

Keeping Fury Underground: Rational Justice in Aeschylus's *Oresteia*

The story told by *The Oresteia* is familiar enough, not to mention the uplifting interpretation that usually goes with it—namely, that in depicting the first trial by jury in western history, Aeschylus dramatizes the emergence of civilized rational justice out of primitive retaliatory vengeance. Before being uplifted, however, let us first revisit the story.

We start with Paris. He abuses Greek hospitality and absconds with Helen to Troy. Agamemnon, leader of the Greeks, organizes a military expedition to retrieve her, but the ominous sign of two eagles' devouring a pregnant hare indicates that while victory may be in the offing, innocent women and children will die. In the austere moral economy of ancient mythology, you are not permitted to destroy the enemy's innocent without first offering up your own, and if you cannot bear the thought of your own daughter dead, then you are morally unfit to wage a war. Without sacrifice there can be no victory. So Agamemnon kills his own daughter, Iphigenia. Such is the burden of being an archetype. Other fathers symbolically sacrifice their daughters—spending too much time at the office, neglecting to attend the holiday concert, accepting an appointment to the Supreme Court of Canada—but archetypes pay the full price. For them, the sacrifice is agonizingly literal. Metaphor is a luxury for the rank and file. By choosing public duty over private interest, nation over family, Agamemnon takes the irrevocable step from being mere head of a household to founding father of a people, and the brutal incommensurability of familial and civic vocabularies of value leads to his death. His

wife, Clytemnestra, can hardly be expected to share her bed with the man who murdered her daughter.

A decade passes. Agamemnon returns home triumphant. But Clytemnestra cannot forgive him. Her vocabulary of values does not go beyond the domestic sphere. She kills her husband while he's taking a bath. Just what Agamemnon, that guilty predecessor of Lady Macbeth, hoped to wash away with water isn't clear. As Aeschylus reminds us, "The hand polluted once with blood,/Though washed in every silver flood/ Is foul for evermore." Years pass. Clytemnestra and her paramour, Aegisthus, improve conditions on the home front. They are the peace party.

But Aegisthus is not really a domestic kind of guy. He is the product of an older story, and he has issues, big issues. His father, Thyestes, was brother to Agamemnon's father, Atreus. Thyestes had an affair with Atreus's wife. Under the guise of fraternal reconciliation, Atreus invited Thyestes to a banquet. Having already killed two of Thyestes' sons, Atreus fed them to his brother, who unwittingly devoured his own children and vomited in agony when he learned the terrible truth. Thyestes, it is true, was not entirely blameless, but adultery is not a blood crime, which is why the primal curse falls on the House of Atreus. Aegisthus remembers his father, the man who should have been king. He also remembers his devoured brothers. From his standpoint, with Agamemnon dead, justice, finally, has been served. Aegisthus feels he rightly occupies the place of Agamemnon, whose amenities of life were but the illicit fruits of the sins of the father.

The intrusion of Aegisthus into the action is deeply troublesome. He is an unlikable and disdainful character, a painful and unwelcome reminder that the stories we consider definitive and central—Agamemnon’s, Clytemnestra’s, our own, our family’s, our nation’s—these stories are only partial stories, partial in both senses of the term—incomplete and biased. What seems homogeneous to the dominant cultural story is in reality heterogeneous. There’s always an Aegisthus lurking in the background, a disgruntled party who remembers what we have forgotten and what we want to forget, an embittered person who does not share the general cultural amnesia and wants to dig back deeper into old grievances—land claims, historical injustices, unacknowledged abuses, whatever. The seemingly congenial boundaries of a self-sufficient now are always illusory. There is inevitably a deeper story, buried for the time being but ready to be exhumed when its time comes. If Orestes, Agamemnon’s avenging son, could see beyond the boundary of his own self-sufficient now, he might see what he has in common with Aegisthus, another injured and vindictive son. He might even see in his mother’s crime an element of displaced Oedipal wish-fulfillment on his part, but, as everyone knows, that sort of horrific self-revelation is treated with eye-gouging thoroughness elsewhere. As the quintessence of the younger generation, Orestes is not suited to the long perspectives. For him, in the words of the chorus, blood calls for blood, the killer must be killed, hate must be met with hate, murder must be repaid with murder. As others do, be it done unto them.

Orestes was away when his father was killed. When he eventually comes home, with malice aforethought, he kills his stepfather and mother. He too is an archetype, and unlike other sons who have issues with their parents, he is not permitted to rebel in the conventional way—tattoos, body piercing, political extremism. He is not permitted to symbolically slay the old regime. So Orestes, a grim literalist, avenges his father's death, but he doesn't get to live happily ever after. Tortured by remorse and pursued by female furies who personify the vicious bite of conscience and demand his blood, Orestes can find no peace. Their lust for retribution cannot be quelled. Orestes is guilty. He must be punished. Blood calls for blood. How can all be right with the world as long as he lives? Finally, at Athens, some time later, the problem is faced and resolved; a court is established to try his case. Orestes is not forgiven, but he is acquitted.

