks from Hamas" (Gwen Ackerman, "Israel drops extradition bid in terror case," in the *Sacramento Bee*, April 4, 1997, p. A9). But deterrence implies a bargain. If Hamas refrains from retaliation, all right then. But if Hamas "retaliates" no matter what, like Germans shooting 400 innocent people for acts of arson, then deterrence doesn't deter anymore.

<sup>218</sup> Negatively expressed in 6.3.A.1.2. In his instructions to guerrillas, Che Guevara recommends terrorism only when it discriminates—that is, when it doesn't "destroy a large number of lives that would be valuable to the revolution" (p. 61). While Che undoubtedly has a humane streak, he also offers the expedient rationale that there is no sense provoking reprisals for the sake of "killing persons of small importance" (p. 62).

<sup>219</sup> Guevara, p. 109.

<sup>220</sup> Qur'-An, II.2.179 ("The Cow," p. 73).

<sup>221</sup> My own three attempts appear in the moral calculus, following 3.16. The third is reproduced in this chapter, immediately below. For a sample application of my severity scale, see above, "Defense of War Aims."

<sup>222</sup> LeRoy M. Lamborn, "Toward a Victim Orientation in Criminal Theory" (1968), in Hudson and Galaway, p. 145.

<sup>223</sup> Marvin E. Wolfgang, "Victim Compensation in Crimes of Personal Violence" (1965), in Hudson and Galaway, pp. 116-129.

<sup>224</sup> The order of the last two categories is disputable. I am assuming, on the basis of my century's experience, that businesslike extermination is more lethal than rage, but the reverse may sometimes be true.

<sup>225</sup> See below, this chapter.

<sup>226</sup> Moral calculus, 6.3.A.1.9. This point is similar but not identical to the one raised in Seneca's Maxim.

<sup>227</sup> Callwell, p. 27.

<sup>228</sup> For discussion of Operation Punishment, see below, Annex E: "Ethnic Relations in Yugoslavia During World War II."



- <sup>229</sup> See above, this chapter.
- <sup>230</sup> Callwell, p. 28.
- <sup>231</sup> As in the case of the flower war with Tepeyacac. See Hassig, p. 172.
- <sup>232</sup> See above, "Defense of Homeland."
- <sup>233</sup> Here I have followed the summary of Hassig, p. 10.
- <sup>234</sup> Fagan, p. 224.
- <sup>235</sup> Hassig, p. 10.
- <sup>236</sup> He does not, however, find that the Aztecs had a "true empire" in the Clausewitzian sense (p. 11).
- <sup>237</sup> This reminds me a little of the Plain Indian custom of counting coup on enemies with lances. For a description of Plains Indian drawings depicting such scenes, see above, "Defense of Homeland."
- <sup>238</sup> Hassig, p. 255.
- <sup>239</sup> *Ibid.*, p. 162.
- <sup>240</sup> *Ibid.*, p. 171.
- <sup>241</sup> Oe, p. 117.
- <sup>242</sup> Dear and Foot, p. 73 (R. V. Jones, article on the atomic bomb).
- <sup>243</sup> Werth, pp. 1,041-42.
- <sup>244</sup> *U.S. News and World Report*, (August 15, 1960), quoted loc. cit.
- <sup>245</sup> Dear and Foot, p. 531 (committee article on Hiroshima).
- <sup>246</sup> 1997.
- <sup>247</sup> William L. Laurence, "A Giant Pillar of Purple Fire": Nagasaki, August 9, 1945; in Hynes et al, vol. 2, p. 768.
- <sup>248</sup> Kahn, p. 18.
- <sup>249</sup> *Ibid.*, p. 24.
- <sup>250</sup> *Ibid.*, p. 12.
- <sup>251</sup> *Ibid.*, p. 22.
- <sup>252</sup> *Ibid.*, p. 31.
- <sup>253</sup> *Ibid.*, p. 32.
- <sup>254</sup> *Ibid.*, p. 33.
- <sup>255</sup> *Ibid.*, loc. cit.
- <sup>256</sup> *Ibid.*, p. 35.
- <sup>257</sup> *Ibid.*, pp. 38-39.
- <sup>258</sup> *Ibid.*, p. 34.
- <sup>259</sup> *Ibid.*, p. 26.
- <sup>260</sup> *Ibid.*, p. 42.
- <sup>261</sup> *Ibid.*, p. 39.
- <sup>262</sup> *Ibid.*, p. 15.
- <sup>263</sup> Li, p. 125 (Mao to Nehru, 1954; Mao in Moscow speech, 1957).
- <sup>264</sup> Pinguet, p. 233.
- <sup>265</sup> *Ibid.*, p. 16.
- <sup>266</sup> Kahn, p. 41.
- <sup>267</sup> See the section on monuments, above, in "Defense of Honor."
- <sup>268</sup> Homer Bigart, "A Walk in Hiroshima": September 3, 1945; in Hynes et al, vol. 2, p. 777.
- <sup>269</sup> *Ibid.*, p. 780.
- <sup>270</sup> Here we might draw an analogy with scientific imminence (see above, "Defense of Earth"; defined in the moral calculus, 5.2.I.1), which requires expert knowledge to ascertain.
- <sup>271</sup> William L. Laurence, op. cit., in Samuel Hynes et al, vol. 2, p. 769.
- <sup>272</sup> Cook and Cook, pp. 110-11 (testimony of Nogi Harumichi). The beheading is assumed. He used a sword and told the prisoners to kneel down.
- <sup>273</sup> Clausewitz, p. 186.
- <sup>274</sup> Nothing has been proved about the expediency of revenge as an *end*. After all, an end need not be expedient or otherwise; it can lie beyond convenience or even logic—but not, of course, beyond moral evaluation.
- <sup>275</sup> Moral calculus, 1.2.4: The Soldier's Golden Rule.
- <sup>276</sup> In some times and places it would. See the table "Retaliation for Violent Crimes: Laws and Customs," below.
- <sup>277</sup> Taylor, p. 641.
- <sup>278</sup> The German war criminals tried to clear themselves of their own atrocities by appealing to *tu quoque* in particular regard to the Soviets, who were never charged with any war crimes at Nuremberg: a typical case of victors' justice. Until late 1946, when the Cold War began, abuses of power committed in the Russian Zone of Germany were not permitted to be exposed by the press in the other three zones, since that would have been "criticism of an Allied power." Cf. Kogon, p. 308.
- <sup>279</sup> Taylor, p. 640.
- <sup>280</sup> The indictment of conspiracy to wage aggressive war was, in spite of prior treaties such as that unrealistic renunciation of war, the Kellogg-Briand Pact, an application of *ex post facto* justice. As Taylor admits (p. 638), "the prosecution was also bringing into the arena new crimes against 'peace' and 'humanity,' the unaware past violations of which

could send the defendants to the gallows." Here hangs Julius Streicher, condemned to death solely for being an anti-Semitic big-mouth. He never killed anybody or schemed to bring about war. By all accounts he was a corrupt and thoroughly despicable fellow who made a living selling hatred in his publication, the *Stürmer*. One feels even less sympathy for him when one reads the testimony of a German Jew, Hans Baermann, whose seven-month sojourn in a death camp near Riga reduced him to eighty pounds. He was then photographed for the *Stürmer*, evidently as an example of a subhuman (Kogon, pp.176-77). Streicher's motivation must have been either to gloat or to offer Baermann as a specimen of a typical subhuman. Still, Taylor is fairminded enough to regret Streicher's crushing at Nuremberg "like a worm." The execution of this undeniably loathsome person was a blow against freedom of speech. Consider also the war crimes trials in Tokyo which were meant to be a counterpart to Nuremberg. Over their five-year span, four thousand Japanese and Koreans will be arrested, of whom more than a quarter will either die in prison or be put to death. Punishment, judicial retaliation, devours them unencumbered by *tu quoque*. One Japanese journalist will later recall that during those trials, the nuclear atrocities at Hiroshima and Nagasaki were never once mentioned (Cook and Cook, p. 207; testimony of Asai Tatsuzo). These authors note that 1,068 out of 4,000 arrested Japanese and Korean war criminals were executed or died in prison between 1946 and 1951. For comparison, in the three western occupied zones of Germany after World War II—that is, excluding the Soviet zone—the Allies prosecuted 5,133 individuals for war crimes, and executed 668 of them (figures quoted in Evans, p. 744). Ex post facto justice is pretty one-sided.

<sup>281</sup> The representative of the Soviet Union perorates and presses to add to the German defendants' crimes the infamous Katyn Forest massacre, when in fact those forty-one hundred murders (simultaneous with over ten thousand tasks of "wet work" in two other

sites) were committed by the NKVD. One account of the destruction of these unarmed Poles runs: "In this case, Stalin took a sheet of his personal stationery and wrote only one word on it: 'Liquidate'" (account of Stanislaw Mikolajczyk, quoted in Allen Paul, p. 115).

<sup>282</sup> For more about this issue, see above, photo portfolio, "Land Mine Victims, 1994-2000."

<sup>283</sup> Defined in the moral calculus, 5.1.7, 5.2.F1. In 6.3.A.1.3, *tu quoque* is rejected as being mere symmetry without discrimination.

<sup>284</sup> In the concentration camps it was very common for horrible spectacles of deterrence to quickly become routine. See, e.g., Buber, p. 214.

<sup>285</sup> Caesar, *The Civil War*, p. 96.

<sup>286</sup> I say "little better," not "no better," because kindness *is* better than no kindness, after all—but the problem of moral theater's expediency remains an important one, since if the means cannot be counted on to achieve the end, its justifiability may on that account alone be called into question.

<sup>287</sup> Interview by author in Split, Dalmatia, Croatia, 1994. See below, "The War Never Came Here."

<sup>288</sup> In a centralized war such as World War II, instead of a war of local irregulars, as in the Yugoslav Civil War, there may be no way to do this.

<sup>289</sup> Margery Fry, "Justice for Victims" (1959), in Hudson and Galaway, p. 56.

<sup>290</sup> Cf. L. T. Hobhouse, "Law and Justice" (1951); Richard E. Laster, "Criminal Resitution: A Survey of Its Past History" (1970); Stephen Schafer, "The Restitutive Concept of Punishment" (1970); in Hudson and Galaway, pp. 5-28, 102-115.

<sup>291</sup> So defined because after the categories of revenge and judicial punishment have been dissected away, military retribution seems to be all that's left.

<sup>292</sup> Lawrence, p. 658.

<sup>293</sup> Darrow, p. 66.

<sup>294</sup> *Ibid.*, p. 71.

<sup>295</sup> Quoted in Lifton and Markusen, p. 220.

<sup>296</sup> Complete works (1912), p. 229; quoted in Seldes, p. 800.

<sup>297</sup> Lincoln, vol. 2, p. 594 (to Edward M. Stanton, May 17, 1864).

- <sup>298</sup> R.D. Laing, *Knots* (New York: Vintage, 1970), p. 8.
- <sup>299</sup> Editorial, "Pyongyang Deserves Sanctions," in the *Hankook Ilbo*, October 12, 1996, in *Korea Focus*, vol. 4, no. 5, September-October 1996, p. 117.
- <sup>300</sup> Edward Peters, p. 232 (Visigothic Code, selection B).
- <sup>301</sup> Quoted in Masur, p. 34.
- <sup>302</sup> Kahn, pp. 45-46.
- <sup>303</sup> Goebbels, p. 346.
- <sup>304</sup> M. Tukachevsky, excerpted in Chaliand, p. 914.
- <sup>305</sup> Quoted in Womack, p. 269.
- <sup>306</sup> Callwell, p. 72.
- <sup>307</sup> Berkman, p. 195.
- <sup>308</sup> Rizal, p. 296.
- <sup>309</sup> Carus, p. 117 (parable of the patient elephant).
- <sup>310</sup> Luke 6:27.
- <sup>311</sup> *Crito*, 49d, in Plato, p. 34.
- <sup>312</sup> Sirach 20:4.
- <sup>313</sup> Pritchard, vol. 2, p. 146 ("Counsels of Wisdom").
- <sup>314</sup> Lincoln, vol. 2, p. 644 (letter to Maj. Gen. William S. Rosecrans, regarding a sentence of execution, November 19, 1864).
- <sup>315</sup> Hesiod, p. 103 ("Works and Days," ll. 700-13).
- <sup>316</sup> Epstein, p. 423, Mishnah, Yoma 85b.
- <sup>317</sup> Petrone, *First People, First Voices*, p. 24.
- <sup>318</sup> Pritchard, vol. 2, p. 225 ("The Treaty between KTK and Arpad").
- <sup>319</sup> *Poetic Edda*, "Havamal: The Sayings of Hár," p. 33, no. 127.
- <sup>320</sup> Laqueur, p. 60 ("Murder," 1849).
- <sup>321</sup> Bayer, p. 50.
- <sup>322</sup> Cicero, p. 137, fourth speech against Lucius Sergius Catalina, 63 B.C.
- <sup>323</sup> Seneca, vol. 1, p. 137 ("On Anger," I.XII.2-3).
- <sup>324</sup> *Tale of the Heike*, p. 756 (12.IX).
- <sup>325</sup> Stephen Owen, p. 82 (*Schemes of the Warring States*).

## PUNISHMENT

<sup>1</sup> Yavetz, p. 23, para. 47.

<sup>2</sup> Kakar, p. 81 (interview with Akbar).

<sup>3</sup> Parallel arguments apply for deterrence and retribution. Comrade Kardelj, one of Tito's deputies, dismisses the Fascist strategy of collective responsibility thus: "Some commanders are afraid of reprisals [by the Germans and Italians] and that fear prevents the mobilisation of Croat villages. I consider the reprisals will have the useful result of throwing Croatian villages on the side of Serb villages. In war we must not be frightened of the destruction of whole villages. Terror will bring about armed action" (cited in Beloff, *Tito's Flawed Legacy*, as quoted in Keegan, *History of Warfare*, p. 52). Ironically enough, the Titoist partisans themselves begin burning the villages of peasants who'd gone over to those Fascist puppets, the Chetniks. The peasants admit to the Partisans that they must help the Chetniks to save their villages from razing. War is war, and pleas of solidarity hardly penetrate terrorized minds. The only remedy left to the Partisans: counter-terror—which might have had the virtue, celebrated by ancient Greek and Roman generals, of denying resources to the occupiers (see "Defense of Ground," above), but which did little to augment the allegiance of burned-out villagers. (Djilas relates the evils contingent on this policy in *Wartime*, p. 155.) Thus we find two contradictory arguments at work: *If the enemy burns villages, the villagers will hate them and come to us*, and *If the enemy burns villages, the villagers will fear them, and stay away from us, so we'll have to make them fear us more*. Most likely the first argument held if the villagers believed that the Fascists wouldn't be back or if they believed that the Partisans would be back first; the task of an apolitical survivor might have been defined as the appeasement of rival threats, each in turn as it threatened (deterred) more. From this we see that the deterrer must play his performance in such a way as to convince the audience of his will, his boldness, his presence, his knowledge and his power. His *justice* need not be on the list.

<sup>4</sup> Or, in the terms of the previous chapter, Diodorus envisages a punishment at or somewhat above the deterrence threshold,

while Akbar sees it as extreme enough to counter-deter.

<sup>5</sup> This is a very pervasive view, and often permeated with as much expediency as Akbar's. In 1982, when I was toying with theories of vanguardist environmental terrorism, Mr. William Haines, a student of philosophy, and (at that time, at least; I've since lost touch with him) a counter-vanguardist, wrote me: "Responsibility for a bad is not the same as simply having caused it. First, hardly anyone simply causes anything (anymore?). Second, there can be extenuating circumstances (I did it to stop something worse, etc.) Justice is a system of universal (i.e. generally known and applied) rules to define relevant causation and extenuation, to maximize good. Responsibility is defined as the instantiation of these rules, and punishment follows to deter other violations. Thus the connection between responsibility and the justification for violence is irrelevant to your plan, which seeks to prevent individual bads by violent intervention into their happening, with full secrecy. It is odd that you see justice (innocence, responsibility) as an absolute matter rather than a social tool. It's better that the general public think thus, but your argument tries to reach a 'higher' plane."

<sup>6</sup> Equally pervasive, as we shall see. Civil action, one fears, is less efficacious than merely suicidal when launched against an unjust government. Having completed an official history of Rome's Persian Wars—for him a comparative panegyric—the historian Procopius then vents his real emotions, frustration, anger, desperation, hatred, in the secret *Anecdota*: "for in the case of those who have suffered the cruellest treatment at the hands of malefactors, the greatest part of the distress arising from a state of political disorder is removed by the constant expectation of punishment to be exacted by the laws and the Government. For in their confident hope of the future men bear their present ills more lightly and easily, but when treated with violence by the power in control of the State, they naturally grieve over their misfortunes the more and are constantly driven to despair by the fact that

punishment is not to be expected" (pp. 89-91; vii.39-40). A case in point of meaningless judicial retribution, which, like the repression of Rudzutak offers the condemned no ethical core, is this contemporary description of the People's Representative Dupin, who during the French Revolution "composed for the prisoners, from time to time, insidious questions from which these unfortunates sought to divine on what basis they were accused, soothing their wives and children right up to the moment when he would go before the tribunal to demand their DEATH" (\_\_\_\_\_, *Dénonciation présentée au Comité de Législation...*, p. 7; my translation).

<sup>7</sup> Displayed at the Kriminalmuseum, Wien (Vienna).

<sup>8</sup> Kriminalmuseum.

<sup>9</sup> "He said his body felt as if it was on fire and his mind was a blank. What he saw was a patch of black."

<sup>10</sup> Elena Chong, "Ex-SAF sergeant accused of murdering housewife testifies: 'I had sex with her at 18,' in the *Straits Times*, March 21, 1997, "Home" section.

<sup>11</sup> *Bukhari*, vol. VIII, p. 528, 7.806.

<sup>12</sup> *Ibid*, p. 531, 7.810.

<sup>13</sup> Moral calculus, 5.3.B.1. One reader writes: "But this doesn't address the extent of the punishment, right? Both can agree on the guilt but the punishment can still be excessive and unjustified." In fact, by "rule" I mean not only "social more" but stipulated penalty.

<sup>14</sup> Michael Fleeman, "McVeigh handed death sentence: 'It's okay,' man convicted in bombing tells parents," in the *Globe and Mail*, June 14, 1997, pp. A9. Likewise one species of those strange Aztec "flower wars" in which prisoners with flower-studded clubs, participating in their own deaths, fought vain ceremonial battles against jaguar warriors who uplifted clubs bristling with razor-sharp flints. In the *Códice Tudela*, we see a captive, naked but for a loincloth, whose ankle is tied to a wheel-like stone of sacred slaughter. He gazes into the face of a jaguar soldier. His slayer, luxuriously accoutered, holds the club aloft; the prisoner raises his club, too. If by some chance or turn of skill he bests the bet-

ter armed man, then he'll have to fight another, or four men at once, until he falls. Then the priests will wear his skin (Hassig, pp. 120 [Fig. 16; Tovar 134], 121). The dried head goes to the skull rack. (In a codex, we see the skulls strung between posts in threes; they resemble the beads of an abacus. The lower jaws are missing. They gape and grin, while feathered priests look out upon them from the temple of the Templo Mayor (ibid, p. 206; Fig. 28 [Tovar 122]).

<sup>15</sup> Sir Samuel Romilly, diary entry for February 16, 1811; quoted in Scott, p. 73. The incident referred to evidently took place some time prior to this. For a Russian case, see Tolstoy's "Nikolai Palkin" in the *Writings on Civil Disobedience*.

<sup>16</sup> "An Amateur Flagellant," 1885; quoted in Scott, p. 79.

<sup>17</sup> The outstanding allegory of this is Kafka's "Penal Colony."

<sup>18</sup> Plato recognizes this in the *Laws* through his lenient treatment of involuntary and passion-driven homicides.

<sup>19</sup> Golden, p. 1. A husband who kills his wife's seducer at the moment when the latter has been caught in the act is often considered less culpable, or more justified, than if he waits a year and then hunts the adulterer down. Ancient law often proceeded according to the same double standard. The Twelve Tables of Rome, for instance, divided theft into manifest, whose penalty might be enslavement or death, and non-manifest, whose penalty was merely double compensation (\_\_\_\_\_, *Ancient Roman Statutes*, p. 11; Table VIII, statutes 12-16, 18b. Cf. Maine, pp. 314-15; Justinian, p. 103; "Concerning Theft," Book 46, Title 2, clause 3 [Ulpian]).

<sup>20</sup> Aquinas, p. 582. Kant's insistence that even though differences in motives may exist among perpetrators of violence, we cannot practically account for them in our judgment, I personally find absurd. We do precisely that when we convict, say, for murder in the first degree instead of murder in the second. And in self-defense we certainly take these into consideration. Our response to the gun certainly reflects what we believe the one behind it intends to do with it, just as Kant's revolu-

tionary might well act out of compulsion, or loyalty, or ideological self-defense, or with or without certain very specific and important behavioral limitations (such as whether or not he kills unarmed persons). See above, introduction. In that awful, wavering moment when all consequences as yet remain hypothetical, we must decide whether the gun is to be used upon us fully and physically, out of sadism or *Realpolitik*, or employed solely as an instrument of terror in order to gain some end, or brandished as a drunken joke. In each case our reply might well be different—but because nobody else can protect us (certainly not any social balance operating ponderously in some appellate courtroom miles away), we must reserve to ourselves the right of decision—that is, interpreting the allegiance condition quite narrowly. See above, "Where Do My Rights Begin?" California law very sensibly states that we are all allowed to stand our ground, and may defend ourselves if we should otherwise be required to flee. We may not pursue and harm a fleeing assailant, because in withdrawing from us he restores our safety; hence it becomes the social balance's business again to correct for any perturbation in its scales. When the aggressor and the victim are alone, however, the social contract must be considered to be suspended. Aquinas says far too flatly that "it is a mortal sin if he makes for his assailant with the fixed intention of killing him, or inflicting grievous harm on him" (p. 582). How can he know how sinful it is? Only in the case of self-defenders such as Goetz, who repeatedly attack the prostrate and unresisting enemy, can we be sure of such a fixed intention. If someone lunges at me with a weapon and I do not have the time to tell him to put it down, then it *must* be right for me to incapacitate him with a bullet designed to cause the maximum possible amount of damage. Aquinas, no doubt, was writing in those buccolic pre-gunpowder days, when strife was slower. But even then, a thrown knife or a whizzing arrow would be plenty fast enough to call for some quick countermeasures.

<sup>21</sup> "By ancient custom of the Romans," says Montesquieu, "it was not permitted to put

girls to death till they were ripe for marriage. Tiberius found an expedient of having them debauched by the executioner" (p. 90; XII.12; citing Suetonius, vol. 1, p. 381; "Tiberius," III.LXI). The original explains that the restriction was for fear of impiety.

<sup>22</sup> Buber, p. 193.

<sup>23</sup> Likewise the military kind. See above, "Deterrence, Retribution and Revenge."

<sup>24</sup> Tocqueville, *Democracy in America*, vol. 1, p. 101.

<sup>25</sup> "This is a hard thing to explain to Americans," recalled a Vietnamese politician, "because Americans are used to the idea of justice." Is there any irony here? Under the American puppet regime in Saigon, he was arrested and beaten for nothing. "You just belonged to the police—period," he went on. "If they got you, you were unlucky, as if you had been struck by a disease. They had gotten others, and some of them had disappeared... Now it was my turn" (Chanoff and Doan, p. 19; testimony of Nguyen Cong Hoan). The revolution, of course, the glorious victory of North Vietnam, would change all that. As one prisoner in a Vietnamese reeducation camp realized: "Everyone who lives in this country is found guilty and sentenced for the crime of living here" (Vo Hoang, "A New Place," in Huynh, p. 113).

<sup>26</sup> Cheng, p. 281. This prisoner is profiled in "Defense of Honor," above.

<sup>27</sup> Montesquieu, p. 23 (V.8).

<sup>28</sup> Moral calculus, 6.3.B.3: Punishment is unjustified when inconsistently applied to penalize similar acts committed under similar circumstances.

<sup>29</sup> Plato, *Laws*, p. 1,507 (XII.963a); p. 1,496 (XII.951b).

<sup>30</sup> Sawyer and Sawyer, p. 269.

<sup>31</sup> Jefferson, p. 1,328 (letter to Dr. Thomas Cooper, 1814).

<sup>32</sup> Eleven centuries before Christ, the great T'ai Kung is supposed to have advised King Wen that "in employing rewards one values credibility; in employing punishments one values certainty" (*T'ai Kung's Six Secret Teachings*, in Sawyer and Sawyer, p. 51). In other words, the arbitrariness of the equation between a specific crime and a specific pun-

ishment cannot, perhaps, be helped, but that randomness, which disfigures the face of justice, may be salvaged, to a degree, by the consistency, the ubiquity, of the penalty's application. —"Other judges," says Cicero, "when they reach a verdict, take meticulous care to ensure that it does not clash even with the decisions already given by quite different courts" (*Murder Trials*, p. 156; "In Defence of Aulus Cluentius Habitus").

<sup>33</sup> Jefferson, p. 347 ("A Bill for Establishing Religious Freedom" (1777, 1779).

<sup>34</sup> See, e.g., Cicero, *Murder Trials*, p. 224 ("In Defence of Aulus Cluentius Habitus"). His client, "who is a knight, is being tried under a law which does not apply to knights at all." In such cases, justice's assertion becomes that of class rights. And we haven't even touched on the question of who actually judges. Even at the very end of the Roman Republic, the politicians were also the magistrates. The inevitable consequence was that trials became political exercises. In 62 B.C., we find the Greek poet Archias being indicted for citizenship fraud. Why? Because his patrons belonged to the Lucullan clique, who were enemies of Pompey. Pompey's clients, therefore, were duty-bound to go after Archias (Erich S. Gruen, pp. 267-68). Not only would this embarrass the Lucullans, but it would also probe their strength. A year earlier, Pompey's then-follower, Julius Caesar, had prosecuted the knight C. Rabirius for a political murder committed thirty-seven years before. The scholar who tells the tale concludes that Caesar was striving for "demonstration and display rather than conviction" (ibid, p. 278). While all the accusers were Pompeians, Caesar's own interest was perhaps to gain renown and to continue his game of self-association with popularism. Justice as an ideal lay enchained in irrelevance. Hence I propose that *punishment is unjust when there is no separation of powers among judges, executioners and sovereigns*.

<sup>35</sup> And, in the case of revolution, unfamiliar.

<sup>36</sup> Cheng, p. 62.

<sup>37</sup> Wiedemann, p. 67.

<sup>38</sup> Ibid, p. 174.

<sup>39</sup> Evans, p. 64. Those demonstrations were

surely also for the benefit of the actual punishers, who had an interest in making sense of the deeds of the transgressive Other. We see this exemplified in the late nineteenth century by the Bertillion method and kindred procedures for measuring and quantifying the human type, the criminal type.

<sup>40</sup> Schedel, leaf no. C [100].

<sup>41</sup> *The Dong-A Ilbo*, "Commutation of Chun's Death Sentence," written December 17, 1996, in *Korea Focus*, vol. 5, no. 1 (January-February 1997), p. 142.

<sup>42</sup> In Islam, a legally punishable crime gets entirely expiated by punishment in this life. This is why Muhammed spoke well of the adulterer who presented himself for stoning. If the crime is not punished before death, then Allah may or may not forgive the crime in the hereafter.

<sup>43</sup> Hampl, p. 63.

<sup>44</sup> Goldman, p. 5. Berkman will be portrayed in this chapter, below.

<sup>45</sup> Quoted in Rudé, *Robespierre*, pp. 200-01.

<sup>46</sup> For discussion of the divergences in England between the Hebraic law of the *lex talionis* and the indigenous common law custom of weregild, see Jefferson, pp. 1,321-29 (letter to Dr. Thomas Cooper, 1814).

<sup>47</sup> Qur'-An, p. 73 (2.178, "Retaliation and Bequests").

<sup>48</sup> Maine, p. 309. Cf. Montesquieu, p. 42 (VI.18). A scholar of Jewish law notes that the latter "is basically common law—law based on specific precedents and cases. Indeed every legal system originated as case law, with the specific case(s) often preceding the emergence of any general principles" (Sirkes, p. 11; Schochet's commentary).

<sup>49</sup> Pritchard, vol. 1, pp. 137, no. 42.

<sup>50</sup> *Ibid*, p. 161, nos. 196, 198, 200, 201.

<sup>51</sup> Radin, p. 467.

<sup>52</sup> Plutarch, *Lives*, p. 42. Our historian also tells how Artaxerxes's punishments showed "a kind of harmony betwixt them and the crimes." One Arbaces the Mede, a deserter, is condemned as a mark of his effeminacy to carry a prostitute about on his back for a day in the public market (*ibid*, pp. 882-82). Compare this with Plato's proposed punishment for cowards in war. Symmetry is what

one makes it.

<sup>53</sup> Herodotus, Book Five, p. 349. Green remarks (p. 9) that "even if not the sadistic, hard-drinking paranoiac of tradition, Cambyses proved a tougher, less paternalistic despot than his father [Cyrus], and made numerous enemies in consequence."

<sup>54</sup> *Bukhari*, p. 16, 12.23 (narration of Anas bin Malik).

<sup>55</sup> Mayer, p. 124.

<sup>56</sup> Plutarch, *Lives*, p. 641.

<sup>57</sup> *Report of the Commissioners of Prisons*, pp. 91-102.

<sup>58</sup> We do at least know that persons whipped with the "cat" were of majority age (Scott, p. 56).

<sup>59</sup> Quoted *ibid*, p. 185.

<sup>60</sup> The Dobuans, as described in Ruth Benedict's *Patterns of Culture*, gloried in it, thanks to their "fierce exclusiveness of ownership." "The good man, the successful man, is he who has cheated another of his place." "A good crop is a confession of theft" (*op. cit.*, pp. 139, 142, 146-148). Trigger tells us that among the Huron theft was more or less acceptable provided that it didn't occur by force. The Huron had very little to steal, and gave generously anyway. Special objects were hidden on the person or cached (*Children of Aataentsic*, pp. 61-62).

<sup>61</sup> We read in a summary of the Athenian constitution that a group called the Eleven put confessed thieves, kidnappers and bandits to death (\_\_\_\_\_ [attributed to Aristotle or one of his students], *The Athenian Constitution*, p. 97).

<sup>62</sup> Scott quotes the case of an eighteenth-century thief who was condemned "to be stripped to the bare back, and privately whip'd until she be made bloody." Thieves of the other gender received the same treatment in the street (p. 45).

<sup>63</sup> Plutarch, *Lives*, p. 46.

<sup>64</sup> For a poster showing one of these burnings, see Evans, p. 157.

<sup>65</sup> Wiedemann, p. 77.

<sup>66</sup> Moral calculus, 5.3.B.4.

<sup>67</sup> Plutarch, *Lives*, p. 146. Recall the Roman case already mentioned: any citizen, not merely the victim, could prosecute a homicide.

<sup>68</sup> Moral calculus, 5.2.C.1, 5.2.C.2.

<sup>69</sup> Quoted in Evans, p. 72.

<sup>70</sup> Royal Commission on Capital Punishment, p. 248.

<sup>71</sup> For a definition of inner and outer honor, see above, "Defense of Honor."

<sup>72</sup> Guevara, p. 153.

<sup>73</sup> Montesquieu, pp. 38-39 (VI.11-12).

<sup>74</sup> Wei Liao-tzu, in Sawyer and Sawyer, p. 263. He further says: "If by executing one man the entire army will quake, kill him. If by rewarding one man ten thousand men will rejoice, reward him. In executing, value the great; in rewarding, value the small" (ibid, p. 255).

<sup>75</sup> Kramer and Sprenger, p. 255.

<sup>76</sup> Hampl.

<sup>77</sup> Scott, pp. 48-49.

<sup>78</sup> Wiedemann, p. 71.

<sup>79</sup> Above, this chapter.

<sup>80</sup> Pinguet, p. 135.

<sup>81</sup> Ibid, pp. 82-84.

<sup>82</sup> From quoted accounts ibid, pp. 80-81. Masur (pp. 25-26) cites the hymn-singing choirs and the sermons preached directly to the condemned in eighteenth-century New England.

<sup>83</sup> Rosen, p. 12.

<sup>84</sup> Kramer and Sprenger, p. xl (M. R. Summers, intro. to 1928 ed.).

<sup>85</sup> Kramer and Sprenger, p. 212.

<sup>86</sup> Ibid, p. 230.

<sup>87</sup> Ibid, p. 213.

<sup>88</sup> Ibid, p. 216.

<sup>89</sup> Ibid, pp. 220-22.

<sup>90</sup> Ibid, p. 228.

<sup>91</sup> Ibid, p. 227.

<sup>92</sup> Ibid, p. 223. We may be sure that failure to confess will not in most cases offer the accused any shred of defense, because, like failure to express a belief in witchcraft, it constitutes defiance of the judge, his science and authority and moral calculus. (See, e.g., p. 234.) If suspicion against her is strong (a category determined by the judge, of course), then she can be imprisoned for a year under ban of excommunication; failure to confess after that renders her an impenitent heretic fit for burning (ibid, p. 239). The supposed logic of the procedure breaks down here, revealing the black craters of expediency beneath. One seventeenth-century confessor

to judicially tortured witches wrote that "a certain religious," perhaps himself, "recently discussed the matter with several judges who had lighted many fires and asked them how an innocent person once arrested could escape; they were unable to answer and finally said they would think it over that night" (Father Friedrich von Spee, S.J.; quoted in Rosen, p. 13).

<sup>93</sup> Kramer and Sprenger, p. 225.

<sup>94</sup> Why always *burning* as a penalty? I wonder if this might have been an attempt at something like, although not identical to, a *contra-passo*? A witch is associated with Satan and hellfire. Could it be that the earthly fire to which she is condemned imparts the right touch of didactic theatricality to the morality play in which she must perform?

<sup>95</sup> Moral calculus, 2.3.C: Injustice may be the unavoidable result of acts undertaken under the limitations of imminence, ignorance of actual circumstances, miscellaneous collective necessities, especially in war and revolution, etc., etc.

<sup>96</sup> Kramer and Sprenger, p. 220

<sup>97</sup> Ibid, p. 226.

<sup>98</sup> Ibid, p. 241.

<sup>99</sup> Solzhenitsyn, vol. 3, p. 445.

<sup>100</sup> The terrible shining of the axe really reflects, like the glitter of John Brown's whip (see below, this chapter), the light of love. How happy authority just or unjust would be, to convince us that this was so! One scholar has written in her study of a certain medieval penalty admittedly much milder than death—namely, public penance—that it was "first and most obviously the reconciliation with God that promised eternal salvation, but it was also the reconciliation with the institutional church through the authority of its sacraments and its priests... It was normally only half voluntary, as much a punishment imposed as a sacrifice assumed, as much a lesson to the populace as redemption to the individual... Perhaps that is why public penance was so compelling... [it] acts out a utopian dream. It declares the hope that God's justice can be visible on earth" (Mansfield, p. 17).

<sup>101</sup> Kramer and Sprenger, p. 256.

<sup>102</sup> Ibid, p. 256. Here once again we see



Seneca's Maxim (moral calculus, 6.3.A.1): Violent deterrence becomes *inexpedient*, although not necessarily unjustifiable, when its severity corrodes loyalty and fear into desperation. (See also "Deterrence, Retribution and Revenge," above.)

<sup>103</sup> We believe in terrorists, Communists and child molesters instead.

<sup>104</sup> Sadder yet is this comment about the investigation of an analogous set of murders, the Waco siege: "Perhaps the most disturbing counter-measure was the charge, made by the President himself, that the hearings were an attack on law enforcement. Quite the opposite was the case," pleads the House Committee. "All involved in the planning and carrying out of the hearings and the investigation ... believed that th[rough] airing and analysis of the Waco events by congressional oversight committees were necessary to the long term credibility and viability of the Federal law enforcement agencies... The public was clearly reminded that we live in a Nation of laws and no power sits above those laws. Americans are far more likely to support law enforcement authorities when they know that such authorities will be held accountable for their actions" (U.S. H.R. Committee on Government Reform, I.b).

<sup>105</sup> Subcommittee on Terrorism &c, pp. 1,111 ("Rules of Engagement"), 1,124-25 ("Censure/Promotion/Suspension of Larry Potts"). Italics mine.

<sup>106</sup> Three months later, when outcry persisted, Potts and three other FBI agents were suspended with pay.

<sup>107</sup> The Ruby Ridge episode is discussed at much greater length below, in "Off the Grid."

<sup>108</sup> Moral calculus, 6.3.B.3.

<sup>109</sup> Moral calculus, 5.3.B.2.

<sup>110</sup> Moral calculus, 6.3.B.3.

<sup>111</sup> UNICRI, pp. 351-52 (Adelmo Manna, "New Sanctioning Prospects for the Protection of the Victim in Penal Law").

<sup>112</sup> Plato, *Laws*, p. 1491 (XII.944e). Here it may be worth reminding the reader that given the nature of hoplite fighting in tight-massed phalanxes, throwing away a shield not only disgraced the coward, and set an evil example,

as it would today, but also endangered the entire line. (See "Sayings of Spartans," in *Plutarch on Sparta*, p. 134: Demaratus.)

<sup>113</sup> "And as for the man and the woman addicted to theft, cut off their hands as punishment for what they have earned, an exemplary punishment from Allah" (Qur'-An, VI.5.38; "The Food," p. 252). The commentator explains (n. 693) that this is the maximum punishment, as indicated by the words "addicted to"—that is, the thieves are habitual offenders.

<sup>114</sup> We saw how Martin Luther King believed that "you can't murder murder" (above, "Defense of Race"), but most people do not accept this.

<sup>115</sup> Appian, vol. III, p. 497 (*The Civil Wars*, II.XX.146).

<sup>116</sup> Hobbes, p. 355 (part II, ch. 28: "Of Punishments, and Rewards").

<sup>117</sup> See above, "Deterrence, Retribution and Revenge."

<sup>118</sup> The wheels of the Nazi extermination machine were greased by euphemisms. Likewise, the nuclear physicist Theodore Taylor, in drawing up targeting plans against the USSR, never had "a daydream about those people ... as individuals, what they might look like, how many of them one would see slammed up against the walls of the nearest building and splattered all over the place" (Lifton and Markusen, p. 150).

<sup>119</sup> Back in Tiberius's day, the pageants were not so elaborate, but the emperor still enjoyed watching: "At Capraea they still point out the scene of his executions, from which he used to order that those who had been condemned after long and exquisite tortures be cast headlong into the sea before his eyes, while a band of marines waited below for the bodies and broke their bones with boathooks and oars, to prevent any breath of life from remaining in their bodies" (Suetonius, vol. 1, p. 383; "Tiberius," III.LXII).

<sup>120</sup> Wiedemann, pp. 86-87.

<sup>121</sup> Maine, pp. 18-19. However, in 1746 King Friedrich II remarked about the traditional penalty of burning at the stake that the public might well "be scandalized rather than improved" (Evans, p. 122). I imagine this to

have been wishful thinking. The truth is probably closest to this cynical formulation of one late-twentieth-century scholar: "People do not want to resolve the tension between social control and law; they often do not care whether the police use excessive force, unless the violence is thrust in their faces" (Chevigny, p. 255).

<sup>122</sup> In effect, the deterrent threshold went down. See above, "Deterrence, Retribution and Revenge"; below, moral calculus, 6.3.A.1.9.

<sup>123</sup> Rosen, pp. 105-06; "A true and just Recorde...", 1582).

<sup>124</sup> Estes Thompson, "Drunken driver sentenced to life in fatal collision," in the *Sacramento Bee*, May 7, 1997, p. A14 ("Nation" section.).

<sup>125</sup> Had he been released, the father might have invoked the Golden Rule in Mr. Jones's favor—or against Mr. Jones, in the style of John Brown. See above, "Defense of Race."

<sup>126</sup> Montesquieu, p. 42 (VI.16).

<sup>127</sup> Masur, p. 30.

<sup>128</sup> Quoted in Masur, p. 34.

<sup>129</sup> Evans, p. 799.

<sup>130</sup> A citizen who rejects the law, on the other hand, is literally an outlaw, a homeless one, a loner outside the social contract. (See above, "Where Do My Rights Begin?") To the extent that he is strong enough to enforce his own will, the arbitrariness of that will meshes perfectly with his own volition—his deeds are his norms—and he thereby experiences freedom and fulfillment. But, because he is also one against many, he must sooner or later also experience the inevitable unfreedom of submission to force, whose imposition will be the more painfully arbitrary as it comes from a group of which he is not a part.

<sup>131</sup> Montesquieu, p. 268 (XXX.18).

#### RETALIATION FOR VIOLENT CRIMES

<sup>A</sup> Darrow, p. 51.

<sup>B</sup> *Hittite Laws*, pp. 1-5, 8-11, 56-58, 98 (comment on mercilessness). Mainly the first tablet is quoted from here. The second tablet often gives higher but proportional financial penalties for the same crimes. For example, the first tablet gives the penalty for knocking

a freeman's teeth out as twenty shekels. The second gives it as a full *maneh* (the Biblical minah).

<sup>C</sup> \_\_\_\_\_, *Ancient Roman Statutes*, the Twelve Tables, pp. 10-13; Maine, p. 308; Wiedemann, p. 70; Buckland and McNair, pp. 295-96.

<sup>D</sup> Byock, p. 26.

<sup>E</sup> *Eyrbyggja Saga*, p. 14.

<sup>F</sup> Varley, pp. 33-34; Blomberg, p. 96.

<sup>G</sup> Rountree, pp. 85, 115.

<sup>H</sup> Trigger, pp. 59-61.

<sup>I</sup> Boas, pp. 174, 259-60.

<sup>J</sup> Exodus 21.12-23.21.

<sup>K</sup> *Inscriptiones Graecae*; in Fornara, p. 18, item no. 15b.

<sup>L</sup> Leviticus 24:13.17-21, Deuteronomy 21:10-15, Deuteronomy 22:23-29.

<sup>M</sup> Kathleen Freeman, pp. 20, 23, 49; Plutarch, *Lives*, p. 149 (Solon); MacDowell, pp. 91, 113-14, 123-25, 254-55. In the case of homicide, Solon's code resembled the non-judicial mechanisms of blood revenge in that an action had to be brought by the relatives of the victim.

<sup>N</sup> Seneca, vol. 1, p. 403 ("On Mercy," I.XV.7; penalty for parricide); Appian, vol. III, p. 205 (*The Civil Wars*, I.XIII.109; attempted rape); Erich S. Gruen, pp. 244-47; Wiedemann, pp. 74-75, 104-106 (gladiators, slaves); Radin, p. 469..

<sup>O</sup> Hornblower and Spawforth, p. 832 (article on "law and procedure, Roman").

<sup>P</sup> Justinian, p. 161 ("Concerning Insulting Behaviour and Scandalous Libels," Book 47, title 10, clause 5 [Ulpian]), p. 165 (clause 9 [Ulpian]), p. 171 (clause 51 [Ulpian]), p. 182 (clause 24 [Ulpian]); Wiedemann, pp. 76-77, Radin, p. 469.

<sup>Q</sup> Lee, p. 31.

<sup>R</sup> *Ibid*, p. 32.

<sup>S</sup> Gibbon, vol. 1, pp. 175-76.

<sup>T</sup> II.2.178 (p. 73), VI.5.33 ("The Food," p. 250). Punishments for assault I have inferred from those listed for dacoity; non-judicial punishment is allowed in war "for sacred things" (II.2.194, p. 82): "Whoever then acts aggressively against you, inflict injury upon him according to the injury he has inflicted upon you." For marriage to captured married

women, see V.4.24 ("The Women," p. 196).

<sup>U</sup> Zorita, p. 131.

<sup>V</sup> Evans, p. 134.

<sup>W</sup> Barbour, pp. 37-39 (November 20, 1606. Instructions for Government).

<sup>X</sup> Rountree, pp. 115-16.

<sup>Y</sup> Dmtryshyn et al, pp. 424-25 (instructions from the Voevoda of Iakutsk, Andrei Barneshlev, to the Cossack Visili Tarasov).

<sup>Z</sup> Wills, pp. 109, 201, 204

<sup>AA</sup> Ibid.

<sup>BB</sup> Evans, p. 134.

<sup>CC</sup> Scott; Royal Commission.

<sup>DD</sup> Van den Berg, p. 70.

<sup>132</sup> Evans, p. 895.

<sup>133</sup> See above, "Defense of Honor."

<sup>134</sup> Ibid, pp. 148, 193-95. This seems to have happened in the Roman Empire as well, with gladiatorial games and the executions in between. Indeed, Wiedemann (p. 132) specifically makes the parallel between the privatization of justice in Imperial Rome and nineteenth-century Europe.

<sup>135</sup> Quoted in Royal Commission on Capital Punishment, p. 246.

<sup>136</sup> Ibid, p. 248.

<sup>137</sup> Ibid, p. 249.

<sup>138</sup> *The Science of Right*, trans. W. Hastie, in Kant, p. 446. Italics in original.

<sup>139</sup> Darrow, pp. 62-63.

<sup>140</sup> Wiedemann, p. 70.

<sup>141</sup> *Laus*, IX.874a, p. 1,433.

<sup>142</sup> MacDowell, p. 117.

<sup>143</sup> Maine, p. 312. Likewise, we find that the purchase of a cow or a slave is not valid until it has been ritually ratified by means of the buyer's striking a pair of bronze scales with a piece of bronze (Justinian, pp. 57-58; introduction by C. F. Kolbert).

<sup>144</sup> Loc. cit.

<sup>145</sup> MacDowell, p. 45.

<sup>146</sup> *Athenaion Politeia*, I, in G. R. Stanton, p. 22. We read in an ancient summary of the Athenian constitution that suits could be entered against animals, inanimate objects and any unknown "doer of the deed" (\_\_\_\_ [attributed to Aristotle or one of his students], *The Athenian Constitution*, p. 103).

<sup>147</sup> Herodotus, Book Seven, p. 457. "Whether

this act should be regarded as a piece of symbolic magic, or mere childish *folie de grandeur*, or a mixture of the two, is very hard to determine" (Green, p. 75).

<sup>148</sup> "Nothing is more distasteful to men, either as individuals or as masses, than the admission of their moral progress as a substantive reality. This unwillingness shows itself, as regards individuals, in the exaggerated respect which is ordinarily paid to the doubtful virtue of consistency" (Maine, p. 58).

<sup>149</sup> Royal Commission on Capital Punishment, p. 250.

<sup>150</sup> Loc. cit.

<sup>151</sup> Ibid, p. 272. When Roman slaves were hanged, burned or crucified by private contractors, the laborers who dragged away the corpses with hooks were required to ring a bell and wear red (1st A.D. inscription, cited in Wiedemann, p. 75).

<sup>152</sup> Ibid, p. 318. What kind of denunciation is it exactly, we ask the squeamish Anglo-American executioners of the 1940s who "should avoid gross physical violence and should not mutilate or distort the body?" (Royal Commission on Capital Punishment, p. 255.) Do they denounce these days, or merely liquidate? We've summarized the procedures of a hanging. Consider the electric chair in the United States: Handcuff the doomed one, shave one of his legs and the crown of his head, lead him before the five witnesses (who in some states cannot be seen by him), strap him to the chair, mask him, attach the electrodes. It all takes two minutes. Then charge him with two different voltages of current for another two minutes. The prisoner makes no sound (ibid, p. 251). In the gas chamber it's much the same. Stripped, stethoscoped, strapped in, leather-masked and prayed over, he awaits the departure of the last prison official, who removes the cover from the lead-walled acid container on the way out. A hand drops a switch. Cyanide pellets fall into the acid. In Nevada, it took five minutes from when they led their criminal out of the death-cell until the door of the gas chamber closed upon him, and four minutes more until his heart stopped. The prison doctor was listening through the long

stethoscope, which pulsed inside a copper tube, then pulsed no more (ibid, p. 253). It seems a far cry from the medieval German criminal screaming out Jesus's name before the crowd while the executioner's wheel smashes his bones. Of course the American method is quicker and less painful; I for one would prefer it. Here are the British Royal Commission's two prerequisites for "humanity": (1) The preliminaries ought to be quick and not provocative. (2) The procedure should produce rapid unconsciousness and death (loc. cit.). The Royal Commission concluded that hanging was faster than electrocution, gassing or guillotining. But the British or American criminal no longer plays a part in his own death. Pinioned, silent and objectified, he receives the current within authority's walls. Society doesn't see him. His death is lost.

<sup>153</sup> Ibid, p. 256.

<sup>154</sup> "The focus of reassurance today is the trial; by contrast, the actual punishment has become almost a secret" (Wiedemann, p. 72).

<sup>155</sup> Remember Solon's Maxim: The best possible city-state is "that where those that are not injured try and punish the unjust as much as those that are."

<sup>156</sup> Brown to Mr. Henry L. Stearns, from Red River, Iowa, 1857 (p. 2), Boyd B. Stutler collection.

<sup>157</sup> In this connection it is interesting to refer to Jewish law, which emphasizes the fundamentally social nature of crime and punishment as something which must be considered in addition to the mere restoration of religious or moral symmetry: "For transgressions as between man and the Omnipresent the Day of Atonement procures atonement, but for transgressions as between man and his fellow the Day of Atonement does not procure any atonement, until he has pacified his fellow" (Epstein, p. 423, Mishnah, Yoma 85b). This passage, however, does not make clear whether old John Brown had the right to remit a portion of his son's punishment, even though so doing "pacified" old Brown. Here lies the question, which each of us must answer in his own way: Is judicial restitution a matter between human beings, between

humans and God, both, or neither?

<sup>158</sup> Brown to Stearns, loc. cit.

<sup>159</sup> This may have been what the tormented Lawrence of Arabia strove to achieve when he asked his Tank Corps colleague to flog him: for pitiable Lawrence the cleansing effect of pain was as short-lived as cocaine's bliss. See above, "Deterrence, Retribution and Revenge."

<sup>160</sup> See above, "Defense of Honor."

<sup>161</sup> Hobbes, pp. 354-55 (II.28).

<sup>162</sup> Luther, p. 490 (Ninety-Five Theses, no. 3).

<sup>163</sup> Georgia slaveholders to the Comander of the 3rd Division of the Confederate District of Georgia August 1, 1862; in Berlin et al, p. 797.

<sup>164</sup> John Myhill, "Children Abusing Adults—Rule 43," in *The Raven*, no. 22, p. 152.

<sup>165</sup> Moral calculus, 6.3.B.6.

<sup>166</sup> See above, "Deterrence, Retribution and Revenge."

<sup>167</sup> At John Brown's trial, the prosecutor admonished those who might not be so certain: "if justice requires you by your verdict to take his life, stand by that column uprightly, but strongly, and let retributive justice, if he is guilty, send him before that Maker who will settle the question forever and ever" (quoted in Oates, p. 326).

<sup>168</sup> See above, "Defense of Race."

<sup>169</sup> Brown to his children, from Akron Ohio, May 10, 1853 (p. 1), West Virginia State Archives, Boyd B. Stutler collection.

<sup>170</sup> "Inventory and appraisement... ", pp. 1-2, Boyd B. Stutler collection.

<sup>171</sup> Brown to Mary Brown, from Springfield, Mass., March 7, 1844 (p. 1), in Boyd B. Stutler collection.

<sup>172</sup> Letter of May 10, 1853, p. 2.

<sup>173</sup> Ibid, p. 1.

<sup>174</sup> If punishment is truly, under some circumstances, love, then that half-suspended whipping in the tannery takes on an even more ambiguous character. In the forty-fourth of his ninety-five theses, Luther insisted that "by works of love, love grows and a man becomes a better man; whereas, by indulgences, he does not become a better man, but only escapes certain penalties" (Luther, p. 494; Ninety-Five Theses, 1517). In other words, by this reason-

ing, John Jr. would have become a better man if he'd received his full quota of stripes.

<sup>175</sup> Brown to John Jr. from Akron, Ohio, August 26, 1853 (p. 1), Boyd B. Stutler collection.

<sup>176</sup> *Ibid.*, p. 6.

<sup>177</sup> Brown to his children, from Akron, Ohio, September 23, 1853, Boyd B. Stutler collection.

<sup>178</sup> Seneca, vol. 1, p. 85 ("On Firmness," XII.3). What would the Animal Liberation Front say about that? See above, "Defense of Animals."

<sup>179</sup> Brown to his wife and children, from New York, December 5, 1838, in Boyd B. Stutler collection.

<sup>180</sup> Brown to Mary Brown, from Springfield, Mass., March 7, 1844, Boyd B. Stutler collection.

<sup>181</sup> Brown to "my dear daughter Ellen," from Boston, May 13, 1859; Boyd B. Stutler collection.

<sup>182</sup> Did his intentions actually become in some sense sacrificial, or had he always meant the boys' good in enlisting them in his grand, cracked and bloody defense of race and creed? John Jr.'s atonement in the tannery, as hauntingly ritualistic as the punishment of rocks, reminds us that with his sons he tried to do as he would be done by. That calculus hardly required that he keep them safe.

<sup>183</sup> Brown to Mary Brown, from Springfield, Mass., March 31, 1857, Boyd B. Stutler collection.

<sup>184</sup> Brown to Mr. Henry L. Stearns, from Red River, Iowa, 1857 (p. 2), Boyd B. Stutler collection.

<sup>185</sup> Oates says that Brown's namesake, "in deep personal anguish, appears to have given contradictory and incoherent directions to Brown's allies" (p. 283).

<sup>186</sup> Brown to John Jr. from Rochester, February 4, 1858, Boyd B. Stutler collection.

<sup>187</sup> "For Allied commentators, there is a problem in assessing the conduct of totalitarian armies, where brutality and genocide were often practised as a matter of policy, but where individual heroism could also be evidenced" (Dear and Foot, p. 525; article on heroism, by Norman Davies).

<sup>188</sup> Brown to his family, from Jefferson County, Virginia, October 31, 1859, Boyd B. Stutler collection, pp. 1-2.

<sup>189</sup> See above, "Defense of Race."

<sup>190</sup> Oates, p. 272.

<sup>191</sup> Herodotus, Book Six, p. 419.

<sup>192</sup> Maine (p. 4) approvingly quotes from Grote's *History of Greece*: "Zeus, or the human king on earth, is not a law-maker, but a judge." The divine nature of justice is indicated by an anecdote out of Plutarch about the Spartans, who acquitted or condemned their kings on the basis of the omens of shooting stars (life of Agis, in *Plutarch on Sparta*, p. 62).

<sup>193</sup> Lloyd-Jones, p. 161.

<sup>194</sup> "For I the Lord your God am a jealous god, visiting the iniquity of the fathers upon the children to the third and fourth generation" (Deuteronomy 5:8). By now there should be no disputing that John Brown believed in the necessity of atonement. The ancient Greeks were capable of going farther. Suppose that a mortal became inflamed through the irresistible agency of a jealous or mischievous god into committing some transgression. Human law, as we shall see in the next chapter, by and large excuses the "I-was-only-following-orders" defense if the compulsion was truly irresistible. Divine law does not. As one commentator on the *Iliad* insisted, "the human agent must take the responsibility even for a god-prompted decision. The human agent knows what is right, but the god overbears his will." In short, we find at the extreme of the moral spectrum punishment being legitimized for crimes which the transgressors did not of their own volition commit (Oedipus unknowingly slaying his father and committing incest with his mother), and punishment being meted out upon stand-ins who did not commit any crime whatsoever.

<sup>195</sup> Maine, p. 105.

<sup>196</sup> Hesiod, p. 31 ("Works and Days," l. 105).

<sup>197</sup> *Ibid.*, ll. 240-41. Vernant remarks apropos of Zeus's supernatural ordering functions that if a king goes beyond what he is legitimately allowed to do, "the whole sacred order of the universe is brought into question" (p. 107). The ethos of Elizabethan England was simi-

lar. See, for instance, the anonymous pamphlet against witchcraft in the continuum of judicial retaliation.

<sup>198</sup> XV.17.13 ("The Israelites," p. 547).

<sup>199</sup> See, e.g., Leviticus 3.4.2, 16.15-19. By countervailing logic, a leper is considered to be not just physically but also spiritually unclean (Leviticus 14).

<sup>200</sup> On the trial of an inanimate object, Kathleen Freeman writes (p. 16): "These are all inanimate survivals; their source is the belief that a man or object which sheds human blood is polluted, and will bring, by contact, actual pollution on the rest of the community."

<sup>201</sup> Caesar, *Gallic War*, p. 341 (VI.16). Montesquieu, condemning the cruelty of the Chinese custom of punishing fathers for the crimes of their children, assures his readers that "amongst us" in eighteenth-century France, "parents whose children are condemned by the laws of their country, and children whose parents have undergone the like fate, are as severely punished by shame, as they would be in China by the loss of their lives" (p. 43; VI.21).

<sup>202</sup> Herodotus, Book Seven, pp. 438-39.

<sup>203</sup> Namely, that a despised transgressor, even if he has committed some terrible deed in a previous incarnation and hence deserves to be despised, will have the sin "wholly wiped out by virtue of the fact that he is despised in this life" (Setcho and Engo), p. 394.

<sup>204</sup> Here is a typical passage from the influential *Threefold Lotus Sutra*: "Whoever speaks against people who uphold the Lotus Sutra will receive "blindness generation after generation... If he ridicules them [the upholders], generation after generation his teeth will be sparse and missing, his lips vile, his nose flat, his hands and feet contorted, his eyes askint, his body stinking and filthy with evil scabs and bloody pus," etc., etc. (Sakyamuni Buddha, p. 343).

<sup>205</sup> Gupta, p. 18.

<sup>206</sup> Moral calculus, 5.3.B.1.

<sup>207</sup> This is why Richard Goldstone, the South African jurist, pressed for war crimes tribunals to judge the interethnic killings of the Yugoslav civil war. "Specific individuals bear the major share of the responsibility, and it is they, not the group as a whole, who need to

be held to account ... precisely so the next time around none will be able to claim that all Serbs did this, or all Croats... I really believe that this is the only way the cycle can be broken" (Stover and Peress, p. 138).

<sup>208</sup> Luther, pp. 378-79 ("Secular Authority: To What Extent It Should Be Obeyed," 1523). And in the famous hadith *Bukhari* one continually finds the Prophet with his own hands executing violent punishments upon evildoers.

<sup>209</sup> See above, "Defense of Authority."

<sup>210</sup> Gandhi, for instance, made more or less the same categorization, but concluded that only the course of mercy was proper. Punishment, redress and correction were uncertain in effect, pandered to police corruption, and gained the victim nothing. (Having previously foresworn "results"—he is being inconsistent here in concerning himself with the victim's gain at all.) Passive acquiescence, which Luther didn't even bother considering, Gandhi likewise ruled out as cowardice. The satyagrahan way was to consider criminals as sick brothers and sisters who needed to be cured (p. 350; "The Satyagraha Way with Crime," in *Harijian*, August 11, 1946. Thus for Gandhi no punishment is "necessary."

<sup>211</sup> "In welchen alle vorgefahlene, und mir Franz Joseph Wohlmut als aufgenommenen Freyman allhier, sowohl allda in Hochfürstlichen Stadt-Gericht, als auf dem Land verrichte EXECUTIONEN durch hinrichtung der DELINQUENTEN, dann mit vornehmung der Torturen, aushauen, und Prangerstellen, hier inbemelter Massen eingetragen worden, angefangen mit dem Jahr 1761."

<sup>212</sup> I'm reminded of the Kriminalmuseum in Vienna, where a bland mummified head dwells under a glass bell-jar. In old prints, the condemned are seen either terrified or anguished or fearful. This head, now severed, is merely lifeless. The skeletons of executed criminals may be dug up and bought by doctors, as happened with that of the husband-murderer Therese Kandl in 1809. There it is, at the Kriminalmuseum. Here is a trophy from 1885: Matthias Bechnrik's skull dirty and grinning (he had killed somebody with a kitchen knife).

<sup>213</sup> An anonymous English pamphlet against witchcraft runs: "the punishments of the wicked are so many warnings to all irregular sinners to amend their lives and avoid the judgment to come by penitency and newness of life" (Barbara Rosen, p. 384; "The Wonderful Discoverie of the Witchcraft of Margaret and Phillip Flower...", 1619).

<sup>214</sup> Berkman, p. 15.

<sup>215</sup> Penn Warren, p. 52.

<sup>216</sup> See above, "Suicide and Euthanasia."

<sup>217</sup> Penn Warren, p. 414.

<sup>218</sup> *Ibid.*, p. 376. Such was also his intention at "Bloody Pottawatomie," as his deeds proved. After the massacres there, he wrote John Jr. that "one of U.S. Hounds" had been at Cleveland going East after me. I have been hideing about a week for my track to get cold... I think I will not be 'delivered into the hands of the wicked'; & feel quite easy; but mean to make it very difficult to follow me" (Brown to John Jr. from West Newton, Mass., April 15, 1857 (p. 2), Boyd B. Stutler collection).

<sup>219</sup> Plato understands very well that it is both, saying "law will both teach and constrain the man who has done a wrong, great or small, never again, if he can help it, to venture on repetition of the act" (*Laws*, IX.862d, p. 1,423). Teaching is the private, personal function; constraining is half personal, half public in its application.

<sup>220</sup> Pritchard, vol. 2, plate 48.

<sup>221</sup> Carus, p. 202 (parable of Vasavadatta).

<sup>222</sup> Creed, like honor, can certainly be convenient for authority, as when (so we read) ancient Mesopotamians hauled before court would rather be condemned for their crimes than perjure themselves swearing their innocence for the gods; this made the burden of proof rather light for the prosecution.

<sup>223</sup> Parke, p. 262 (Appendix I, inquiry no. 7).

<sup>224</sup> Gandhi, p. 113 ("The Law of Suffering," in *Young India*, June 16, 1920).

<sup>225</sup> It is just such a circumstance to which that 1902 report to Parliament refers when, beginning with the assumption that defense of authority is legitimate, it concludes that "older criminals, ... by a long course of repeated crime, have proved themselves indif-

ferent to all reformatory influences, and must be regarded as the enemies of society" (*Report of the Commissioners of Prisons*, p. 9). For a fitting counterpart, take this pamphlet by the anarchist Kropotkin, who, defying the many punishments he has received, invokes the golden grail of class self-defense when he cries out that "order is an infinitesimal minority raised to positions of power, which for this reason imposes itself on the majority and which raises children to occupy the same positions later so as to maintain the same privileges by trickery, corruption, violence and butchery" (Kropotkin, *On Order*, p. 6). Ah, he won't reform! Well, the instruments and procedures of control lie ready to hand: in the British prisons in 1902 those included irons or handcuffs, close confinement, flogging, dietary punishment, loss of privileges (*Report of the Commissioners of Prisons*, p. 90). When these are administered, how often do you think the convict is first asked whether he accepts the warden's moral calculus?

<sup>226</sup> Quoted in Erkind, p. 20 (letter to the Allied Control Council, 1946).

<sup>227</sup> Díaz, p. 129. The young Nero, preparing to inscribe two brigands' death-warrants, used almost identical words (Seneca, vol. 1, p. 431; "On Mercy," II.3). Cortes and Nero, like Eichmann, evidently hated to see the word made flesh—or, I should say, made *upon* flesh, transforming souls into carrion. But, admirably persevering, they mastered their feelings. Cf. Gómara, pp. 89-90, who follows the moral calculus of Cleon the Athenian in his account of the incident, remarking about Cortes, "in truth, if he had been soft, he never would have mastered them."

<sup>228</sup> "Fac-simile of the last letter of John Brown... ", Charlestown, Jefferson Co., Va., November 27, 1859, Sabbath (p. 1), from the West Virginia State Archives, Boyd B. Stutler collection. Emphasis in original.

<sup>229</sup> Royal Commission, p. 274.

<sup>230</sup> *Ibid.*, p. 321.

<sup>231</sup> "In modern civilisation the deterrent value of the punishment meted out for any given crime against society is governed by the chances of the crime being discovered and the culprit detected" (Scott, p. 132).

<sup>232</sup> "Fac-simile of the last letter of John Brown... ", pp. 1-2. Emphasis in original.

<sup>233</sup> Letter to Reverend Luther Humphrey, from Charlestown, Jefferson Co., Va., November 19, 1859 (p. 1), from Stutler collection.

<sup>234</sup> Ibid.

<sup>235</sup> Brown to Mary Brown, from Springfield, 29th Nov. 1846 (p. 1), Boyd B. Stutler collection.

<sup>236</sup> Undated document beginning "The passage just read ... " (p. 1), Boyd B. Stutler collection.

<sup>237</sup> See Akbar's remarks in the epigraph to this chapter.

<sup>238</sup> If not, then punishment confirms their damnation—surely harder to accept. In our struggle to comprehend and judge the morality of punishment we would do well to meditate on what Luther once wrote about the powerlessness of human will: "Of course, this seems to give the greatest offense to common sense or natural reason, that God, who is proclaimed as being so full of mercy and goodness, should of His own mere will abandon, harden and damn men, as though delighted in the sins and great eternal torments of the miserable... I myself have been offended at it more than once, even unto the deepest abyss of despair, so far that I wished I had never been made a man. That was before I knew how healthgiving that despair was, and how near it was to grace" (Winter, p. 131). And down through the centuries we can still smell Luther's rage and bafflement. How much more must the prisoner rage, as he receives his strokes and goes into the dirty darkness!

<sup>239</sup> See the table of punishments, above.

<sup>240</sup> See above, this chapter.

<sup>241</sup> Cicero, *Murder Trials*, p. 51 ("In Defence of Sextus Roscius of Ameria").

<sup>242</sup> One of his editors will wander through Vincennes a couple of centuries later and describe the cells as follows: "It was in one of these ice-cold cylinders, in this atmosphere of funereal horror, that the Marquis de Sade wrote his letters, fine examples of eloquence and imagination with which only the most universal products of the Elizabethan genius can be compared" (Sade, *Letters*, p. 24; remarks of Gilbert Lély).

<sup>243</sup> Sade, *Letters*, p. 37 (letter no. II, to Mme. de Sade, March 6, 1777).

<sup>244</sup> This point is controversial. Lély, for instance, insists on it, while Lever hesitates.

<sup>245</sup> Luther, p. 384 ("Secular Authority").

<sup>246</sup> Sade, *Letters*, p. 52 (letter no. IV, to Mme. de Sade, February 1, 1779).

<sup>247</sup> Ibid p. 101 (letter no. X, to Mlle. de Rousset, January 26, 1782).

<sup>248</sup> See above, "Where Do My Rights End?"

<sup>249</sup> Sade, *Letters*, p. 106 (letter no. XI, to Mlle. de Rousset, April 17, 1782).

<sup>250</sup> Ibid, p. 62 (letter no. VI, to Martin Quiros, January 1780).

<sup>251</sup> Daniel Lee Anders, "Letters from the Hole," in *Grand Street*, no. 60, 1997, p. 97 (letter to Mike Davis, September 7, 1995).

<sup>252</sup> Sade *Letters*, p. 37 (letter no. III, to Mme. de Sade, April 18, 1777).

<sup>253</sup> Sade, *Letters*, p. 135 (letter to Mme. de Sade, November 1783).

<sup>254</sup> Darrow, p. 90.

<sup>255</sup> Ibid, p. 99.

<sup>256</sup> Or Alphonse.

<sup>257</sup> Laborde, p. 77 (déposition de Roze Kailair, my translation).

<sup>258</sup> Loc. cit.

<sup>259</sup> Loc. cit.

<sup>260</sup> Ibid, p. 78.

<sup>261</sup> Ibid, pp. 79-80.

<sup>262</sup> Ibid, pp. 110-11 (déposition de Sade).

<sup>263</sup> Sade, *Letters*, p. 14 (Margaret Crosland).

<sup>264</sup> Saint-Exupéry, *Wind, Sand and Stars*, p. 209.

<sup>265</sup> This of course is another argument against the deterrent value of punishment—namely, that the criminal believes he won't get caught. As we've seen, John Brown might well have believed this. The British Royal Commission points out that between 1900 and 1949 only one out of every twelve murderers in England were executed (p. 319). This gives capital deterrence a pretty low plausibility.

<sup>266</sup> Maine, p. 69.

<sup>267</sup> Williams, p. 167. As late as 1746, a feudal lord actually appealed his right to exclude any police sovereignty from his dominions (Williams, p. 165). See also "Defense of Class."

<sup>268</sup> Mishima, *Madame de Sade*, p. 6.

<sup>269</sup> Sade, p. 16 (Margaret Crosland).



<sup>270</sup> Loc. cit. Even the absolutism of the King Louis the Last he despises, because that system depresses the sovereign rights of nobles such as himself (Lever, pp. 402-03).

<sup>271</sup> Quoted in Lever, p. 324.

<sup>272</sup> Sade *Letters*, p. 79 (letter no. VII, to Mme. de Sade, February 20, 1781).

<sup>273</sup> Scott, p. 11 (italics in original).

<sup>274</sup> Bataille, p. 111.

<sup>275</sup> \_\_\_\_\_, *Des lettres de cachet*, p. 81 (my translation).

<sup>276</sup> In Paris, this functionary often drafted and signed *lettres de cachet* (Williams, p. 42).

<sup>277</sup> Unfortunately, one of the many almost inescapable problems of politics is that anything the social body does, in order to guard against that very dangerous spontaneity of bandits and lynchers which the social body was formed to fight, requires a procedure, a mechanism; mechanisms require mechanics, functionaries; functionaries through superior experience of the mechanism may learn to guide it for their own ends. See above, "Where Do My Rights End?" When the king announces, "*L'état, c'est moi*," he is proclaiming that his personification of the social body grants him licence to do his own will. He is the master mechanic. This is no mere disease of autocracy; in medieval Iceland, which as we've seen has scarcely any "state apparatus," we encounter the depressingly familiar spectacle of mechanics, in the guise of advocates for and against the accused, arguing their opposing cases on technicalities; as when in *Njal's Saga* a group of known murder-burners defends itself through the shabby tactics of jurisdiction and jury composition (pp. 300-316). Whether I am to be expelled from the commonality on the grounds of some absurdly formalistic verdict or of a *lettre de cachet*, the result may not much differ from that of an encounter with highwaymen. Due process is an essential corollary of the social contract. That is why the eighteenth-century protest against *lettres de cachet* continues: "Society's right of jurisdiction emanates from its duty of protection" (\_\_\_\_\_, *Des lettres de cachet*, loc. cit.; my translation), which the victim of a *lettre de cachet* never got. The solution, as our anonymous author sees it, is quite simply

separation of powers: the personality of the executive should have no right to make the laws; and the lawyers shouldn't be allowed to execute them. No doubt this is necessary. In Sade's case, however, it might not have mattered. A man who'd poisoned some women half to death might still receive life imprisonment from a jury of his peers. (To Sade, of course, his only peers were like-minded aristocrats, libertines.)

<sup>278</sup> Bataille, p. 129.

<sup>279</sup> Both Sade and John Brown were tested and refined in prison (doom's effect on Rudzutak remains unknown). From posterity's point of view, the arguable result was to make Sade a great writer and Brown a great martyr. From the point of view of absolutist France and slaveowning Virginia, the culprits were merely hardened in their infamy.

<sup>280</sup> *Laws*, VII.794a, p. 1,366.

<sup>281</sup> Sade, *Letters*, p. 84 (letter no. VII, to Mme. de Sade, February 20, 1781).

<sup>282</sup> *Ibid*, p. 114 (letter no. XIII, to Mme. de Sade, August 1782).

<sup>283</sup> *Ibid*, p. 123 (letter no. XV to Mme. de Sade, June 25, 1783).

<sup>284</sup> Gabrielle-Eléonore de Sade to Madame de Montreuil, January 19, 1779; quoted in Lever, p. 306.

<sup>285</sup> Oddly enough, there is in Sade very little revenge or even retaliation, evil being done merely for its own sake. When we read the popular Communist Chinese tale (rendered a little dubious not only by its original source, but also by its teller, the novelist Malraux, who at times can be as fabulous as Herodotus) of the peasant woman who, in revenge for her husband's decapitation by a local warlord, attended the warlord's trial and tore out his eyes (Malraux, *Anti-Memoirs*, p. 450), we can consider the degree of symmetry of the case, and judge whether or not the woman was justified; above all, we feel that the woman and the warlord have a relationship of sorts: her violence responds to his violence. We can ask, for instance, whether what occurred constitutes judicial retaliation, instead of revenge, because it took place in a courtroom, which means that the Communist judiciary must have sanctioned it. (After all, if they didn't

like it they could have stopped the lady after the first eye.) We can wonder why the warlord decapitated her husband in the first place; we sense some kind of mutual expression, however horrible, from perpetrator to victim and back again. In Sade's work, on the other hand, the impression one gets is of a pallid, largely disembodied intelligence floating on a cloud, relishing vistas of meaningless carnage.

<sup>286</sup> *Sodom*, p. 645.

<sup>287</sup> Sade, *Letters*, p. 101 (letter no. XII, to Mlle. de Rousset, May 1782).

<sup>288</sup> Becker, p. 252.

<sup>289</sup> Sade, *Letters*, p. 147 (no. XXI).

<sup>290</sup> *Ibid*, p. 148 (same letter).

<sup>291</sup> Above, "Where Do My Rights End?"

<sup>292</sup> Moral calculus, 5.1.8.

<sup>293</sup> L. T. Hobhouse, "Law and Justice" (1951); in Hudson and Galaway, p. 27.

<sup>294</sup> See Hudson and Galaway, pp. 29-42.

<sup>295</sup> "Deterrence, Retribution and Revenge," above.

<sup>296</sup> Moral calculus, 1.2.4.

<sup>297</sup> Excerpted in Hudson and Galaway, pp. 71-84.

<sup>298</sup> Ignore for the moment the truism that this penalty never would have been imposed. Humiliation of an aristocrat would have been humiliation of the aristocracy.

<sup>299</sup> Undoubtedly, idleness and boredom were partially responsible for his vices; and the little happiness he got in late life came (aside from the occasional act of sodomy and pedophilia) from his writings and theatrical performances. But any project not directed entirely by himself wouldn't have appealed to him much. He would have done whatever he had to do, but cynically, despising his victims all the more.

<sup>300</sup> Letter to Gaufridy in 1774, quoted in Lever, p. 241.

<sup>301</sup> Gandhi, pp. 309-09 ("To the Reader," November 10, 1940).

<sup>302</sup> Rollins and London, p. 62.

<sup>303</sup> Lever, p. 311.

<sup>304</sup> Le Brun, p. 66.

<sup>305</sup> LeRoy G. Schultz, "The Violated: A Proposal to Compensate Victims of Violent Crime" (1965), in Hudson and Galaway, pp.

133-34, fn. 176.

<sup>306</sup> Sade, *Letters*, p. 42 (letter no. III, to Mme. de Sade, April 18, 1777).

<sup>307</sup> *Ibid*, p. 34 (letter no. I, to Madame la Présidente de Montreuil, February 1777).

<sup>308</sup> *Loc. cit.*

<sup>309</sup> *Ibid*, p. 36 (letter no. II, to Mme. de Sade, March 6, 1777).

<sup>310</sup> *Ibid*, p. 37.

<sup>311</sup> Which he spent in more than one prison. He was in the Bastille from 1777 until the year of revolution 1789.

<sup>312</sup> Sade, *Letters*, p. 172 (to his lawyer Reinaud, May 19, 1790).

<sup>313</sup> Quoted in Lever, p. 444.

<sup>314</sup> Darrow, pp. 119-20.

<sup>315</sup> Sade to his cousin, Mme. de Bimard, May 4, 181; quoted in Lever, p. 550. Luther longs to say, as I do, that we are all moral agents, and can choose (at least to an extent) how we will respond to the necessity that tortures us. But Luther cannot back down before his challenger Erasmus, who accepts the will as his living smiling spouse, and whom Luther is trying to ridicule and refute. And so a few pages later Luther grits his teeth and writes: "As for myself, I frankly confess, that I should not want free will to be given me, even if it could be, nor anything else be left in my own hands to enable me to strive after my own salvation ... because, even though there were no dangers, adversities or devils, I should still be forced to labor with no guarantee of success and to beat the air only. If I lived and worked to all eternity, my conscience would never reach comfortable certainty as to how much it must do to satisfy God" (Winter, pp. 135-36). But it seems to me that if there is no free will, then we cannot be responsible for our badness, hence cannot deserve punishment; nor can punishment benefit us. Is benefit in fact any part of punishment? Many would say that is not, but any mind which strives to make sense of its surroundings must, when enduring stripes, seek for causes and meanings.

<sup>316</sup> Kakar, p. 208.

<sup>317</sup> Moral calculus, 1.3.13.

<sup>318</sup> Quoted in Lever, p. 545.

<sup>319</sup> Lever, p. 564.

<sup>320</sup> *Ibid*, p. 560.

<sup>321</sup> Quoted loc. cit. (entry for September 2, 1814).

<sup>322</sup> Taken from Lubarsky. Definitions of articles of Soviet criminal code taken from p. 7, "Conversion Table." Names of prisoners and their associated facts drawn from the alphabetized list which makes up the main portion of this booklet.

<sup>323</sup> Berkman, p. 513.

<sup>324</sup> See above, "Defense of Authority."

<sup>325</sup> It took courage in those days to admit to homosexuality, even if it was the product of jailing rather than of inborn inclination. Hence Berkman's admissions prove his ability to be candid about matters which do not benefit his public honor. However, some incidents in this memoir have clearly been embellished for their propaganda value, such as the anecdote from his Russian school days in which he dares in class to refer to Nihilist uprisings, and at exactly that moment a Nihilist bomb goes off. On balance, *Prison Memoirs of an Anarchist* can probably be trusted as a record of jailhouse experience, and as a sincere statement of feeling.

<sup>326</sup> Ibid, p. 62. Berkman's lover, Emma Goldman, similarly remarked in 1919, when Frick died a natural death, "Neither in life nor in death would he have been remembered long. It was Alexander Berkman who made him known, and Frick will live only in connection with Berkman's name. His entire fortune could not pay for such glory" (Goldman, p. 8).

<sup>327</sup> Loc. cit.

<sup>328</sup> Ellis, p. 42. The machine guns employed were Gatlings.

<sup>329</sup> Goldman, p. 4.

<sup>330</sup> Berkman, p. 103.

<sup>331</sup> Plato, *Laws*, pp. 1,490-91 (XII.944d).

<sup>332</sup> "An anarchist never begs for clemency." See above, continuum to "Suicide and Euthanasia."

<sup>333</sup> Eli Horowitz very reasonably notes: "What about its value as *prevention*? When Berkman was in jail, he couldn't bomb anybody."

<sup>334</sup> Berkman, p. 485 (Berkman to "the Girl," April 15, 1905).

<sup>335</sup> Ibid, p. 432.

<sup>336</sup> Ibid, p. 276.

<sup>337</sup> His moral calculus, which was as murder-

ously shallow as the calculus which he imagined—with some plausibility—the Fricks of this world to be employing against the "toilers," might have condemned Frick's wife and children, too. In our long chapter on defense of class, we concluded that such violence cannot be condoned when it fails to distinguish between unequal human capacity, unequal luck and unequal goodness.

<sup>338</sup> See above, "Defense of Authority," and also below, the moral calculus, 6.2.c.1.4-5, 8.

<sup>339</sup> Moral calculus, 2.4.

<sup>340</sup> Moral calculus, 6.3.A.3.

<sup>341</sup> Gandhi, p. 352 ("The Satyagraha Way with Crime," *Harijan*, August 11, 1946).

<sup>342</sup> Quoted in Berkman, p. 450.

<sup>343</sup> Hans Ramaer and Thom Holtermann, "Clara Wichmann and the End of Criminal Law," in *The Raven*, no. 22, p. 147.

<sup>344</sup> Rolling and London, p. 174.

<sup>345</sup> Ibid, p. 59.

<sup>346</sup> Quoted in Evans, p. 197.

<sup>347</sup> Ibid, p. 907.

<sup>348</sup> Quoted in Rudé, *Robespierre*, p. 165.

<sup>349</sup> Gibbon, vol. 1, p. 176.

<sup>350</sup> Cicero, *Murder Trials*, p. 273 (defense of Gaius Rabirius).

<sup>351</sup> Op. cit., p. 30 ("War and Peace").

<sup>352</sup> Parker, p. 106. "It shall then be a duty of the Lords of the Confederacy who remain faithful to warn the offending people [who neglect or violate the laws]. They shall be warned once and if a second warning is necessary they shall be driven from the territory of the Confederacy by the War Chief and his men" (ibid, p. 55; article 92).

<sup>353</sup> *Laws*, IX.868e, p. 1428.

<sup>354</sup> *Constitution fédérale de la Confédération suisse*, p. 35 (Chapter I, Article 65, no. 1; my translation).

<sup>355</sup> Hobbes, p. 336 (pt. II, ch. 27: "Of Crimes, Excuses, and Extenuations").

<sup>356</sup> Ibid, p. 356 (pt. II, ch. 28: "Of Punishments, and Rewards").

<sup>357</sup> Luther, p. 93 ("Two Kinds of Righteousness," ca. 1519).

<sup>358</sup> Ibid, p. 398 ("Secular Authority: To What Extent It Should Be Obeyed").

<sup>359</sup> Ibid, p. 102 (commentary on Galatians, 1531).

<sup>360</sup> Carus, p. 148 ("Simha's Question Concerning Annihilation").

<sup>361</sup> Levi, p. 11.

<sup>362</sup> Seneca, vol. 1, p. 121 ("On Anger," I, VI.2).

<sup>363</sup> *Ibid*, p. 449 ("On Mercy," extracts preserved by Hildebert of Tours).

<sup>364</sup> Rousseau, pp. 36-37. ("The Social Contract").

<sup>365</sup> *Laws*, IX.871d, p. 1,431.

<sup>366</sup> Jefferson, pp. 351 ("A Bill for Proportioning Crimes and Punishments").

<sup>367</sup> Kathleen Freeman, p. 91 ("Against a Step-Mother, on a Charge of Poisoning," between 450 and 411 B.C.).

<sup>368</sup> Quoted in Evans, p. 491.

<sup>369</sup> *Konjaku monogatori shu*; quoted in Friday, p. 115.

<sup>370</sup> Interviewed by author, 1997.

<sup>371</sup> Darrow, p. 73.

<sup>372</sup> Quoted in the *Sacramento Bee*, March 27, 1997, "Newslines" section, p. A18, "Electrocution still backed in Florida."

## LOYALTY, COMPULSION AND FEAR

<sup>1</sup> Lucan, p. 13 (I.376-78).

<sup>2</sup> Quoted in Seldes, p. 46.

<sup>3</sup> A loathsome little "revisionist" pamphlet, calling Ohlendorf's "the most revealing trial in the 'Einsatzgruppen case' at Nuremberg," asserts that Ohlendorf was tortured by the allies. "He denied that the Einsatzgruppen as a whole had inflicted even one quarter of the casualties claimed by the prosecution" (Harwood, pp. 11-12).

<sup>4</sup> Those scruples show up the limits of Tolstoyan inwardness. "I think that even if one was a woman in a brothel," says our white-bearded pacifist, returning to one of his favorite cited professions, "or a gaoler, one ought not suddenly to give up one's work. Certainly anyone who realizes the evil of such a life will not go on with it, but the important thing is not the external change" (Goldenweizer, pp. 198-99). I cannot accept this statement in the case of a murderer for whom an "immediate change" will save him

from adding to the blood on his hands.

<sup>5</sup> Luther, p. 399 ("Secular Authority: To What Extent It Should Be Obeyed").

<sup>6</sup> Wilhelm Keitel on Hitler: "I believed in him so blindly. —If anybody had dared to tell me then any of the things I have found out now, I would have said, 'You are an insane traitor—I'll have you shot!'" (Gilbert, p. 110).

<sup>7</sup> Quoted in Taylor, p. 248. I am reminded of the sea-captain in Alfred de Vigny's *Servitude et grandeur militaires*, who explains to his young victim: "However fine a lad you may be, I can't get out of it. The sentence of death is there, properly drawn up, and the order of execution signed, initialled, sealed; nothing is missing" (p. 34). Afterward, the captain cries in amazement: "To obey a piece of paper! for it was only that in the end! There must have been something in the air which compelled me" (p. 35). And, like Keitel and many another Nazi in the dock, he falls to railing against his superiors. See above, "Defense of War Aims."

<sup>8</sup> Manfred Guttmacher describes one murderer thus: "He is devoid of loyalty to anyone. This is a nuclear defect in most sociopaths" ("The Normal and the Sociopathic Murderer," in Wolfgang, p. 132).

<sup>9</sup> See the section entitled "King Olaf's Mad Dogs," in "Defense of Honor," above.

<sup>10</sup> Only the lay brothers who sometimes accompanied them were allowed to bear arms. Perhaps God helped the Jesuits; in any case, the designs of those cool and remorseless politicians succeeded. According to Trigger's classic account, only a few years after they set out in earnest to convert them, "many Huron apparently ceased to try to influence events and looked towards the future with a sense of bitter resignation" (*The Children of Aataentsic*, p. 750). And they had cause, for the following year the Iroquois launched their great assault which almost exterminated the Huron and drove the survivors from their homeland forever. The Jesuits took that disaster with sickening equanimity, and much of its cause lay in the undermining of traditional Huron authority which they had set about with such gusto.

<sup>11</sup> Letter on obedience to the fathers and brothers at Coimbra, Rome, March 26, 1553;

in Loyola, p. 309 (italics mine).

<sup>12</sup> Ibid, p. 310.

<sup>13</sup> But how rare is authority's own violence? For Loyola, who embraced his country's military causes and her sometimes brutal defenses of creed, violence against "alien" groups must have been less problematic than for, say, Tolstoy! "I was only following orders" became for him "I am proud to have obeyed my superior." The frequent sadness and cruelty of obedience looms dismally through history. It bloomed into a proud, tall crop in medieval Japan, where, in Pinguet's words, "genocide seemed the price of a lasting peace. Thus victories were always followed by tremendous manhunts, as fugitives were tracked down, families exterminated" (p. 79). We find it in the famous Chinese poem "Yellow Bird," which tells how one after another, three high retainers of the deceased Lord Mu, standing beside the open grave-pit, shake with dread as they wait to be sacrificed to serve him in the next world (Stephen Owen, p. 26; *Classic of Poetry* CXXXI, "Yellow Bird," ca. 620 B.C.). Two millennia later, the Jews of the Lithuanian town of Kelme will likewise be standing beside their open grave, listening to their Rabbi instruct them to "accept this judgment calmly." After all, what else can they do but cooperate? They are surrounded by merciless armed men. Unobstructive obedience will bring them a more dignified end. But one butcher leaps from the pit, and with his teeth rips the German officer's throat out ... (testimony in Yad Vashem archives, quoted in Graenum Berger, "The Roles of Communal Workers in Jewish Self-Defense," in Baron and Wise, p. 310).

<sup>14</sup> Loyola, p. 306. Italics mine. "Did you ever see a more upright-looking man, a more straightforward, honest character?" said another defendant (Schacht, quoted in Gilbert, p. 105).

<sup>15</sup> Kleist, p. 72 (ll. 1587-93). For an eerie parallel with Kleist's story, which hinges on strict and narrow obedience, cf. Wei Liao-tzu's tale of the warrior who, "unable to overcome his courage," left the ranks to kill and decapitate two of the enemy. The commander says, "There is no question that he is a

skilled warrior. But it is not what I ordered." And he orders him decapitated (Sawyer and Sawyer, p. 258).

<sup>16</sup> Mosse, p. 101 ("A Soldier Believes in Plain Talk," translated excerpt of *Die Geschichte eines Hochverrätters*).

<sup>17</sup> I imagine a torturer in the service of the Spanish Inquisition to have employed Ohlendorf's justification, or else held by supreme authority that tormenting and burning heretics could not be against God. But as a general rule, of course (that is to say, when someone is not on trial), we can hardly expect every behavior to be transparent so that any bystander such as ourselves can see the ethos within.

<sup>18</sup> The Pope approved the Ten Commandments, *however those might be interpreted*; so did the Jesuits. Therefore they would follow the orders of the Catholic Church; if some directive went too egregiously against the Decalogue they would be aware of it, and they would also be aware that their Superiors would be aware. Here lay the core of their moral identity. The reader is referred to the biographies of popes Innocent IV, who authorized the use of torture in 1252, and Paul IV (1555-59), who put Protestants to death and created Rome's Jewish ghetto, requiring the wearing of a special Jewish badge. His handling of the Roman Inquisition has been described as "a reign of terror." What would obedience to such Popes entail?

<sup>19</sup> Mosse, p. 326 ("Public Law in a New Context," translated excerpt of *Staat, Bewegung, Volk: Die Dreigliederung der politischen Einheit*.)

<sup>20</sup> Sophocles: "That is no city, which belongs to one man" (Aeschylus et al, p. 137, "Antigone," trans. Sir Richard C. Jebb).

<sup>21</sup> Moral calculus, 5.2.C.1.

<sup>22</sup> Thus, grim, taciturn old John Brown, who is recalled as requiring "unquestioning obedience to his commands" (Winkler, p. 64), led his undissenting vigilantes to the slaughter of the unarmed, as we've seen, and later commanded the attack on Harpers Ferry in an equally dictatorial spirit of unity; but that unquestioning obedience which is written of could scarcely have sustained itself had that

Bible-loving teetotaler commanded murder out of drunkenness, as some of his pro-slave victims reportedly had; or had he turned against a slave. One interesting test of commonality might be to ascertain whether what the followers do in the absence of orders corresponds to what they do when given specific directives. Speaking of atrocities committed during Operation Barbarossa, Lucas remarks (p. 28) that “many commanders, officers, and men, being faced with situations for which no solutions had been given, no firm guidelines laid down and who needed results decided on the seemingly easy option of execution and repression.” What he overlooks is that when “firm guidelines,” such as the ones that Keitel signed, were indeed laid down, the same “easy options” were followed.<sup>23</sup> “Total division, total polarization,” writes Maurice Pinguet (p. 77). “As in Dante’s Florence, every man had to be on one side or the other. The division, shearing through the entire thickness of Japanese society, from the furthest paddy-field to the court itself, made a struggle to the death inevitable.”

<sup>24</sup> The point has been made that at this period in Japanese history, vertical alliances were more practical and enduring than the horizontal, because peers found themselves in competition for scarce honors, sinecures, etcetera; whereas a retainer was ineligible for the same rewards as his master, and vice versa. Moreover, from a practical point of view, the links of the chain of obedience rapidly became attenuated with distance. In Keitel’s Germany a fighter (*Kämpfer*) would feel as loyal, or even more so, to his leader’s leader as to his leader; in Shigemori’s Japan this simply was not the case. Thus relationships of obedience were more easily and expediently entered into than the passages of the *Tale* quoted above might lead us to believe—and more easily broken. If one warrior’s lord gave unacceptable orders, there might well be another armed faction in the neighborhood. Obedience was, in short, active rather than passive. See, e.g., Friday, pp. 99 and 115-17. Like Varley (who emphasizes the realistically bilateral nature of the lord-vassal relationship, pp. 32-33, 58-59), Friday insists that most

warriors did in fact put self-interest first, as a westerner would expect them to. But he is then compelled to assert what we already know, and concludes, not especially helpfully: “By choosing to die [the warriors] were not totally abandoning their self-interests; in a very real sense, they were actually furthering them” because honor in the Ciceronian sense of posthumous renown was so important (p. 119 fn.). Blomberg (pp. 91-95, 97-99) writes that the arrangement was as follows: the vassal offered loyalty, to the point of laying down his life, and successive lives; the lord offered kindness, protection, affection. In his history of the Pacific campaign of World War II, Eric Bergerud writes that “much of Japanese education and military indoctrination dealt with mythological renderings of great acts of heroism in both the distant and recent past. All had one thing in common: the hero died in battle” (p. 130). Bergerud expresses deep admiration for the courage of these soldiers, and equally deep contempt for their leaders who instigated what proved to be pointless self-sacrifice. He goes on to say that of all the Allied veterans he interviewed, none expressed any regrets regarding the bombing of Hiroshima and Nagasaki, because thanks to this training the Japanese, they believed, would have fought on uselessly and bloodily to the end (p. 132).

<sup>25</sup> Blomberg, p. 94. One finds cases of this custom in Vietnam, too (e.g. Chanoff and Doan, p. 49; testimony of Nguyen Van Hung, private, NVA).

<sup>26</sup> Cook and Cook, p. 126 (testimony of Deibun Shigenobu).

<sup>27</sup> *Tale of the Heike*, vol. 2, p. 452 (Book 7, ch. XX).

<sup>28</sup> The reader continually meets with characters such as Tsunemasa of the Heike, who longs only to see his lord, an abbot whom he once served, before unrolling his red banner and leading his soldiers on; to the abbot, as to many of us, this visit is unexpected, touching and deeply right. *Tale of the Heike*, vol. 2, pp. 441-3 (Book 7, chapter XVII).

<sup>29</sup> Judicial Affairs General Research Institute (Japan), p. 247, Table III-5; trans. Mrs. Keiko Golden.

<sup>30</sup> See above, "Defense of Gender."

<sup>31</sup> Lady Hygeyong, p. 68 (memoir of 1795).

<sup>32</sup> Varley characterizes the Heike as "courtiers who are losing out as a ruling elite to provincial warriors in the tumultuous transition to the medieval age" (p. 111).

<sup>33</sup> "A sword which could not cut off a man's head with one stroke was considered useless" (Blomberg, p. 56).

<sup>34</sup> Naturally, as in the paintings of Napoleon's grandeur, there is a certain self-serving hagiography here, but with all due deductions for exaggeration there remains the same kind of loyalty, expressed literally to the point of suicide, which was to confound American soldiers during World War II (contemporary accounts generally describe it as "fanaticism"—a term of denigration to an American; Keitel's liege lord, on the other hand, frequently used it as a praise-word in his speeches and table talk).

<sup>35</sup> *Tale of the Heike*, vol. 1, p. 99 (Book 2, ch. IV: "Shigemori's Lesser Admonition"). Varley calls him "the conscience" of the Heike (p. 88).

<sup>36</sup> *Ibid.*, pp. 110-11 (ch. 6: "The Admonition").

<sup>37</sup> Varley, pp. 88-89.

<sup>38</sup> For discussion of Ostrovsky's *How the Steel Was Tempered*, see above, "Defense of Class."

<sup>39</sup> *Tale of the Heike*, p. 113 (ch. 7: "The Beacon").

<sup>40</sup> Indeed, the *Tale of the Heike* harps on one of Shigemori's greatest anxieties, the degradation of Buddhism, faith of the land, through the feuding of rash, vain monks. When Shigemori's father arrogantly overreaches himself, the vanguard of the rebellion consists largely of priests at first, who cast their grievance in the cosmological terms appropriate to their commonality: "It is a great grief for us that Kiyomori is about to nullify the Imperial Law and destroy the Buddha's Law at his own will." (*ibid.*, vol. 1, p. 252; Book 4, ch. VII, "The Appeal to Mount Hiei"). Kiyomori's arrogance and cruelty deserves punishment; and the main subtext of the work is the Buddhist one that anything that flourishes (specifically including the Heike) must someday decay.

<sup>41</sup> Blomberg, p. 89.

<sup>42</sup> See, e.g., Pinguet, pp. 78-79.

<sup>43</sup> *Tale of the Heike*, vol. 2, p. 450 (Book 7, ch. XIX).

<sup>44</sup> Kleist, p. 36, ll. 732-33.

<sup>45</sup> Krebs, p. 142.

<sup>46</sup> Trigger to author, September 14, 2002.

<sup>47</sup> Moral calculus, 5.3.C.2.

<sup>48</sup> Moral calculus, 6.3.C.1.2.

<sup>49</sup> A phenomenon we've discussed already in another chapter: "Defense of Honor," above.

<sup>50</sup> "Alzburg Defendant Admits Leaving U.S. Airmen Unburied," in *The Stars and Stripes*, June 8, 1946.

<sup>51</sup> Kleist, p. 25, ll. 473-74.

<sup>52</sup> Quoted in Taylor, p. 477.

<sup>53</sup> Some of Keitel's Japanese counterparts were willing to go even farther down the road of obedience than he. After obeying orders to commit atrocities, the war criminals were instructed by one lieutenant-general that "he would not forgive them were they to cause the Japanese army to lose face to foreign countries." Accordingly, they were to admit the act and deny the command. Some did (Cook and Cook, p. 430; testimony of Fuji Shizue).

<sup>54</sup> According to Evans (pp. 55-56), German tradition held that punishments such as hanging, which wrapped and bound the condemned like prize packages, were more degrading than punishments which allowed some freedom of movement and thereby permitted them to display courage and uprightness. Interestingly, the same stigma was attached to decapitation in medieval Japan—a punishment reserved for the lower orders—which is why condemned samurai preferred the far more agonizing punishment of *seppuku* as a mark of their superior status (Pinguet, p. 132).

<sup>55</sup> Quoted in Taylor, p. 354.

<sup>56</sup> Quoted *ibid.*, p. 439. Regarding personal motives, the trials of most Nazi war criminals proved less than enlightening—probably because these men struggling for their lives, like flies in the spiderweb of justice, did not care to incense the world against them any further by rehashing theories which could in any event be read in published sources. By and large they were doers, not ideologues—a plausible reason (although ultimately I think a mistaken one) for punishing them. (Exceptions: Streicher and Rosenberg never

killed anyone, nor signed any death-warrants.) When I say “doers, not ideologues,” I mean Keitel in this chapter, but Keitel was highly representative. Eichmann, for instance, never reflected sufficiently on why he killed. When his Israeli interrogator asked him, “Did you believe that the German nation could survive only if all the Jews in Europe were exterminated?”, his reply was a classic of malignant idiocy: “Herr Hauptmann, if they had said to me, ‘Your father is a traitor,’ if they had told me that my own father was a traitor and I had to kill him, I’d have done it. At that time I obeyed my orders without thinking” (Lang and Sibyll, p. 157).

<sup>57</sup> See above, “Defense of War Aims.”

<sup>58</sup> Excerpted in Chaliand, p. 598.

<sup>59</sup> A highly desirable state for Tolstoy, because it would end the battle.

<sup>60</sup> Manstein, p. 287.

<sup>61</sup> Homer, *The Iliad*, p. 87 (I.344-45).

<sup>62</sup> Caesar, *Gallic War*, p. 61 (I.40).

<sup>63</sup> Gibbon, vol. 1, p. 129. This author believes (*ibid*, pp. 246-47) that the checks and balances instituted by Constantine in the fourth century to prevent these abuses tended to make the government less efficient, to the point of introducing factionalism between military and civilian departments, which became calamitous during the barbarian invasions.

<sup>64</sup> To illustrate this process in Keitel’s country, a passage out of the eminent historian Gordon Craig will have to do: “Throughout the course of German history the Prussian army, and the German army which grew out of it and inherited its traditions, had been a law unto itself, acquiescing in directions issued by the political heads of the state for the most part only when it suited its purpose to do so” (p. 468). And this continued to be more or less the case until 1938, the midpoint of the Third Reich, when Hitler assumed supreme direction over the army, and appointed the ever obliging Keitel to be his second-in-command. Commenting on the “humiliations” which followed, Craig writes: “Indeed, swallowing their pride, the officers as a class followed their master to the bitter end, and in doing so inevitably assumed a large share of the responsibility for the crimes

of his régime” (pp. 469-70). In other words, Keitel’s obedience, and that of his peers, can be explained less by the habit of soldierly obedience which had supposedly always prevailed than by Hitler’s cleverness in trussing and decapitating the General Staff. The editor of Keitel’s memoirs insists that “this creed” of obedience “was not so much a left-over of the Old Prussian *Junkers* era of the eighteenth century, as an expression of the rationalisation of the concept of loyalty that had sprung up in the age of Kaiser Wilhelm” (Keitel, p. 29).

<sup>65</sup> Clausewitz, Keitel’s countryman and fore-runner, had insisted that the war aim is not the soldier’s business—the position also, I suppose, of Private Meadlo at My Lai. Shall we reject it?

<sup>66</sup> Duchess d’Abrantes, vol. 1, p. 161.

<sup>67</sup> Keegan, *The Mask of Command*, p. 6. Under Communism, states often pretend to revert to the Spartan example, but of course command remains more centralized than ever. In his column “Revolutionary Armed Forces and the People’s Army,” General Vo Nguyen Giap explains: “the people’s armed forces became the instrument of violence of our State to combat internal and external enemies and safeguard the new regime, the revolutionary power and the people’s interests. That is why the people eagerly participated in the struggle to defend the State, and the State is able to arm the population extensively” (*Vietnam Courier*, no. 2; July, 1972, p. 9). One suspects that that participation was not always so eager. See above, “Defense Against Traitors.”

<sup>68</sup> His career proves the naiveté of Tocqueville’s assertion that “men are not corrupted by the exercise of power or debased by the habit of obedience; but by the exercise of power which they believe to be illegal and by obedience to a rule which they consider to be usurped and oppressive” (*Democracy in America*, vol. 1, p. lxxv). Keitel, like Ohlendorf, never questioned the right of his leader to command him. Hitler’s power might have felt “oppressive” to Keitel because Hitler’s *personality* was unpleasant, but he did not question it, and it is precisely the habit of obedience which debased him—just as it was Hitler’s policy of



insisting on unconditional obedience which rendered his regime despotic and illegitimate. "Obedience to a rule *which they consider to be oppressive*"—but is oppressiveness only in the eye of the beholder?

<sup>69</sup> Lucan, p. 113 (VI.261).

<sup>70</sup> Keitel to the prison psychologist, Dr. Gilbert; in Gilbert, p. 249.

<sup>71</sup> Reproduced in Daniel Gerould, *Guillotine: Its Legend and Lore* (New York: Blast Books, 1992), p. 36. A similar caricature was made of Robespierre.

<sup>72</sup> Op. cit., p. 36 ("War and Politics; Reciprocal Effect Between Policy and Strategy").

<sup>73</sup> Gerould, p. 67.

<sup>74</sup> Moltke, p. 78 ("Thoughts on Command [1859-70]").

<sup>75</sup> A dissenting view: Alan Clark speaks of the Führer's "personal courage. He had said that he would remain in Berlin and die there, and so he did. Hitler may have despised the Prussian aristocracy, but few exits from the stage of history have been so scrupulous in their honouring of the seignorial code" (p. 458).

<sup>76</sup> General Count Philip de Segur, one of the officers who survived Napoleon's Russian campaign, wrote of the Emperor's enforced abandonment of his troops: "It was then seen too clearly that a great man is not replaced, either because the pride of his followers can no longer stoop to obey another, or that having always thought of, foreseen and ordered every thing himself, he has only forged good instruments, skilful lieutenants, but no commanders" (vol. 2, p. 320). This is an excellent description of how Hitler's lieutenants felt.

<sup>77</sup> See, e.g., Cook and Cook, p. 430 (testimony of Fujii Shizue).

<sup>78</sup> In *Wartime* (p. 113), Djilas admits the total failure of his cadres to reeducate German prisoners about the evil of Nazism. When finally asked if they would kill noncombatants again, they simply replied: "Orders are orders!"

<sup>79</sup> Quoted in Taylor, p. 537.

<sup>80</sup> Reisman and Antoniou, p. 330 ("Judicial Decisions: International Military Tribunal [Nuremberg], Judgement and Sentences, October 1, 1946"). Thus his toolishness strove for the highest form of Ignatian obedience, of willing what his master willed. In

the summer of 1996 I was called to jury service in California, and intermixed with the many stupidities, some necessary, some merely predictable, was the cautious, thorough-minded fairness of those quiet courtrooms, in each of which the defendant, now harmless and humiliated, awaited the selection of jurors; and while each judge warned us that the law was the law whether we agreed with it or not, and that if in our determination the defendant had broken the law we had to say so, nonetheless, the judge went to great pains to ask each of us: "Can you serve? Can you abide by my demand that you apply this law to the defendant? Is there anything about this defendant, or this case, or your own life, which might possibly prevent you from being fair?" And I believed this to be just and good, and even kind. Anybody who evinced the slightest doubt about his ability to administer the law—which in practice meant also his *desire* to administer the law—was excused. And General Keitel—we must acknowledge this—was likewise given the opportunity to be excused from committing what was neither just, good nor kind. His first warning: the Geneva Accords. But the Nuremberg defendants subscribed to their countryman Clausewitz's contention that "violence arms itself with the inventions of Art and Science in order to contend against violence. Self-imposed restrictions, almost imperceptible and hardly worth mentioning, termed usages of International Law, accompany it without essentially impairing its power" (op. cit., p. 101). The case which Keitel's side would make at Nuremberg was that (a) the USSR had not been a signatory to the Geneva Accords; therefore, the Reich need not be bound by them either; (b) the Allies had all violated the accords on occasion, the Soviets most egregiously; (c) the Kellogg-Briand Pact, which the majority of the belligerents had signed, specifically proscribed war as a method of settling differences; yet no one paid any attention to it; hence the other international protocols could be violated, too. (All of these rationalizations, of course, violate the Golden Rule, as well, I suppose, as a nation's collective inner honor, but most

nations have no such thing.)

<sup>81</sup> Keitel, p. 105.

<sup>82</sup> *Ibid.*, p. 166.

<sup>83</sup> Overy, p. 341 (interview of June 27, 1945).

<sup>84</sup> The death-judgment pronounced on him particularly singles out Poland, Belgium, Holland and Russia (quoted in Gilbert, p. 439).

<sup>85</sup> Quoted in Gilbert, p. 440. The simple fact is that if a crime is committed, somebody has to be responsible. Is the perpetrator guilty—or his commander for ordering or condoning it—or are both parties equally stained? I would choose the third possibility. Cortes, whose war against the Aztecs is by twentieth-century commentators so often pronounced unjust, found himself, like that darling of the rising-up justifiers, Spartacus, unable to prevent his troops from committing violence. Cortes's Spaniards immediately began to loot Montezuma's palace, where they were quartered, and perhaps to outrage some of the Mexican women who ground maize for them. Spartacus's risen slaves turned quickly to murder and rape (Yavetz, p. 88 [Sallust, Book 3, Fragment 98]). Does this extenuate either one of these commanders from accountability? No. Ineffective command in effect comprises complicity.

<sup>86</sup> Arendt, *Eichmann in Jerusalem*, p. 279.

<sup>87</sup> Fest, p. 360.

<sup>88</sup> Manstein, pp. 287-88.

<sup>89</sup> To recapitulate, there must be legitimate command, a just cause and an intention of advancing good and avoiding evil, not simply dominating or revenging. See the portrait of Caesar in the chapter "Defense of War Aims."

<sup>90</sup> Seward, p. 161.

<sup>91</sup> *Ibid.*, p. 243.

<sup>92</sup> Keegan, *The Mask of Command*, p. 317.

<sup>93</sup> Gordon Craig, p. 495.

<sup>94</sup> *The Goebbels Diaries*, p. 534 (entry for September 23, 1943).

<sup>95</sup> Guderian, p. 388. When Guderian was interrogated at Nuremberg (November 5, 1945), he used similar words: "General Keitel is basically a decent character. He was absolutely overpowered by Hitler's personality, and he considered it his duty to approve of

everything that Hitler said" (Overy, p. 533).

<sup>96</sup> Even before Hitler had come to power, one of his Gauleiters had concluded that "with an animal-like acuteness of perception he differentiated between people who gave him unconditional loyalty and an almost religious faith and those who viewed and judged him from a critical distance according to standards of reason" (Krebs, p. 153).

<sup>97</sup> Keitel, pp. 167-68.

<sup>98</sup> General von Blumentritt gives a typical anecdote: When Blumentritt was suspected of complicity in the 1944 assassination attempt on Hitler, Keitel refused to shake his hand. But his audience with Hitler went well, after which Keitel immediately invited him for tea (Liddell Hart, *The German Generals Talk*, pp. 269-70). A soldier who was mesmerized by Napoleon as a schoolboy, but outlived him and his charm by decades, later wrote about tyrant-worship that "the source of this flaw in us is a great need of action, and a great intellectual laziness" (Vigny, p. 109).

<sup>99</sup> William Craig, p. 351. General von Manteuffel accuses him of zealously indulging and encouraging Hitler's grandiose confidence in achieving the impossible (quoted in Liddell Hart, *The German Generals Talk*, p. 282).

<sup>100</sup> Above, "Defense of Honor."

<sup>101</sup> For some remarks on Hitler's motivations in watching this, see above, "Deterrence, Retribution and Retaliation."

<sup>102</sup> Keitel, p. 139.

<sup>103</sup> The Nazi war aims can I think be best described by quoting from Plotinus's First Ennead, which, composed seventeen centuries before Keitel's trial, touches on the nature of evil: "Some conception of it would be reached by thinking of measurelessness as opposed to measure, of the unbounded against bound, the unshaped against a principle of shape, the ever-needy against the self-sufficing: think of the ever-undefined, the never at rest, the all-accepting but never sated, utter dearth; and make all this character not mere accident in it but its equivalent for essential-being, so that whatsoever fragment of it be taken, that part is all lawless void, while whatever participates in it and resembles it becomes evil, though not of

course to the point of being, as itself is, Evil-Absolute" (Plotinus, p. 28).

<sup>104</sup> Keitel, pp. 139-140.

<sup>105</sup> Thucydides, p. 368.

<sup>106</sup> Singleton, p. 194.

<sup>107</sup> For more on this episode, cf. Djilas, *Wartime*, pp. 93-94. Djilas sets the number of victims at 6,700, but adds that this is an approximation. As far as inflaming revenge goes, Djilas was all too aware that Partisan atrocities were similarly helping to drive people into the Chetniks' camp (cf. p. 149). See above, "Punishment."

<sup>108</sup> A point of comparison can be made with General Grant, who during the American Civil War ordered "the severest punishment" for pillage; and when four of his pickets were assassinated one morning by snipers—an act of provocation analogous to if much smaller than the one in Yugoslavia—Grant simply rounded up the local citizenry under guard, explaining, "The intention is not to make political prisoners out of these people, but to cut off a dangerous class of spies" (Grant, pp. 979, 978; General Order No. 3, January 13, 1862, and letter to Brig. Gen. Eleazer A. Paine, January 11, 1862).

<sup>109</sup> Overy, p. 345 (interrogation of June 27, 1945).

<sup>110</sup> For an eyewitness if possibly self-serving account of the history of this order, complete with several of its document-incarnations, see Warlimont, pp. 158-71. Excerpts from the memorandum of March 31, 1941, written *almost three months in advance of the war with Russia*: "If adequate proof of his [the commissar's] position is forthcoming, the officer will forthwith order his execution and ensure that it is carried out. [Political leaders and commissars] should be liquidated if possible at prisoners-of-war collecting points or at the latest on passage through the transit camps" (pp. 163-64). Warlimont claims that Keitel was "only a recipient," not an originator, of the final order (p. 170). Obviously the Nuremberg Tribunal disagreed.

<sup>111</sup> For an extract from one of those reprisal orders, see the first epigraph to the "Deterrence, Retribution and Revenge" chapter, above.

<sup>112</sup> Dear and Foot, p. 646.

<sup>113</sup> Keitel, p. 153. His editor discusses the infamous orders at length (pp. 251-65), and tries to exculpate Keitel to some degree, arguing that both sides committed acts of terrorism and that many such orders were never enforced, or not enforced very long. But the facts, the mass graves, continue to accuse.

<sup>114</sup> His eleventh-hour statement of grievance against Hitler was more warranted than Dr. Gilbert was willing to admit. "A wise emperor rules his country by exemplifying fidelity," the *Tale of Heike* pointedly said (vol. 1, p. 220; Book 3, ch. XIX, "Seinan Detached Palace"), because, as we have seen, some form of commonality between leader and led is necessary before that "holocaust of obedience" can safely be offered up; and Hitler was among the most faithless of leaders. He treated no one with respect. But we have also seen that commonality is no guarantee of decency.

<sup>115</sup> Gilbert, p. 245.

<sup>116</sup> Keitel, p. 131.

<sup>117</sup> *Ibid.*, p. 124.

<sup>118</sup> *Ibid.*, p. 136.

<sup>119</sup> *Ibid.*, p. 147.

<sup>120</sup> Wei Liao-tzu, in Sawyer and Sawyer, p. 265

<sup>121</sup> Alan Clark, pp. 235-6, 470.

<sup>122</sup> *Ibid.*, pp. 446, 470.

<sup>123</sup> Remak, p. 165. He then quotes an exception: the last letter of a young man condemned to death because he refused to join the S.S. (p. 170)! More consideration ought to be given to Keitel's likely fate had he in fact decided to resign his post. The benign results to other generals who quarrelled with Hitler, however, suggest that had Keitel so chosen, he might have exercised his deference in such a fashion as to excuse himself and go into comfortable retirement.

<sup>124</sup> Hong Ponghan was Lady Hyegyong's father. When he advises the king to show more love to his son, Lady Hyegyong's husband, in order to prevent precisely the tragedy that would occur, "His Majesty immediately stripped him of his post and issued a stern admonition. Father withdrew hurriedly and awaited his punishment" (Lady Hyegyong, p. 286; memoir of 1805).

<sup>125</sup> Luther, p. 388 ("Secular Authority: To

What Extent It Should Be Obeyed”).

<sup>126</sup> So called in memory of Hans and Sophie Scholl, who died for their beliefs.

<sup>127</sup> I am reminded of the the seventy-two-year-old Japanese farmer who recalled his activities during the Second World War in a secret group called Unit 731. He used to vivisect prisoners alive, without an anesthetic; they died screaming. The first case he remembered well. The prisoner was a thirty-year-old Chinese man whom they'd infected with plague. “This was all in a day's work for the surgeons,” explained the old man, “but it really left an impression on me because it was my first time.” Sadism, in other words, had not become expediency. But soon enough he understood: an anesthetic might affect blood vessels and other systems which Unit 731 needed to study. “Because in a war, you have to win” (*Bangkok Post*, March 23, 1995, p. 37; “Outlook” section: “Unmasking the horror of Japan's World War II medical experiments”). This completely unacceptable excuse—fear of losing a war—has been far too often heard in history. It is nothing other than that old sawhorse, “the end justifies the means.” Had the vivisector been in direct fear for his life as a result of some Chinese military advance, his activities still would not have been justified.

<sup>128</sup> Gilbert, p. 31.

<sup>129</sup> An eerie thought! The homeless beggar-artist who was once Adolf Hitler might have excited only our pity and repulsion instead of condemnation. And yet his opinions on Jews, Bolsheviks and German *Lebensraum* were already formed. It was just that he was in no position to carry them out.

<sup>130</sup> *Goebbels Diaries*, p. 164 (entry for March 21, 1942).

<sup>131</sup> *Oberkommando der Wehrmacht*; the German Supreme Military Headquarters. Keitel headed this organization, which was formed by Hitler in 1938 as a means of weakening the old German General Staff.

<sup>132</sup> Warlimont, p. 13.

<sup>133</sup> Koestler, *Dialogue with Death*, p. 91. In this light it is apposite to consider these lines from a history of torture and its jurisprudence: “the work of the torturer, himself conditioned to torture anyone at all, may be

applied to any victim suspected of any sort of opposition to the government... By this stage in his career, the torturer is hardly in a position to discriminate among his victims” (Edward Peters, p. 183).

<sup>134</sup> “Eichmann was created” instead of being a born sadist, “and he may be the closest kind of human yet made to fit the idealized pattern of the modern torturer” (ibid, p. 182).

<sup>135</sup> We need to continually remind ourselves that this way of thinking is not a Nazi aberration, but in fact representative of any number of officialdom's minions. Here, for instance, is a summation of Dan Mitrione, an American police adviser in Uruguay who taught his Latin American colleagues how to use torture: He “was self-educated, of the working class, a devoted father of nine, and dedicated to his work. In the White House and the U.S. embassies, there were brilliant men to set his nation's policy; in the CIA, there were arrogant men to interpret it... In Uruguay, young men and women who considered themselves idealists began to shoot policemen who were often Mitrione's good friends. The U.S. government had developed harsh methods in South Vietnam for combating that kind of subversion... Mitrione merely made use of them” (Langguth, p. 307). — “I wasn't the one who started this war, was I?” exclaims a Soviet lieutenant-colonel in Afghanistan. “What did I need it for? The government said go, so we went. And now they're blaming us for it” (Borovik, p. 236). Citing the case of S.S.-Major General Nebe, who did occasionally mitigate some actions of the machine he otherwise functioned as a part of, the camp survivor Eugen Kogon insists: “No matter how liberally the right of active self-defense against the immediate enemy is interpreted, the life of innocent persons puts an insurmountable limit to our actions.” (We will find a different point of view when we turn to the precedents of Jewish law.) “Nebe cannot be excuplated from having taken over command of a special liquidation unit in the east” (Kogon, p. 144). A very different case was that of Kurt Gerstein, who joined the S.S. in order to infiltrate it and pass on accurate news of the exterminations. The Pope

refused to meet him, and the government of Sweden declined to transmit his information until after Germany had surrendered. Some consider him a good man, others an accomplice of evil. For a thumbnail sketch, see Levin, pp. 307-13. —Edward Peters in his book on torture wants to convince us, in opposition to Koestler, that the professional torturer is not in fact “like us,” because he has been conditioned to “accept a fabricated reality in which his victims have been set outside the pale of humanity” (p. 184), but the Milgram experiment, and the record of history, makes me believe that professionals of that sort are so common as to be like us.

<sup>136</sup> Arendt, *Eichmann in Jerusalem*, p. 137.

<sup>137</sup> Gilbert, p. 440.

<sup>138</sup> See Annex F.

<sup>139</sup> Cook and Cook, p. 466 (testimony of Tominaga Shozo, 2): “From the point of view of those murdered ... it didn’t matter whether the act of killing was a voluntary one or done under orders. I realized that first I had to take responsibility myself, as a person who acted.”

<sup>140</sup> Photos in the Museum of the People’s Revolution; reproduced in Lindsay, unnumbered plates 5 and 6, following p. 87. Many of those who insist on the “uniqueness” of Nazi atrocities are historical illiterates. There would have been similar scenes in, for instance, the city of Palmyra, which twice dared to rise up against the Roman emperor Aurelian (Gibbon, vol. 1, p. 125). This was Göring’s defense. Dr. Gilbert continually brought him up short: “I asked him whether the crimes of past history should be the accepted pattern for international law. ‘Well, no, but I thought that as long as the atomic bomb has made war too dangerous for nations to resort to, they will settle their differences peacefully in the future anyhow’” (Gilbert, pp. 35-36).

<sup>141</sup> Gilbert, pp. 45-46.

<sup>142</sup> Ibid, p. 48. The rage and hatred of Dr. Gilbert himself continually seeps through this memoir. One aspect of the Nuremberg Trials which has always made me uncomfortable is the determination shown by the prosecutors to “break” the defendants as well as to

execute them. The sociopolitical justifications for this common feature of most show trials are obvious, and to some extent I accept them. The Allies wanted to take no chances that these war criminals might become glamorous martyrs. Was Göring guilty of atrocities? Very definitely. Was it right to sentence him to death? Absolutely. But, his loathsome deeds acknowledged, he must also be credited with a sort of courage in the courtroom, despite the prison psychologist’s labeling of it as “cynical bravado.” (Gilbert, p. 79) “We were a sovereign state and that was strictly our business,” he said once (ibid, p. 37), and “*of course*, I wanted to make Germany great!” (ibid, p. 67). When the Heike were faced with beheading by the Genji, they often made comments similar to Göring’s, for which they were respected by the executioners. In fact, on a number of occasions in the *Tale* a Genji official will offer to pardon some Heike warrior whose deeds he admires, but the captive will usually reply that he cannot serve two masters, and that if he is allowed to live he will continue to try to take revenge on all the Genji that he can. “Highly commendable!” the official always cries, sentencing the Heike prisoner to immediate death.

<sup>143</sup> Ibid, p. 412. Peiper’s sentence was commuted to life imprisonment. He was released ten years later, and survived for two more decades until someone fire-bombed his house.

<sup>144</sup> Simon Wiesenthal, *The Sunflower* (New York: Schocken, 1976), p. 206.

<sup>145</sup> Gilbert, p. 432.

<sup>146</sup> Kingsbury Smith, “The Nazi Haman Julius Streicher’s last words: ‘The Bolsheviks will hang you one day,’ in the *New York Journal-American*, October 16, 1946, International News Service; quoted in Snyder and Morris, p. 727.

<sup>147</sup> Testimony of Guillaume Manchon; quoted in Pernoud, p. 162.

<sup>148</sup> Ibid, pp. 199-200. See also pp. 168-69, 192-93, 196-97.

<sup>149</sup> According to Smart (pp. 392-93), the causes for medieval hatred of the Jews were three: they practiced their religion in secret, they lent money (which the Catholic Church for-

bade Christians to do), and through no fault of their own they lived in ghettos, which rendered them all the more alien. Milosz, while granting some sixteenth-century exchanges of ideas between rabbis and the Arian Polish Brethren (pp. 33-34), nonetheless concludes that "for several centuries the Polish Jews lived a life completely separated from that of the surrounding Christians" (p. 163). André Schwarz-Bart's prizewinning novel *The Last of the Just* conveys a sense of the violence which European Jews had to endure—from the Middle Ages down to Hitler. In the seventeenth century, when Rabbi Sirkes wrote his responsum, conditions for Jewish communities were far less precarious than had been the case during the Crusades. A fitful protection against murder and extortion existed.

<sup>150</sup> Sirkes, p. 77 (Schochet's commentary).

<sup>151</sup> Violence against the Jews, of course, went back centuries before.

<sup>152</sup> Schwarz-Bart, p. 351.

<sup>153</sup> For vampire case studies from Eastern Europe during this time and beyond, see Summers, chs. III-V.

<sup>154</sup> This sacred liquid will also ease their menstrual cramps, stop circumcisional bleeding and facilitate giving birth.

<sup>155</sup> For a brief résumé of these charges against Jews, see Trachtenberg, pp. 6-9. Blood of course was actually very rarely used in Jewish magic, thanks to Talmudic law. For mention of a few known (and rather benign) cases, see pp. 129-31. For more information on Jewish magic, the reader is referred to Seligmann, pp. 229-243.

<sup>156</sup> For descriptions of medieval Polish towns I have relied on the woodcuts in Schedel, leaves CCXXX (Praga), CCLXV (Cracovia), CCLXVI (Lvbecca). This book was published in 1493, a bit more than a century before the events in Cracow. The general look of things in eastern Europe changed very little in that time.

<sup>157</sup> Read, for instance, *The Protocols of the Learned Elders of Zion*. It is a nasty irony, and perhaps an inevitable one, that the National Socialists, who relied upon this forgery and on similar texts to make their case that world Jewry was conspiring to create despotism, themselves did the very same.

<sup>158</sup> Sartre, *Anti-Semite and Jew*, p. 13.

<sup>159</sup> What they actually said we don't know, but the implication of Rabbi Sirkes's responsum is that the Jews could expect anything up to outright extermination.

<sup>160</sup> Eli Horowitz notes here: "Pretty different dilemma when the decider and the innocent victim are the same person."

<sup>161</sup> Levin, pp. 151-52.

<sup>162</sup> Caesar, *Gallic War*, p. 419 (VII.26).

<sup>163</sup> Two centuries later, Alfred de Vigny would call for limits on absolute command because "it ought never to be possible that a few adventurers, suddenly assuming dictatorial powers, should be able to transform four hundred thousand honorable men into assassins, by laws which are as fleeting as their authority" (p. 46). The Kalish elders were, in effect, handing the Bach such command. His law and authority would be fleeting, his decision final. But what else could they do? How could they make their decision any more fairly than to ask a scholar in another city to determine what was sanctioned?

<sup>164</sup> "A line of anti-Semitic descent from Martin Luther to Adolf Hitler is easy to draw" (Dawidowicz, p. 23).

<sup>165</sup> Sirkes, pp. 77-78 (Schochet's commentary).

<sup>166</sup> Sirkes, p. 111 (Schochet's commentary).

<sup>167</sup> See above, "Where do My Rights End?"

<sup>168</sup> See below, "The War Never Came Here."

<sup>169</sup> See above, "Suicide and Euthanasia."

<sup>170</sup> Sirkes, p. 83 (Schochet's commentary).

<sup>171</sup> Sirkes, pp. 77-78 (Schochet's commentary).

<sup>172</sup> Luther, p. 385 ("Secular Authority: To What Extent It Should Be Obeyed").

<sup>173</sup> Schochet believes that he lived for years, a profitable extortion victim.

<sup>174</sup> Jewish Council, which governed each ghetto under Nazi jurisdiction.

<sup>175</sup> In April 1941, Ringelblum is still writing in his Warsaw Ghetto diary: "The news from the camps is not bad. This will doubtless influence Jews to go there" (p. 154).

<sup>176</sup> Dawidowicz, p. 283. When does acceptance become complicity? Other factors—legend, fatality, scribal accuracy—inevitably complicate our inquiries into past events, and even if we knew "everything," it might not be easy. Consider Colonel Philip Toosey, sen-

ior British officer at the Tha Makham Bridge Camp, who played a decisive role in constructing the infamous “bridge over the River Kwai.” His Japanese captors planned to invade India. Building the bridge would help them do it. The Geneva Conventions forbade them to use the labor of prisoners of war, but they didn’t care. “In yielding to duress,” writes one survivor, “we prisoners, of course, were disobeying our own military code by helping the enemy’s war effort” (Ian Watt, p. 15). Colonel Toosey encouraged them to do just that. Between his moral calculus and Rabbi Sirkes’s lay the triple commonality of *necessity, group salvation and practicality*. He made the prisoners themselves responsible for distributing and safeguarding tools, for insuring that daily labor quotas were met and even for supervising the actual construction operation, because, as he wrote in his diary, “whether we liked it or not this work had to be done” (loc. cit.)—an understated way of saying that if they didn’t do it, the Japanese would use their machine guns. As a direct result of his cooperation, he was able to convince his keeper to give the men better rations and a day off every week. The survivor I have quoted continues that Toosey was regarded as a hero by his men, because “anybody on the spot knew that the real issue facing Toosey was not between building or not building the bridge; it was merely how many prisoners would die, be beaten up, or break down, in the process.” (Ibid, p. 21. It may also be worth mentioning that Toosey was simultaneously working with the secret “V” organization, whose members sought, at their own peril, to ameliorate conditions within the camps through illegal channels; *ibid*, pp. 24-25. But even had he not proven his sympathies in that way, I would have to call his actions justified.) Viewed through the lenses of loyalty, defense of homeland and defense of war aims, these POWs were all traitors, and their participation in the work unjustified. But only the most inhuman pedant would regard them so. Compulsion brought communal self-defense to the fore. Again, Martin Luther: “For all the lies and false confessions which such weak consciences utter”—and all

their participation in an evil work—“falls back upon him who compels them.”

<sup>177</sup> Dawidowicz, p. 289. Too easy to despise Gens for having defouled himself! But he faced choices which Raabi Sirkes probably never imagined.

<sup>178</sup> Ringelblum, p. 121 (January 15-16, 1941).

<sup>179</sup> Sirkes, pp. 55-56 (Schochet’s commentary).

<sup>180</sup> Ringelblum, pp. 300-301 (June, 1942).

<sup>181</sup> The “final solution to the Jewish problem” was neither planned at the beginning of World War II nor formally inaugurated until January 20, 1942, but Polish Jews had been treated with great violence from the very first. One-third of the 10,000 Polish civilians murdered in the first two months of Occupation were Jews. Toward the end of 1941, when German bureaucrats were already receiving secret briefings on the Final Solution, Vilna’s Jews were “resettled.” By April 1942, we find Ringelblum talking of waiting murder-squads just outside the Ghetto, and of the exterminations at Treblinka. “Besides, one is always hearing reports about extermination squads that are wiping Jewish communities off the face of the earth” (p. 257). But nobody wants to believe that it will happen to *all* Jews. “The Ghetto has calmed down somewhat since the massacre of April 18... People have become a little more optimistic” (p. 260). The future Warsaw Ghetto fighter Kazik, who’d been in the country, didn’t learn “what had happened in the Ghetto” until the end of 1942 (Rotem, p. 16).

<sup>182</sup> For a typical case of such bribery, see *ibid*, p. 158 (April 26, 1941).

<sup>183</sup> One German tactic was to threaten to withhold food if quotas remained unfulfilled (*ibid*, p. 162, April 26, 1941).

<sup>184</sup> Sirkes, p. 79 (Schochet’s commentary). Eli Horowitz to author: “Didn’t they think their compromise would save some lives (i.e., the principle of effectiveness)?” They did, as long as their ignorance of “resettlement”’s real meaning permitted, and then longer, at which point they were wrong.

<sup>185</sup> Ringelblum, p. 155 (April 17, 1941).

<sup>186</sup> *Ibid*, p. 321 (late 1942).

<sup>187</sup> *Ibid*, p. 310 (Oct. 15 1942)

<sup>188</sup> Rotem, p. 166.

<sup>189</sup> Sirkes, pp. 41-48 (Schocher's commentary). Of course this ranking does not make strict logical sense. Most of the criminals and outsiders would likely be men, although I have tried to put "defiled" women on the borderline between righteousness and criminality; similarly, a man might prize his wife above some male acquaintance, etcetera, etcetera, but this is the best way I can think of to tabulate this inconsistent and sometimes vague policy which nonetheless possesses a partly consistent core.

<sup>190</sup> Sirkes, p. ii (Schocher's commentary). Compare this with the traditional Inuit expedient hierarchy of lives to be saved (above, "Defense of Class").

<sup>191</sup> For most of the Jewish part of this continuum I am indebted to Dawidowicz, p. 292, and to Levin, p. 319.

<sup>192</sup> "I knew very well that the Germans treated Poles differently from Jews; and I knew that, if we turned ourselves in, we could expect to be sent to a labor camp near Warsaw and not to a death camp" (Rotem, p. 130).

<sup>193</sup> Ibid, p. 148.

<sup>194</sup> Borowski, p. 38 ("This Way for the Gas, Ladies and Gentlemen").

<sup>195</sup> Ka-Tzetnik, pp. 42-44 ("Operation Old People").

<sup>196</sup> The Warsaw Ghetto Uprising expressed the principle that it was better to die than to give up any more unspecified innocent people—or rather (such being the bitter cruelty of their case), that it was better to die pure than to die sullied.

<sup>197</sup> Rotem, however, recalled that in early 1943, just before the Uprising began, "the relatively few Jews left in the Ghetto generally weren't enthusiastic about our operations" (p. 26). Kurzman dates general approval for an uprising from January 1943 (p. 37).

<sup>198</sup> This figure referred to those Jews who were exterminated in July and August 1942. This "Great Action" continued through September and eventually murdered 350,000 people. Since the establishment of the Ghetto in September 1940, many had already died of starvation, typhus, etcetera—66,000 between January 1941 and May 1942.

<sup>199</sup> "The Jews have actually succeeded in mak-

ing a defensive position of the Ghetto," wrote Göbbels in his diary, stunned. He called the struggle "exceedingly serious" (p. 394; entry for May 1, 1943). The Jews fought bravely and effectively until the inevitable end. Many then committed suicide.

<sup>200</sup> See "Defense of Authority," below.

<sup>201</sup> Bakunin, p. 104.

<sup>202</sup> Lang and Sibyll, p. 38.

<sup>203</sup> Interviewed by author. See below, "The Skulls on the Shelves."

<sup>204</sup> \_\_\_\_\_, *Ancient Roman Statutes*, p. 126 (document 146, loyalty oath of Gangara municipality, 3 B.C.).

<sup>205</sup> Quoted in Varley, p. 35.

<sup>206</sup> Chanoff and Doan, p. 169 (testimony of Nguyen Van Thich, Viet Cong Ranger platoon leader; Viet Cong assassin).

<sup>207</sup> Hobbes, p. 625.

<sup>208</sup> Gilbert, p. 108.

<sup>209</sup> Napoleon, p. 76 (maxim LXIV).

<sup>210</sup> For more details of this affair, see "Deterrence and Retribution."

<sup>211</sup> *Napoleon on Napoleon*, p. 162.

<sup>212</sup> Guderian, p. 384.

<sup>213</sup> Manstein, p. 361.

<sup>214</sup> Thucydides (Strassler), Book One, p. 47 (1.84).

<sup>215</sup> "Sayings of Spartans," in *Plutarch on Sparta*, p. 138 (Theopompus).

<sup>216</sup> Thucydides (Strassler), Book Three, p. 187.

<sup>217</sup> Petrone, *First People, First Voices*, p. 54.

<sup>218</sup> Mubarakshah, *Adab al-harb wa-al-sbaja'ah*, excerpted in Chaliand, p. 449.

<sup>219</sup> *Tale of the Heike*, vol. 2, p. 604 (Book 10, ch. VII).

<sup>220</sup> *Phaedo*, 116c, in Plato, p. 96.

<sup>221</sup> Reisman and Antoniou, p. 334 ("International Military Tribunal [Nuremberg], Judgment and Sentences, September 30, 1946").

<sup>222</sup> Hobbes, pp. 345-46 (Part II, Chap. 27: "Of Crimes, Excuses, and Extenuations").

<sup>223</sup> Clausewitz, p. 259.

<sup>224</sup> Herodotus, Book Three, p. 230.

<sup>225</sup> Reisman and Antoniou, pp. 358-59 (*U.S. v. Griffen*, U.S. Army Board of Review, July 2, 1968. Griffen had murdered a surrendered Viet Cong prisoner in 1967.)

<sup>226</sup> Konrád, *The Melancholy of Rebirth*, p. 10



("Letter from Budapest").

<sup>227</sup> Freeman, p. 59 ("On the Execution without Trial of Polemarchus," 403 B.C.).

<sup>228</sup> Lossky, p. 236.

<sup>229</sup> Reisman and Antoniou, p. 395 ("Statute of the International Tribunal" re: war crimes in Yugoslavia).

<sup>230</sup> Díaz, p. 199.

<sup>231</sup> Tacitus, p. 109 (*Annals*).

<sup>232</sup> Gandhi, p. 174 ("The Right of Civil Disobedience," *Young India*, January 5, 1922).

<sup>233</sup> Imperial Executive Order, May 3, 1964 (Burrell White Exhibit No. 2, January 13, 1966), appendix to HUAC report, third page.

<sup>234</sup> Laqueur, p. 26 (*Vindiciae contra Tyrannos*, 1579).

<sup>235</sup> Quoted in Pipes, *The Russian Revolution*, p. 309.

<sup>236</sup> Bakunin, p. 141.

<sup>237</sup> Luther, p. 388 ("Secular Authority: To What Extent It Should Be Obeyed").

<sup>238</sup> *Babylonian Talmud Baba Metziab 62a*; quoted in Sirkes, p. 3 (Schocher's commentary).

<sup>239</sup> Dawidowicz, p. 299.

<sup>240</sup> Hitler, p. 255. We find him declaiming on Marxist politicians in 1925: "If at the beginning of the War and during the War twelve or fifteen thousands of these Hebrew corrupters of the people had been held under poison gas, as happened to hundreds of thousands of our very best German workers in the field, the sacrifices of millions at the front would not have been in vain. On the contrary: twelve thousand scoundrels eliminated in time might have saved the lives of a million real Germans, valuable for the future" (*ibid.*, p. 679). This ratio is 1:83.

<sup>242</sup> Lawson, p. 220.

## SADISM AND EXPEDIENCY

<sup>1</sup> Kogon, p. 17. No date given; by context *ca.* 1936.

<sup>2</sup> Hesiod, p. 41 ("Works and Days," l. 193).

<sup>3</sup> Quoted in Trotsky, *History of the Russian Revolution*, vol. 1, p. 59. Italics in original.

<sup>4</sup> See above, "Means and Ends."

<sup>5</sup> As we saw (above, "Defense of Honor."),

honor comprises no guarantee of goodness or justice. But no code whatsoever is worse.

<sup>6</sup> Expediency may not be the noblest of considerations, but it is by no means ignoble, either, if it follows in the service of a reasonable end, such as self-preservation, individual, local or national. Alliances certainly tend to be matters of policy rather than of compassion. We read that the Corcyreans, successfully inveigling Athens into an alliance against Corinth, recommend that the Athenians "secure the friendship of the strongest that does exist" (Thucydides [Strassler], Book One, p. 24)—which is to say, of course, Corcyrea; Sparta may be stronger, but Sparta is no friend. It might be equally politic to make guarantees to a weak power, as Britain did to Czechoslovakia (and also to Poland) just before World War II—and perhaps even to keep them, if the conquest of that power by the common enemy would be against one's interest. In such a case, the guarantee would, in effect, put the enemy on his notice that aggression against the weak power would start a war. Obviously the decision needs to be framed in these terms: Which is more to our advantage—to let our ally be conquered without a struggle, and thereby give an impression of weakness at the same time we forego our prior advantages territorial, strategic and material derived from our ally's independence; or to risk war with the enemy? Pure expediency must be our *modus operandi* in the state of nature, since there is no social contract to break or be enforced. This situation endures in much of international law.

<sup>7</sup> And sometimes for extenuating reasons. A significant minority of the soldiers who fought in the Thirty Years' War were conscripts, particularly those from Sweden and Finland. A historian writes that in certain areas "enlistment was ... virtually a sentence of death" (Geoffrey Parker, p. 193). One cannot expect the men who were thus snatched up by the murderous expediency of their leaders to operate on a much higher plane themselves, particularly when they were not adequately paid or even fed. This does not justify rape, murder, etcetera. It may extenu-

ate them very slightly; it could easily justify pillage by imminent self-preservation.

<sup>8</sup> Chanoff and Doan, p. 118 (testimony of Han Vi, cultural cadre).

<sup>9</sup> See above, "Deterrence, Retribution and Revenge."

<sup>10</sup> For this unpleasant tale, see Gibbon, vol. 1, p. 429.

<sup>11</sup> Tacitus, p. 36.

<sup>12</sup> Matthew 13:30.

<sup>13</sup> He's effective; he'll crush Pyrrha and Eresus; he stands ready to wipe out all the men of Mytilene and enslave the rest, as the Athenians vote to do; later they'll overrule themselves, and he'll spare the Mytilenians. Like Keitel, he's a good soldier; and there will be no Nuremberg Trials afterward.

<sup>14</sup> Thucydides, p. 211.

<sup>15</sup> Wiedemann, figure 7 ("Execution scene...").

<sup>16</sup> *Ibid.*, p. 82.

<sup>17</sup> See above, "Deterrence, Retribution and Revenge."

<sup>18</sup> See above, "Loyalty, Compulsion and Fear." Another example of expediency's pretended ends: Napoleon's first private secretary, Bourrienne, remarks with a witty cynicism which mirrors his master's that the Emperor respected religion everywhere "as a powerful engine of government," and that "I will not go so far as to say that he would not have changed his religion [to Islam] had the conquest of the East been the price for that change" (memoirs by Louis Antoine Fauvelet de Bourrienne, included in Al-jabarti, p. 153). For precisely that reason, Napoleon's proclamation to his troops insisted on religious toleration (*ibid.*, p. 136; proclamation quoted in full). It is hard not to smile at Bonaparte's proclamation to the Arabs that "the French are also faithful Muslims, and in confirmation of this they invaded Rome and destroyed there the Papal See" (*ibid.*, p. 26). "In fact," he said later, "I wished only to gain time" (*Napoleon on Napoleon*, p. 110).

<sup>19</sup> Berkman, p. 237.

<sup>20</sup> Burkart, p. 182 (testimony of "Marta Fernandez").

<sup>21</sup> Cicero, p. 252, speech in defense of Titus Annius Milo, 53 B.C. How can it be otherwise for any professional in such a field?

We've seen how Cicero's integrity was flawed not only by absurd self-aggrandizement but also by the contradictory expediencies of various patrons and law cases; he'd demand death for a conspirator, then laud the courage and patriotism of a rich murderer.

<sup>22</sup> See above, "Defense of Authority."

<sup>23</sup> Luther, p. 93 ("Two Kinds of Righteousness," 1519?).

<sup>24</sup> See above, "Days of the Niblungs."

<sup>25</sup> Shalamov, p. 441 ("Quiet"). One might think to draw a distinction by noting that justifications of self-defense, loyalty, compulsion, deterrence and retribution all invoke some good or dubious simulacrum thereof beyond the actual violence, whereas the goal of sadism is the violence itself. But if it's that easy, what do we have to do to determine the knowing official's motives—psychoanalyze him?

<sup>26</sup> I find it interesting that in the Middle Ages, executioners were often also torturers, punishment being seen as violence being applied for the ends of the state. Most (though by no means all) twentieth-century executioners simply execute, the notion of some justifiable continuum between killing and wounding being rejected (officially, at least) by the institutions which they serve. The goal of capital punishment, they often hypocritically say, is not to inflict suffering on the condemned, but to make him "pay his debt" (which, translated into the terms we have been using, means to take revenge) or else to remove him from the scene. Payment of a debt can certainly be accomplished by suffering if it can be accomplished by extinction.

<sup>27</sup> Coleman, p. 173.

<sup>28</sup> Stalin recognized this in argument for saving from execution a rapist who'd shot an engineer who'd sought to protect the victim. The rapist was sent to the front. "Now he is one of our heroes... The important thing is that [the Red Army] fights Germans—and it is fighting them well, while the rest doesn't matter"—Djilas, *Conversations with Stalin*, pp. 110-11.

<sup>29</sup> And here it is important to acknowledge once again that an act of violence may, no, *will* fall into more than one category. After all, what would life or literature be without

mixed motives? Consider, for instance, a Serb who rapes and cuts the throat of his Muslim next-door neighbor. That deed might be considered an act of sadism, an act of expediency (in the service of his pleasure, of his gaining her house and possessions), of deterrence and retribution (her relatives had done the same thing to his relatives), an act of national self-defense, of ethnic self-defense, of proactive self-defense and God knows what else. This is another reason why the justice or injustice of any act should not be determined (although practically speaking it sometimes must be) without reference to the relationship between victim and perpetrator, and their state of mind. If, for instance, the Serb knew the Muslim only on sight, and did what he did only out of lust and bloodlust, then his crime would be more unequivocally unjustified than if her brother, well aware of the culture of revenge in the Balkans, had killed the Serb's son in a battle; or—worse yet—if she had connived at her husband's raping the Serb's daughter. In none of these circumstances would his act have been justified. But in each case the severity of the moral judgment ought to be accordingly tempered (nor not) by mercy and understanding.

<sup>30</sup> By and large, of course, "sadism" and "sadistic" are clichés which the mass word-smiths keep hanging above their workbenches, ready to stick into any descriptions of atrocities past, present and future. Partly this is because one can so easily find little boys who love to crush anthills; but the word-smiths rarely trouble to meet the little boys in person; "sadistic" is too often a synonym for "incomprehensible."

<sup>31</sup> *EIDOS* magazine, vol. 8, no. 4 (n.d.; ca. 1996), p. 9 (letter from Michel B., Succ. Mtl. Nord, Canada).

<sup>32</sup> Op. cit., p. 234.

<sup>33</sup> KGB, p. 21 ("Special Remarks on Instruction for External Surveillance").

<sup>34</sup> P. Ratchnevsky, *Genghis Khan* (New York: Oxford, 1991), p. 155; quoted in Keegan, *A History of Warfare*, p. 189. One recalls a characteristic John Brown phrase: "I do not love to ride free Horses till they fall down dead" (Brown to B. Sanborn, Esq., Peterboro, May

15, 1857, Boyd B. Stutler collection). Would you call Seneca sadistic for watching in the arena with his fellow Romans the morning spectacles of bears and bulls tied together to fight to the death for the delectation of the crowds? At the end, a man came in to kill each winner (Seneca, vol. 1, p. 353; "On Anger," III.XLI.2).

<sup>35</sup> Pritchard, vol. 1, p. 191 ("Shalameser III Against the Aramean Coalition").

<sup>36</sup> The storming of the Bastille, for example, must have been a deep affront to Louis XVI's self-esteem. Thomas Jefferson, an eyewitness, if not necessarily of the Bastille's fall, then certainly of the palace conclaves before and after, reports that the king "went to bed fearfully impressed. The decapitation of de Launai [the governor of the Bastille] worked powerfully thro' the night on the whole aristocratic party, insomuch that, in the morning, those of the greatest influence on the Count d'Artois represented to him the absolute necessity that the king should give up everything to the Assembly" (op. cit., p. 90; "The Autobiography").

<sup>37</sup> Brochure for the first HSA (U.K.) International Conference on Precision Guided Munitions, June 10-11, 1996, blurb for Merlin terminally-guided mortar munition.

<sup>38</sup> And when might that be? See "Defense of War Aims."

<sup>39</sup> Dmytryshyn et al, p. 264 (doc. 81: "A Report from Erofei Khabarov...", August, 1652).

<sup>40</sup> Erofei Khabarov was probably not one those angry sadists, but a more rollicking one, serving his Tsar according to the norms of the age. He led his irregulars on down the Amur River, enjoying the expedient pleasures of Attila. "We mowed down their men and captured their women, children and the livestock" (Dmytryshyn et al., p. 268). What did they do with them when they captured them? Expediency finds no need to say.

<sup>41</sup> Edward Peters, p. 251 (Guazzini, *Tractatus...*, 1612).

<sup>42</sup> Discussed in detail in "The Skulls on the Shelves."

<sup>43</sup> Edward Peters, p. 271, Tuol Sleng torturer's manual, sec. 3, 4a. And in South Korea,

we find torture being employed until 1987, and perhaps later, not by the government's moral-punitive apparatus, but by its "investigative agencies" (Han Sang-jin, professor of sociology, Seoul National University, "Human Rights and Growth in East Asia," in *Korea Focus*, vol. 5, no. 1 [January-February 1997], p. 6).

<sup>44</sup> Chanoff and Doan, p. 112 (testimony of Mrs. Le Thi Dau). A Japanese military policeman who beheaded more than forty Chinese, nine of them in one day, told his interviewer that "if more than two weeks went by without my taking a head, I didn't feel right. Physically, I needed to be refreshed" (Cook and Cook, p. 155; testimony of Uno Shintaro). He got so he would "notice" people's necks, even that of his own regimental commander. "What a great neck, I'd think. Then suddenly I'd come back to my senses. It was almost like being addicted to murder." One thinks of the Soviet secret police executioners who "cannot sleep unless they have shot someone dead" (article in the *London Times*, September 28, 1918, quoted in Pipes, *The Russian Revolution*, p. 823). Lucky murderers! They were getting paid to do what they loved best; their sadism was expedient.

<sup>45</sup> *Memoirs of Lt.-Col. G. S. Hutchison*; quoted in Ellis, p. 143.

<sup>46</sup> See Campbell, pp. 105-07, for examples of such inscriptions.

<sup>47</sup> Julius Caesar, p. 45 (I.20).

<sup>48</sup> Whitman, p. 728 (*Specimen Days*, "The Most Inspiring of All War's Shows"). "A battle is a dramatic action, which has its beginning, its middle, and its end" (*Napoleon on Napoleon*, p. 261). "The stage of action for a military strategist is built upon objective material conditions, but on that stage he can direct the performance of many a drama, full of sound and colour, power and grandeur" (Mao, *Selected Readings*, p. 91). With mingled fascination and horror, the eminent military historian Keegan (*History of Warfare*, p. 226) refers to "the allure that the warrior life exerts over the male imagination." (Again, I have met women to whom this also applies.) It is "deeply satisfying to its adherents. I am tempted, after a lifetime's acquaintance with

the British army, to argue that some men can be nothing but soldiers."

<sup>49</sup> Einhard and Notker the Stammerer, p. 163 (Notker's life). On a kindred trope Professor Hale remarks (p. 13): "'Forests' of pike [are] a shorthand invention which had now [c. 1535] become a convention—and was to have a long life because of its diagrammatic handiness."

<sup>50</sup> Kakar, pp. 41-42.

<sup>51</sup> Bayer, p. 227.

<sup>52</sup> *Ibid*, p. 236. "The guillotine soon provided the most engrossing theater in all Europe," writes Gerould, p. 25. A French actress sings: "I'm going to climb the scaffold. 'Tis only a change of theatres" (p. 34). In prison, people practiced being guillotined in skits and pantomimes, to allay their own and others' fears.

<sup>53</sup> Seneca, vol. 2, p. 331 ("On the Shortness of Life," XIII.7).

<sup>54</sup> *Ibid*, p. 330, ed. fn. (b).

<sup>55</sup> Is there a "point" to art? Propagandists think so; and in the remainder of this chapter we shall often be referring to them and their grisly expediencies. But propaganda is by no means the only aesthetic motivator for violence. Recall that Aristotle once defined tragedy as a catharsis of pity and fear. Not all violence is tragedy, but much or most is catharsis of some sort. Consider the Japanese cartoonist who was "thrilled" when he heard about Pearl Harbor because "all the indecisive gloom cleared off just like that" (Cook and Cook, p. 96; testimony of Yokoyama Ryuichi). He had nothing to do with the sneak attack. He didn't see any Americans or Japanese die. It was therefore not the violence in and of itself which relieved his soul, but the *announcement* of it. This is the realm of art.

<sup>56</sup> See above, "Deterrence, Retribution and Revenge."

<sup>57</sup> *Tale of the Heike*, vol. 2, p. 647 (Book 11, ch. I). See Gen. W. T. Sherman quote below, this chapter.

<sup>58</sup> *Ibid*, vol. 2, pp. 542-43 (Book 9, ch. X).

<sup>59</sup> Cf., e.g., vol. 2, p. 547 (Book 9, ch. XI).

<sup>60</sup> For much the same reason that one opera frequently recalls another, the student of history will find that many an atrocity will be recapitulated somewhere down the centuries. In Imperial Rome, something like the Heike

parade had been carried out on the orders of Marcus Otho, who'd persuaded the soldiery to slay his political enemies (Tacitus, *Histories*, p. 200, para. 44). They had no trial. Whatever justice Marcus Otho could muster therefore had to be aestheticized into the severed heads afterward.

<sup>61</sup> *Tale of the Heike*, vol. 2, p. 580 (Book 10, ch. I).

<sup>62</sup> Such was by now the tradition (Varley, p. 27). For the ideological and religious underpinnings of this custom, see Blomberg, pp. 86-89.

<sup>63</sup> Monaghan, p. 33 (photo: "Ethiopian troops pass in review" [1935]). More pointed is the case of Nazi dive-bombers, which, wrote a Frenchman who survived them, produced a literally unforgettable "whistling scream," which had been deliberately amplified by the German engineers (Bloch, p. 54.).

<sup>64</sup> Proctor Patterson Jones, p. 112 (painting in commemoration of August 16, 1804).

<sup>65</sup> Such presentations can backfire, as when in 1812 Napoleon ordered the gallows for Russian arsonists at Moscow, and the hanged ones' fellow-citizens prayed and kissed their feet. The Emperor's valet writes in amazement that "such fanaticism is almost unparalleled" (Proctor Patterson Jones, p. 365; Constant, "Escape from the Kremlin").

<sup>66</sup> The Jewish historian Josephus describes for us the triumphal procession in Rome after the conquest of Jerusalem and Masada: animals clothed in purple and gold are driven by; effigies of the Roman gods are carried; people carry golden and ivory statues of Victory. "Furthermore, even the mob of captives did not lack ornaments, and the elaborate and beautiful nature of their garments hid from view any unsightly mutilation of their bodies... A copy of the Jewish law was ... last of all the spoils" (Campbell, p. 76; Josephus, *Jewish War*, 7.132-57; extracts). The procession pauses at the temple of Jupiter Capitolinus, where "it was an ancient custom to wait ... until the death of the general of the enemy should be announced" (loc. cit.). Simon of Gioras is plucked out from among the captives, noosed, whipped, dragged and liquidated. "When it was

announced that Simon was dead there was a roar of approval and they began the sacrifices" (ibid, p. 77).

<sup>67</sup> "A little patch of black and white, for the long street to stare at, and the flies to settle on," in *Pictures from Italy* (London, 1846); quoted in Snyder and Morris, p. 69.

<sup>68</sup> In the "killing fields" of Choeung Ek, Cambodia, just outside of Phnom Penh, I saw at what is now becoming a sort of tourist site nine thousand skulls. In the still unopened graves, they said, lay many more. (See below, "the Skulls on the Shelves.") "Wherever you went, you could see tiny bones," recalled a Hiroshima survivor. "That was horrible. I couldn't stand those bones" (Cook and Cook, p. 397; testimony of Kimura Yasuko).

<sup>69</sup> See above, "Defense Against Traitors." And if the Vietnamese bride had a trial, it probably resembled that of the Princesse de Lamballe during the "September days" of the French Revolution in 1792. Her judges asked her but four questions, to the last of which she gave an unsatisfactory reply: she would not swear an oath of "detestation of the king, the queen, and royalty" (Duchess d'Abrantes, vol. 1, p. 52). How could she? She was, after all, superintendent of the queen's household. By her refusal she proved herself to be equivalent to the Vietnamese girl who "went around with the enemy." She had to be made an example of. Having dispatched her with dagger and lance, they cut off her head with its "long auburn tresses clotted with blood, and a countenance still lovely" (ibid, p. 51; the duchess did not see this herself, but was told about it by her brother, into whose aristocratic face the princess's head had been thrust), and paraded it through the streets, to titillate the mob and to terrify her friends—not very different from leaving it spitted and placarded like the Vietnamese girl's. Carlyle (*The French Revolution*, p. 152) claims that her head was exposed outside the windows of the Temple "that a still more hated, a Marie Antoinette, might see." The duchess asserts that her inheritor, the Duc d'Orleans, was forced to view it.

<sup>70</sup> Herodotus, Book Seven, p. 523. See above, "Defense of Ground."

<sup>71</sup> Lucan, pp. 171-72 (VIII.687-91).

<sup>72</sup> So did the Aztecs in 1520 when they succeeded in capturing some of Cortes's troops, and after sacrificing them in sight and hearing of their companions, threw down their heads in a knotted bundle, shouting: "We will kill you, too" (Díaz, p. 381). The brave soldier admits in his memoirs that after that, he never went into battle again without feelings of dread and horror at the possibility that he might be sacrificed. Deterrence and retribution this is, of course, but also sadistic and ritual aesthetics. He assures us that in the Mexican town of Xocotlan, "I remember in the square where some of their *cues* [temples] stood there were many piles of human skulls, so neatly arranged that we could count them, and I reckoned them at more than a hundred thousand. I repeat that there were more than a hundred thousand" (p. 138).

<sup>73</sup> Daily log at Tuol Sleng; excerpted in "Word for Word / Torturers' Archive: Cambodia's Bureacracy of Death: Reams of Evidence in Search of a Trial," in the *New York Times*, July 20, 1997.

<sup>74</sup> Cook and Cook, p. 224 (testimony of Haranaka Shigeo).

<sup>75</sup> In his well-researched historical study of that vile art, Prof. Edward Peters repeatedly expresses anxiety lest the word "torture" be overused to the point of dilution. He cites the case of an Argentinian trade unionist who argues in torture's justification that poverty and frustration, too, are forms of torture. The repression of "real" enemies of the state is acceptable to the Argentine (p. 153). This brings to mind Marx's scathing critique of the reformist Proudhon, who wants to keep only the "good side" of slavery and eliminate the bad. It is, in short, the sort of argument that Cortes implicitly made with his declarations of inevitability, or Keitel with his "but what I could do?" attitude: *I am a pawn of history. Many other forces human and inhuman did as much evil as I. What I did, I actually didn't do; it was something that just happened.* This is certainly a defense which I would not countenance, because it leaves no one responsible or accountable. But I think that Peters goes too

far when he wants to maintain his narrow definition of torture as a judicial proceeding inflicted by the state, which excludes, as he explicitly states, all forms of assault and battery committed by private parties (say, by a kidnapper upon his prey; *ibid*, pp. 150-55). I hope to have shown by now how difficult it is to dissect away sadism from expediency—and if that is the case with institutions such as the state, it would seem to be even more the case with individuals. I propose, therefore, to keep the label "torture" for any case having to do with the deliberate non-consensual infliction of physical or mental pain. Wounding someone for the sake of self-defense is not torture; wounding him in exactly the same way, on purpose to wound, is torture. We will not find ourselves thereby impotent to draw distinctions.

<sup>76</sup> Herbert Radtke, quoted in Edward Peters, p. 162. Radtke believes that "the procuring of information is only of secondary importance."

<sup>77</sup> Thus one scholar finds that up until the infamous Rodney King beating the Los Angeles Police Department routinely used torture "to punish and to degrade." "Looks like monkey-slapping time," officers key-boarded each other (Chevigny, p. 43). Practically speaking, of course, Reason Number 4 is difficult to distinguish from Reasons 3 or 5.

<sup>78</sup> Quoted in Edward Peters, pp. 265-66.

<sup>79</sup> Trigger, p. 73. "The sacred nature of what was about to happen was emphasized by the orders of the headman that no one in the village should engage in sexual intercourse that night and that, while torturing the prisoner, everyone should behave in an orderly and restrained fashion and burn only his legs at the beginning."

<sup>80</sup> Fanon, p. 282.

<sup>81</sup> Wills, p. 199.

<sup>82</sup> Edward Peters, p. 217 (*Digest of Justinian*, Book 48, Title 18, 1.24).

<sup>83</sup> *Ibid*, p. 242 (*Constitutio Criminalis Carolina*, 35).

<sup>84</sup> Edward Peters, p. 258, abbr. trans. of Guazzini, *Tractatus ad Defensam Inquisitorum* ..., requisite 19.

<sup>85</sup> *Ibid*, p. 232.

<sup>86</sup> ———, *Ancient Roman Statutes*, p. 239 (document 302, edict of Constantine I on professional informers, A.D. 314, clause 3). Guazzini goes so far as to suggest that the person tortured without good cause may kill his judge without penalty of homicide (Edward Peters, p. 252; Guazzini).

<sup>87</sup> Torture in ancient Roman times became more prevalent as the power structure increasingly distinguished upper-class citizens from lower-class citizens, thereby forcing the latter into the same leaky boat of jurisprudential mercy as the slaves, who were already subject to torture. In the twentieth century, on the other hand, the state began to decide what constituted a crime against it, and how much peril it was in at the moment, a required preliminary for the determination of what might be allowed in the name of self-defense (Edward Peters, pp. 29-33, 104-109). *We must withhold from authority any exclusive right to make such definitions and distinctions.*

<sup>88</sup> *Ibid.*, p. 224 (Code of Justinian, Book 9, Title 41).

<sup>89</sup> Pernoud, p. 206. We might also mention the Vietnamese revolutionary who held out against torture through a combination of pride, hatred and solidarity with his as yet undiscovered comrades (Chanoff and Doan, p. 96; testimony of Trinh Duc).

<sup>90</sup> Caesar, p. 235 (*The African War*, written by another hand).

<sup>91</sup> Sometimes we do know—or the commentators think they do. After Cortes slaughtered six thousand Cholulan Indians, “those who had merely wondered at him up to this point now began to fear him, and more from fear than love they opened their doors to him wherever he went” (Gómara, p. 133). For more on this subject, see above, “Deterrence, Retribution and Revenge.”

<sup>92</sup> Recall the actions of Caesar’s troops in Avaricum (above, “Defense of War Aims”).

<sup>93</sup> Lucretius/Epictetus/Marcus Aurelius, p. 78.

<sup>94</sup> Djilas, *Conversations with Stalin*, p. 131. There might have been some gloating on Molotov’s part over the U.S.’s humiliation; as I imagine him, however, based on his interviews, he would have been indifferent rather than thrilled about the terrible deaths of the

people who were in those planes; his sadism, therefore, was of the politico-strategic kind indulged in by most victorious annexers, generals or issuers of edicts.

<sup>95</sup> Castro, p. 143 (speech: “Our people have no other path to liberation than that of armed struggle,” delivered at the Chaplin Theater, April 19, 1967, “Year of Heroic Viet Nam”). “Broadly speaking there are two possible alternatives,” a counter-insurgency expert once wrote, “the first being that the Law should be used as just another weapon in the government’s arsenal, and in this case it becomes little more than a propaganda cover for the disposal of unwanted members of the public” (Kitson, pp. 69). (I think I will take the second alternative, myself.)

<sup>96</sup> Kuznetsov, p. 81. Hence also the tale of the Franciscan monks at Buchenwald who were forced to let down their trousers while being entertained by S.S. who shouted pornographic jokes in their ears (Kogon, p. 133). To the extent that this humiliation broke their spirits and thereby made them more easily controllable, such a procedure might be regarded as a functional one. To the extent that the S.S. were enjoying themselves, it was sadistic; and the standard comment of eyewitnesses was in fact that “thousands of ‘ordinary’ Germans had made it a full-time job to murder millions of other people in a sort of mass orgy of professional sadism, or, worse still, with the business-like conviction that *this was a job like any other.*” (Werth, p. 890. The author, a journalist, saw the extermination camp at Maidanek, as well as many other scenes of German atrocities.)

Kogon’s book, by the way, contains a very interesting psychological profile of the S.S. (pp. 270-284), which deserves considerable credence since Kogon had to stare into their faces as a prisoner. He characterizes them as limited in intellectual outlook, as failures in their pre-S.S. professions, and generally as thuggish opportunists. Many of the needless cruelties they inflicted on prisoners could be seen as Prussian army discipline (“hazing”) writ large. “The occasional testimonies smuggled out by inmates or provided by survivors” of early Soviet prison camps, writes Pipes

(*The Russian Revolution*, p. 836), "paint a picture that to the smallest detail resembles descriptions of Nazi camps." Margarete Buber, however, who had the lamentable privilege of comparing both, concluded that—at least at the beginning of World War II—the Gestapo followed certain legal formulae, and might even release people occasionally; whereas arrest in the USSR was in and of itself proof of guilt (op. cit., p. 183). By 1944, however, the failing German war effort, combined with the expansion of the labor-extermination camp system in Germany, left little to choose from between Ravensbrück and Karaganda. There remained one minor difference: prostitutes did better in Soviet camps. They could exchange sex for food and privileges. In German camps, puritanism prevented this (p. 198).

<sup>97</sup> Seneca, vol. 1, p. 107 ("To Novatus on Anger," I. 1).

<sup>98</sup> See above, "Where Do My Rights End?"

<sup>99</sup> Turnbull, p. 112.

<sup>100</sup> Trotsky claimed that Stalin was sadistic by nature, and liked to burn anthills and cut sheeps' throats at his dacha (Trotsky, p. 414). This accusation may, however, be motivated by personal malice. Suetonius (vol. 2, p. 345; Book VIII, Domitian, III) claims that the cruel emperor Domitian "used to spend hours in seclusion each day, doing nothing but catch flies and stab them with a keenly sharpened stylus."

<sup>101</sup> Lady Hyegyong, p. 287 (memoir of 1805). See above, "Defense of Gender."

<sup>102</sup> Hukanovic, p. 83.

<sup>103</sup> Gibbon, p. 167.

<sup>104</sup> Spitz and Fisher, p. 503.

<sup>105</sup> I suppose that Eichmann was also this sort of "just like you" torturer. He strove to be "humane"; his standard instruction to the convoys was: "Avoidable cruelties are to be avoided" (Lang and Sibyll, p. 146). Unlike Pol Pot's cadres at Tuol Sleng, his assignment was not to "smash" his victims physically, mentally and morally; not to break them; only to annihilate them. He thus had the luxury of avoiding avoidable cruelties. How? By closing his eyes. (For discussion of Eichmann's reactions to his work, see below,

"Moral Yellowness") "You must cause only the damage that is strictly necessary, not a bit more," a Cuban double agent claims to have been told by Dan Mitrione, a U.S. torture expert in Montevideo. "We must control our tempers in any case." How can that be sadism? (Langguth, *Hidden Terrors*, p. 313.)

<sup>106</sup> Edward Peters, p. 212 (*Theodosian Code*, Book 9, Title 35, no. 7).

<sup>107</sup> Defined in the moral calculus, 5.1.1. And of course this imminent defense would have to respect proportionality and discrimination.

<sup>108</sup> Lever, p. 64.

<sup>109</sup> Mishima, *Madame de Sade*, pp. 9-10.

<sup>110</sup> "Beauty is the simple thing, ugliness the extraordinary one... Hence it should come as no surprise that plenty of people would [rather] take their pleasure with an old, ugly, and even a stinking woman than with a fresh and pretty girl" (Sade, *Sodom*, quoted in Lever, p. 277).

<sup>111</sup> Mishima no doubt would reply to me: "The world is filled with people who despise what they cannot imagine" (*Madame de Sade*, p. 73).

<sup>112</sup> Le Brun, pp. 13-14.

<sup>113</sup> Sade, *Sodom*, p. 1,061.

<sup>114</sup> *Ibid*, p. 1,067.

<sup>115</sup> Mishima, who emulated him in life and in art, has one of his characters insist that Sade "was trying to create not the emptiness of acts of the flesh that vanish the instant after satisfaction, but an imperishable cathedral of vice" (*Madame de Sade*, p. 103). Eichmann's imperishable dream-cathedral, on the other hand, would be a well-run police station.

<sup>116</sup> Should we call these fantasies displaced aggression? In his memorandum on post-conquest Mexico, the Spanish judge Zorita describes the displaced *oppression* later described by concentration camp survivors: an overseer, black and hence himself a slave, lays his leather strap across all of his Indian construction workers' backs—at the end of the working day, which meant that the beating served no end except sadistic power assertion (op. cit., p. 205).

<sup>117</sup> Cook and Cook, p. 99 (testimony of Yokoyama Ryuichi).

<sup>118</sup> Herodotus, Book Five, p. 377.

<sup>119</sup> Buber, p. 201.



<sup>120</sup> Borowski, p. 40 ("This Way for the Gas Chambers, Ladies and Gentlemen").

<sup>121</sup> In another story in the same collection ("A Day at Harmenz", pp. 66-67), an S.S. man punches a prisoner in the face for daring to smile at him and initiate a conversation.

<sup>122</sup> *Ibid.*, p. 87 ("The People Who Walked On").

<sup>123</sup> *Sodom*, p. 250.

<sup>124</sup> Sartre, *Anti-Semite and Jew*, p. 22.

<sup>125</sup> Borowski, p. 93 ("The People Who Walked Away").

<sup>126</sup> Confession of Gilles's page, Poitu; quoted in Benedetti, p. 114.

<sup>127</sup> The proverbially cruel Domitian, for instance, who enjoyed playing terrifying yet caressing jests upon his senators (see above, "Deterrence and Retribution")—or Caligula, who used to tease his wife that he longed to torture her in order to discover by what secret she drew his love (Michael Grant, *The Twelve Caesars*, p. 114).

<sup>128</sup> *Juliette*, p. 562.

<sup>129</sup> Adelson, p. 738.

<sup>130</sup> *Ibid.*, p. 825.

<sup>131</sup> *Ibid.*, p. 766.

<sup>132</sup> *Juliette*, p. 987.

<sup>133</sup> Domitian again comes to mind. He is said to have particularly liked to watch gladiatorial contests between dwarves and women (Michael Grant, *The Twelve Caesars*, p. 244).

<sup>134</sup> *Juliette*, p. 1,015.

<sup>135</sup> Borowski, p. 95 ("The People Who Walked On").

<sup>136</sup> Herodotus, loc. cit.

<sup>137</sup> *Juliette*, p. 1,054.

<sup>138</sup> See above, "Loyalty, Compulsion and Fear." Sadism, then, justifies itself through expediency, and the next stage in the progression is a declaration of inevitability. We saw this repeatedly with Cortes. Every act of aggression he committed was necessary. So it also is in more private acts of violence. After a brief medical discussion of the lacerations and abrasions created by the forcible rape of a child, the forensic pathologist continues: "The child usually presents little or no indications of a struggle because she is unable to offer effective resistance other than screaming in pain and fright, an activity which frequently leads to her death from suffocation as

the attacker attempts to silence her" (Adelson, p. 647). It's all quite logical; how can the assailant be blamed?—I only wanted a good screw, Your Honor. I never would have done anything more, but she wouldn't stop screeching. She was yelling so loud that if I hadn't done something, somebody would have called the cops. It was self-defense, you see!—The body of a one-year-old girl floats in a stream, the genitalia abraded and torn, the head contused. The murderer explains that after the rape he had to smash the baby's face against the steering wheel "to quiet its screams" (loc. cit.). How can you accuse him of sadism?

<sup>139</sup> Cook and Cook, p. 146 (testimony of Yuasa Ken).

<sup>140</sup> *Ibid.*, p. 149.

<sup>141</sup> *Ibid.*, p. 147.

<sup>142</sup> Sherman, p. 898. In this connection one is reminded above all of Clausewitz, who admires honor, boldness, bravery, resolution—who, in effect, is in love with war. By war alone, he says, can effeminacy and sloth be guarded against: "Now in our days there is hardly any other means of educating the spirit of a people in this respect, except by War, and that too under bold Generals" (op. cit., p. 262). He pretends to jeer at the aesthetics of it, remarking that many bygone wars were "theatrical exhibitions, got up in honour of a royal birthday (Hochkitch), often a mere satisfying of the honour of arms (Kunersdorf), or the personal vanity of the commander (Freiberg)" (p. 298. Anatol Rappaport remarks that, eighteenth century wars being essentially based on the "art of maneuver," "the distinction between a well-executed battle and a well-executed parade (or, for that matter, a ballet) was not sharp in the eighteenth century"; *ibid.*, p. 20).

<sup>143</sup> Li, p. 376.

<sup>144</sup> Cook and Cook, p. 153.

<sup>145</sup> Campbell, p. 189 (Dio, 76, 15).

<sup>146</sup> Segur, vol. 2, p. 5.

<sup>147</sup> KGB, p. 49 ("Instructions for Fighting Profiteers").

<sup>148</sup> Gilbert, p. 4.

<sup>149</sup> Gritz, p. 170.

<sup>150</sup> Quoted in Scott, p. 65.

<sup>151</sup> Pritchard, vol. 2, p. 98 ("The Story of Idrimi, King of Alalakh").

<sup>152</sup> Macdonald, p. 165. As mentioned before, this racist manifesto in the form of a novel is said to have been the ideological "blueprint" for the Oklahoma City bombing.

## SADISM, MASOCHISM AND PLEASURE

<sup>1</sup> Pantziarka, pp. 143-44.

<sup>2</sup> John Marcucci, "Sharing the Pain: Critical Values and Behaviors in Khmer Culture," in Ebihara et al, p. 134.

<sup>3</sup> To Lucretius it seemed that the victim usually fell in the direction of his wound, and so he wrote: "Thus he who gets a hurt from the weapons of Venus, whatever be the object that hits him, inclines to the quarters whence he is wounded, and yearns to unite with it and join body with soul; for a mute desire gives presage from the pleasure" (Lucretius/Epicetetus/Marcus Aurelius, p. 57). And so I too came to long for the wounds of Venus.

<sup>4</sup> Another S/M friend of mine tells me that this is not uncommon.

<sup>5</sup> Russell, p. 65.

<sup>6</sup> Comfort, p. 149 (entry on bondage).

<sup>7</sup> Califia, pp. 6-7.

<sup>8</sup> Wiseman, pp. 339-40 ("SM Sayings").

<sup>9</sup> SAMOIS, p. 30 (Juicy Lucy, "If I Ask You to Tie Me Up, Will You Still Want to Love Me?")

<sup>10</sup> Delacoste and Alexander, pp. 50-52 (Lash, "Pain, Pleasure and Poetry").

<sup>11</sup> Artaud, p. 11 ("Theater of Cruelty" manifestoes).

## MORAL YELLOWNESS

<sup>1</sup> Vol. 1, p. 173. Italics in original.

<sup>2</sup> The secret memorandum launching the Red Terror is addressed from Lenin to Krestinsky. See *The Unknown Lenin*, p. 56 (document 28: memorandum to N. N. Krestinsky, September 3 or 4, 1918 [dated provisionally by editor]).

<sup>3</sup> *Report of Court Proceedings: The Case of the Anti-Soviet Bloc of Rightists and Trotskyites*, 1938, in Daniel, p. 213. When Krestinsky tried to recant, the NKVD apparently dislocated his shoulder. See Conquest, *The Great Terror*, pp. 342-354, for an account of his trial.

<sup>4</sup> "The tide of terrorism was running," writes a capitalist historian, "and Stalin observed what he could not have known before—that slaughtering people high and low in the party caused not indignation and protest but awestruck submission... Millions wept when the grim secluded monster died"—Wesson, pp. 159, 161.

<sup>5</sup> *My Life*, p. 449. In Trotsky's house in Coyoacán the kitchen was all yellow; maybe in ordinary life he didn't mind yellow; maybe Natalia loved that color; most likely Trotsky didn't worry about interior decoration. Ten yellow chairs, Mexican vases and plates on the yellow buffet (Natalia must have collected them); three yellow cabinets with brown trim. More shelves, a stove with four burners, a platter with leaping fishes, a tiny frying pan, a roller on the table; and here are Natalia's round glasses.

<sup>6</sup> Emily Carr, p. 29 (entry for November 3, 1932).

<sup>7</sup> *Ibid*, p. 33 (entry for January 26, 1933).

<sup>8</sup> For further development of this theme, see the section entitled "You Got to Treat It Like Your Last Roll of the Dice," in the southern religion chapter, "Nightmares, Prayers and Ecstasies," below.

<sup>9</sup> Cook and Cook, p. 386 (testimony of Yamaoka Michiko).

<sup>10</sup> Moral calculus, 5.4.A.

<sup>11</sup> Moral calculus, 6.4.A.

<sup>12</sup> See above, "Loyalty, Compulsion and Fear."

<sup>13</sup> Keitel, p. 113.

<sup>14</sup> Taylor, photo by R. D'Addario (sixth photo following p. 354).

<sup>15</sup> During the Spanish Civil War, looking into the eyes of some villagers who'd just shot a man for ideological reasons, Saint-Exupéry thought: "Strange: there was nothing in their eyes to upset me. There seemed nothing to fear in their set jaws and the blank smoothness of their faces. Blank, as if vaguely bored. A rather terrible blankness" (*Wind, Sand and*

*Stars*, p. 183).

<sup>16</sup> *Ibid.*, p. 618. With what I take to be some cynicism, Taylor writes (*loc. cit.*): "Hess was utterly devoted to Hitler and, if he had remained in Germany, there is little doubt he would have followed his Fuehrer to the end. There is little reason to be sorry for his conviction." But Hess did not, after all, choose to stay in Germany, and I am not aware that people ought to be punished for what they might have done. Of course, this is not to say that Hess was entirely guiltless, either. "Hess had a central position in the Nazi government, and the documents he signed and the meetings he attended adequately proved his knowledge of and participation in Hitler's plans and decisions to conquer Czechoslovakia and crush Poland, the Low Countries, and France" (p. 269). In the end, his punishment was like something out of a Borges story. He spent his last years entirely alone in that prison, as Taylor acknowledges; as soon as his suicide attempt had succeeded, the structure was immediately razed. It is as if the authorities had followed Kant's prescription in *The Science of Right*: "Even if a civil society resolved to dissolve itself with the consent of all its members—as might be supposed in the case of people inhabiting an island who resolved to separate and scatter themselves throughout the whole world—the last murderer lying in the prison ought to be executed before the resolution was carried out" (p. 447).

<sup>17</sup> Steve Johnson, "Survival in the Bulge: Fifty Year Ago, Houk Earned Silver Star in World War II Battle," *Los Angeles Times*, December 19, 1994, p. C19.

<sup>18</sup> Thomas L. Johnson, p. 6.

<sup>19</sup> Taylor, p. 248. For a brief portrait of Ohlendorf, see above, "Loyalty, Compulsion and Fear."

<sup>20</sup> Coleman, pp. 365-66.

<sup>21</sup> *Ibid.*, p. 363.

<sup>22</sup> Levin, p. 244. And let us drink once again of the explanations of that most impartial social engineer, Adolf Eichmann. A sadist? Just the reverse. "Even today, if I see someone with a deep cut, I have to look away" (Lang and Sibyll, p. 76). He deposed, in tones of

horror: "They fired into the pit; I can still see a woman with her arms behind her back, and then her knees crumpled and I cleared out" (*ibid.*, p. 80). That was on his official mission to Minsk. The head office had asked for a report. "And I said to that S.S. officer in Lemberg: 'How can they stand there firing at women and children? How is it possible?... It's just not... Those men will either go mad or they'll turn into sadists.'" He couldn't get Lemberg out of his head. "There had been a pit there, it was already filled in, and blood was gushing out of it... how shall we say?... like a geyser." And Auschwitz, for his job he had to go there, too. Discovering an "enormous grating, an iron grating" where they were burning Jewish corpses, he got sick to his stomach (p. 84). This sensitivity infuriated his Israeli interrogator. One would think that a person who took sadistic pleasure in the deaths of others would be more unpleasant than a person who didn't; Eichmann proved that the case was not that simple. When told that his interrogator's father had been liquidated through the agency of one of Eichmann's own transports, he cried: "But that's horrible, Herr Hauptmann! That's horrible!" (p. ix). It was as if he had (or admitted) no conception of the relationship between cause and effect. "Because I, I didn't kill them, did I? I didn't hang them and I didn't shoot them" (p. 111). ("It is therefore necessary to remove 1,200 Jews from the Sabac camp immediately," reads an old telegram from Belgrade to the German Foreign Office. "Eichmann suggests shooting" p. 137; *date-line* September 12, 1941.) The interrogator chose to believe that the prisoner's failure to admit any connection between himself and his immense crimes was merely a desperate, dishonest act put on in hopes of wriggling out of his belated noose. I happen to suspect that Eichmann was more likely a prince of rationalizations: he cannot successfully deny, so he redefines. —"Was that decision a technical transport problem?" asks the interrogator in mingled contempt and loathing. "Sending four thousand children to the death camps?"—"Yes, Herr Hauptmann," the prisoner replies. "It was a question of guidelines

for the handling of shipments" (p. 134). Like most people Eichmann wants to do a good job; he also wants to be liked.

<sup>23</sup> "You are on patrol when you observe two men in an apparent traffic dispute," runs a California police manual. "One of the men pulls back his coat to display a pocket knife and looks menacingly at the other while displaying the knife. This man's actions are... a misdemeanor... To satisfy the elements of this crime, one need only *exhibit* a deadly weapon in a rude, angry or threatening manner" (Bruce, p. 239).

<sup>24</sup> On the subject of colored reputations one could recall Carlyle's epithet: "sea-green Robespierre." Carlyle considered that liquidator a murderer and a terrorist, which he was. Trotsky, on the other hand, chalked up much of the French revolution's progress to "the austere labor of Robespierre," in whom Trotsky saw no yellowness or greenness—indeed, nothing but goodness. The science of moral physiognomy would seem to be in its babyhood.

<sup>25</sup> I have used Ulrich Keller/Gunther Sander: *Citizens of the 20th Century*, 1980. The newest publication of this work is: *People of the 20th Century, A cultural work of photographs divided into seven groups*, Edited by Die Photographische Sammlung/SK Stiftung Kultur, Revised and newly compiled by Susanne Lange, Gabriele Conrath-Scholl, Gerd Sander, Harry N. Abrams, New York, 2002, Seven Volumes, Slipcased, 619 photographs in duotone, Essays by Susanne Lange and Gabriele Conrath-Scholl in German, English and French.

<sup>26</sup> In the interests of clarity, the estate of August Sander has asked me to mention the following: "The newest texts explain again that in most of the cases Sander himself did not mention names in regard to his portraits, except when he wanted to point out that the person who was depicted was somebody who stood in the public eye. This approach was chosen since he was especially focussing on showing types of a special group of people." I respect the viewpoints of the Sander estate, but feel that in this chapter on moral yellowness, it is important to name individuals who might otherwise be de-individualized. I am grateful to the estate for tolerating my

respectful disagreement.

<sup>27</sup> Thus the complete series of persecuted Jews (plates 410-20) given in Sander, VI, "The Big City." (See p. 63 for portfolio contents.)

<sup>28</sup> Ibid, VI, "Itinerants," plates 356-64.

<sup>29</sup> Ibid, IV, "Occupations," "National Socialists" (plates 242-248).

## INEVITABILITY

<sup>1</sup> Thucydides (Strassler), Book One, p. 85.

<sup>2</sup> Address to his generals, August 22, 1938; quoted in Bullock, *Hitler, A Study in Tyranny*, p. 525.

<sup>3</sup> One student of the sad phenomenon of Mexican "barrio infanticide" concludes that for extremely poor parents, the destruction of the seventh or eighth child may be "a necessity," especially if it is female (Piers, pp. 17-18). In one village in India, both male and female infants may be destroyed after a couple produces two children (Venkatachalam and Srinivasan, p. 29). One might also consider the case of the European wet nurse, whose own child, the source of her milk, which is her only income, conveniently disappears. She thus became "both professional feeder and professional killer" (Piers, pp. 47-48, 52).

"See above, "Loyalty, Compulsion and Fear."

<sup>5</sup> Berkman, p. 433 (letter to "the Girl," December 20, 1901).

<sup>6</sup> Trotsky, *History of the Russian Revolution*, vol. 2, p. 249.

<sup>7</sup> See above, "Defense of Authority."

<sup>8</sup> To give Trotsky his due, he allows his opponents the same determinist courtesy: "The 'policy' of the upper circles at Tzarskoe Selo, face-to-face with the revolution, were but the reflexes of a poisoned and weak beast of prey. If you chase a wolf over the steppe in an automobile, the beast gives out at last and lies down impotent. But attempt to put a collar on him, and he will try to tear you to pieces, or at least wound you. And indeed what else can he do in the circumstances?" (ibid, vol. 1, p. 96).

<sup>9</sup> Brown to his family, Charlestown, Va., October 31, 1859 (p. 1), Boyd B. Stutler collection.

<sup>10</sup> Brown to H.B. Sanborn Esq, from Labon,

Fremont Co., Iowa, October 1, 1857, Boyd B. Stutler collection.

<sup>11</sup> Moltke, p. 32 ("War and Peace").

<sup>12</sup> Suetonius, vol. 1, p. 29 ("The Deified Julius," I.XXI).

<sup>13</sup> Timur, *Tuzak-i-Timuri*, excerpted in Chaliand, p. 489.

<sup>14</sup> Thucydides (Strassler), p. 47 (5.105).

<sup>15</sup> *Hansard's Parliamentary Debates*, p. 386 (March 30, 1874, vote of thanks, Ashantee War).

<sup>16</sup> Kathleen Freeman, p. 47 (speech written by Lysias, "On the Killing of Eratosthenes the Seducer," some time between 400 and 380 B.C.).

<sup>17</sup> Cumings, pp. 215-16.

#### FOUR SAFEGUARDS

<sup>1</sup> Rizal, p. 308.

<sup>2</sup> Eighty years later, I met a number of Serbs who still idolized him. (A cab driver in Frankfurt told me proudly: "We did it—we, the Serbs! We started World War I! We changed history! We killed millions!" Others simply called him hero, patriot, martyr, etc.)

<sup>3</sup> See above, "Defense of Class."

<sup>4</sup> See above, "Defense of War Aims."

<sup>5</sup> Aye Saung, p. 61. A similar case: Bakunin can assert confidently, without being in the least interested in what steps might be taken, what program followed, that "every political revolution which does not have economic equality as its *immediate* and *direct* aim is, from the point of view of popular interests and rights, only a hypocritical and disguised reaction" (p. 372).

<sup>6</sup> See below, "But What Can We Do?"

<sup>7</sup> Moral calculus, 5.1.6. Eli Horowitz: "This is generally plausible, but a strangely mathematical formulation. I'm not sure how this works in practice. If one person is very justified by honor, and another person is somewhat justified in each of race, class, and homeland, which person's violence is more justified? Of course, this is mostly ridiculous, but I'm not sure how the principle would be used if not in response to questions like this." I can't answer this very legitimate objection except to say

that the person who was somewhat justified by race, class, and homeland would probably be more justified than the the person who was somewhat justified only by race.

<sup>8</sup> Moral calculus, 5.1.6a.

<sup>9</sup> See above, "Defense of Authority,"

<sup>10</sup> Aristotle, p. 102.

<sup>11</sup> Thus in the moral calculus, 5.2.C.1, I have added the following indication of justice to legitimate authority-violence: "Its necessity is accepted by some members of the group against whom it is directed."

<sup>12</sup> Moral calculus, 1.6+.

<sup>13</sup> Trotsky, *My Life*, p. 234.

<sup>14</sup> *Ibid*, p. 180.

<sup>15</sup> Moral calculus, 1.6+.

<sup>16</sup> See above, "Days of the Niblungs."

<sup>17</sup> Cicero, *Selected Political Speeches*, p. 291 ("In Support of Marcus Claudius Marcellus"). This passage was already cited, though not quoted, in "Defense of War Aims," above.

<sup>18</sup> See above, "Moral Yellowness."

<sup>19</sup> Djilas, *Wartime*, p. 197.

<sup>20</sup> See below, Annex E: "Ethnic Relations in Yugoslavia During World War II."

<sup>21</sup> Moral calculus, 6.3.A.1.6.

<sup>22</sup> Maranan, p. 53 ("Resteta Fernandez: From Student Activist to Freedom Fighter").

<sup>23</sup> Guevara, p. 79.

<sup>24</sup> "FC," *The Unabomber Manifesto: Industrial Society and its Future* (Berkeley, California: Jolly Roger Press, 1995), p. 25, para. 78 ("How Some People Adjust").

<sup>25</sup> Pernoud, p. 110.

<sup>26</sup> *Ibid*, p. 172.

<sup>27</sup> *Ibid*, p. 173.

<sup>28</sup> *You Can't Blow Up a Social Relationship*, p. 18.

<sup>29</sup> Or, as Freud put it with his usual gentle resignation (he was writing about atrocities committed during World War I): "Having in this way come to understand once more our own fellow-citizens who are now so greatly alienated from us, we shall the more easily endure the disillusionment which the nations, those greater units of the human race, have caused us, for we shall perceive that the demands we make upon them ought to be far more modest" (p. 761; "Thoughts on War and Death").

## REMEMBER THE VICTIM!

<sup>1</sup> Sørensen, p. 95 ("The Wicked Judas").

<sup>2</sup> Malraux, *Anti-Memoirs*, p. 500.

<sup>3</sup> Freud, p. 766 ("Thoughts on War and Death," 1915, trans. E. Colburn Mayne). Keegan's hopeful belief that we can avoid war in future begins with a rejection of the Clausewitzian message that "war is a continuation of politics by other means." Pointing out that there has been both politics without war and (in the case of primitive societies) war without politics, Keegan invites us to study those societies further to extract from them their methods of limiting war by ritualizing it as the Aztecs did, increasing use of diplomacy (that is, evasion, bribery and other forms of negotiation) as the Persian Empire of Darius did, avoiding face-to-face confrontations (as was the rule until the Greeks), limiting the presence of soldiers to a small caste, as most countries in the West did up until the French Revolution, and controlling arms production and development, which the Japanese did when they temporarily renounced firearms. This is all very well and good, but the Aztecs sacrificed human beings by the thousands (see above, "Defense of Creed"); the Persians, having a long history, have a long history of cruelties—Darius himself hardly refrained from war (see above, "Defense of Ground"); the Western countries offer us many a war of conquest or fraternal murder; and the Japanese were not so nice in Korea.

<sup>4</sup> "Force finds out those who lack the virtue to wield it," insists Keegan in his fascinating *Mask of Command*, (p. 312); but curiously enough his use of "virtue" is in the Platonic functional, not moral sense: divinely appointed rulers gain their virtue from on high, but "secular rulers enjoy no such moral exemption; in their worlds the virtues that attach to force are those by which it is resisted—resilience, tenacity, hardihood, but, above all, courage." Justice itself does not seem to be present. Not even perceived goodness (i.e. propaganda skill) makes an appearance.

<sup>5</sup> Above, "Three Meditations on Death."

<sup>6</sup> Borovik, p. 21.

<sup>7</sup> Freud, while condemning war as evil, by and large prefers to speak of it with descriptive restraint, as one might expect of a medical man: "And so, if we are to be judged by the wishes in our unconscious, we are, like primitive man, simply a gang of murderers... so long as the conditions of existence among the nations are so varied, and the repulsions between peoples so intense, there will be, must be, wars" (loc. cit). Hardly a Hitler, hardly a Gandhi!

<sup>8</sup> See above, "Three Meditations on Death," ("Siege-Thoughts").

<sup>9</sup> Ringelblum, p. 130 (February 28, 1941). For Ringelblum's moral and expedient calculi, see above, "Loyalty, Compulsion and Fear."

<sup>10</sup> *Ibid*, p. 194 (August 26, 1941). The words of a survivor of Allied air raids on Tokyo uses almost identical words: "There were bodies lying all over the city. A man dying meant nothing" (Cook and Cook, p. 220; testimony of Kawachi Uichiro).

<sup>11</sup> Hale, p. 45.

<sup>12</sup> Académie des Inscriptions et Belles-Lettres, p. 468 (entry 789, December 27, 1339 to December 25, 1340). My translation of French translation.

<sup>13</sup> Buffetaut, p. 209 ("Cadavres allemands près de Douamont").

<sup>14</sup> Remarque, p. 70.

<sup>15</sup> Letter to author of March 13, 1996, my translation of her German (a second language for her).

<sup>16</sup> Duong, p. 218.

<sup>17</sup> Cook and Cook, p. 34 (interview with Nohara Teishin).

<sup>18</sup> See above, "Sadism and Expediency."

<sup>19</sup> Levi, p. 156.

<sup>20</sup> Lifton and Markusen, p. 232.

<sup>21</sup> *Ibid*, p. 206.

<sup>22</sup> Garros et al, p. 116 (diary of Andrei Stepanovich Arzhilovsky, entry for October 31, 1936). This same man is quoted above, in "Deterrence, Retribution and Revenge."

<sup>23</sup> Quoted in Dawidowicz, p. 343.

<sup>24</sup> Exodus 20:13.

<sup>25</sup> *Meditations*, Book VIII; in Lucretius/ Epictetus/ Marcus Aurelius, p. 290.

<sup>26</sup> Solzhenitsyn, vol. 2, p. 609.

- <sup>27</sup> Letter to his parents, brothers and friends, June 20, 1892, quoted in the introduction to Rizal, p. 20.
- <sup>28</sup> Pahor, p. 168.
- <sup>29</sup> Julia Ward Howe, p. 229 (speech on equal rights, 38th Annual Convention of the National American Woman Suffrage Association, February 12, 1906).
- <sup>30</sup> Hoffman, p. 189.
- <sup>31</sup> Carus, p. 148 ("Simha's Question Concerning Annihilation").
- <sup>32</sup> Caesar, *Gallic War*, p. 217 (IV.27).
- <sup>33</sup> Napoleon, *Maxims*, p. 71 (maxim XLV).
- <sup>34</sup> Nietzsche, p. 89, sec. 146.
- <sup>35</sup> Khun Sa, p. 51.
- <sup>36</sup> HUAC report, p. 83.
- <sup>37</sup> Machiavelli, p. 25.
- <sup>38</sup> Gomara, p. 129.
- <sup>39</sup> "Qualifying Violent Revolution" (speech of September 8, 1872), in *Karl Marx on Revolution*, p. 64.
- <sup>40</sup> Fanon, p. 37. Fanon, by the way, recapitulates Aristotle's basic dictum on revolution (see below, "Self-Defense of Revolution") when he says: "The well-known principle that all men are equal will be illustrated in the colonies from the moment that the native claims that he is the equal of the settler. One step more, and he is ready to fight to be more than the settler" (p. 44).
- <sup>41</sup> Op. cit., p. 302.
- <sup>42</sup> Exodus 22:23-25.
- <sup>43</sup> Martin Smith, p. 399.
- <sup>44</sup> See below, "Dey Bring Dem Bloodstains Up Here."
- <sup>45</sup> Interviewed in this book. See the section on self-defence of race.
- <sup>46</sup> Numbers 31:7-18
- <sup>47</sup> Interviewed in this volume. See "The Skulls on the Shelves."
- <sup>48</sup> Sun-tzu, p. 232 (ch. 13, "Employing Spies").
- <sup>49</sup> *Plutarch on Sparta*, p. 160, no. 5.
- <sup>50</sup> Martin Smith, p. 228.
- <sup>51</sup> Li, pp. 379-380.
- <sup>52</sup> "FC," p. 31, para. 94 ("The Nature of Freedom").
- <sup>53</sup> Simha Rotem (Kazik), p. 78.
- <sup>54</sup> Chuev, p. 278 ("We Were Diverse Individuals," 1982).
- <sup>55</sup> Hitler, p. 654.
- <sup>56</sup> Sade, *Juliette*, p. 414