Aeschylus's version of these events is a tragedy in three parts. Dripping in blood and gore, the first two plays—*Agamemnon* and *The Libation Bearers*—set the stage for the third, *The Eumenides*, which is not only an account of the first trial by jury but also a profound meditation on the difference between tribal justice, a vengeful chain reaction of reciprocal violence, and rational justice, a formal process that necessarily relies on argumentative and procedural technicalities. Through rational justice Orestes is able to escape the furies; they are transformed into the kindly ones, or so we're told, and they are driven underground to reside beneath the polished floor of every palace of justice; you might say that they are the subconscious of the law. Nevertheless, it is crucial to understand that Orestes does not escape bloody justice through the operation of some higher principle, such as love, mercy, or fairness. Rather, righteous moral fury is simply

supplanted by legality. Tribal justice yields to rational justice, and this new justice system must forever strive mightily to keep fury underground. From this point on, disputants go to court. You could say that this is a moment of climactic transformation in the history of western civilization. From the heights of Olympus, you could say that due process and rule of law now reign supreme, that after all that slaughter a stirring emancipation narrative has achieved its triumphant conclusion. From a less exalted standpoint, you could say that by winning his case with the dubious argument that matricide is a logical impossibility, Orestes was the first defendant in the history of western civilization to get off on a technicality.

If the *Eumenides* seems obsessed with human carnage and thus makes us wonder whether ritual purification of vengeance by rule of law is really possible, we should keep in mind that no heinous act of violence takes place in this third play, a dearth that makes bloody imagery all the more necessary. For the Furies have to be inordinately hungry for blood so that after their purgation, the audience regards their transformation into the kindly ones as a step forward into a brave new world.

By pitting the old gods against the new, the Furies against Apollo and Athena, Aeschylus is able to carve out a distinction between an absolute and a relative view of transgression. The Furies would punish forever. Backed first by Apollo and later by Athena, Orestes argues that he has suffered enough.

This first trial is an archetypal trial since from the Athenians' point of view it is the essence of trial, at least as defined by their norms of civic enlightenment, norms that are overtly discriminatory against women. And this male-centeredness inspires an ingeniously specious argument on behalf of Orestes, a necessarily specious argument, perhaps, for emotionally volatile moral disputes are rarely if ever transcended by higher moral insights. It would be nice if the issues were clearer, but who—pray tell—occupies the ethical high ground in this pageant of slaughter? True, Orestes killed his mother, but her death is but one episode in a long and involuted story. Orestes killed Clytemnestra who killed Agamemnon who sacrificed Iphigenia so he could conquer Troy which sheltered Paris who stole Helen, and so on. And let us not forget the prior story of Atreus and Thyestes and the seduced wife and the cannibalized sons and the doleful Aegisthus left behind until he is slain by Orestes who kills Clytemnestra, who killed Agamemnon...

Given such utter moral chaos, how could any legal argument designed to resolve it not be tinged with an element of arbitrariness? As counsel for the accused, Apollo has no option but to try to impose legality on this moral chaos, so that rule of law not only supplants retaliatory vengeance but also enforces a principled amnesia. If everything is remembered, nothing can be resolved. It would seem that one of law's vital functions is to determine where the story starts and what the court is permitted to remember.

Advocating for Orestes and affirming the essentially patrilineal character of his culture, Apollo argues that matricide is logically impossible. The mother, he says, is but an incubator for the sperm of the father and a nurse for the offspring. It is fatherhood that

bestows legal status and identity, motherhood being but a biological function. In the eyes of the law, a mother is not a parent. Hence there can be no such thing as matricide.

Motherless herself, Athena was born from the head of Zeus. So it comes as no surprise that when the jury is split, she casts the deciding vote in favor of Orestes' acquittal. The liberal civic vocabulary of male supremacy prevails over the conservative domestic vocabulary of female fury. Rational justice in this culture is unremittingly patriarchal. Nevertheless, the Furies, matriarchal avengers working under the banner of tribal justice, must be placated and appeased. They are transformed and given a new home underground. They are, as I have said, the subconscious of the law, a gruesome reminder that beneath the burnished floors of every court of law reside the Furies—vigilantes, lynch mobs, avengers of all stripes.

Aeschylus's intent, however, goes well beyond this fable of transformation. For at the time of the play's debut, Athens and Argos had recently made a treaty of alliance, and it is thus propitious that Orestes hails from Argos but is acquitted in Athens. Moreover, the play was staged just a few years before the full establishment of a democratic city-state under the leadership of Pericles. For all intents and purposes, the old tribal modes of justice were a thing of the past. But the emerging civic modes were already under siege, for in any social order, civic faction perpetually challenges civic unity, pitting generation against generation, class against class, and so forth. These are the ineluctable sociopolitical tensions and conflicts that tragedy views under the sign of miasma, pollution.

Aeschylus is saying in effect that if you think conditions are bad now, you should remember what things were like in the old days—murder, mayhem, endless retaliation, endless suffering. If you contemplate the viciousness of tribal justice, you will appreciate the virtues of civic enlightenment. The uneasy conditions now are far superior to the drastic conditions then, and the play, in approaching its conclusion, sounds the hope that citizens may unite in directing their aggressive energies outward. “May their wars,” Athena says, “be with foes abroad.”

For Aeschylus, as for every tragic dramatist, a state of social tension and political conflict just is. It is ineradicable and cannot be permanently purged and purified by tragic catharsis. The best a playwright can do is to manipulate such tension and conflict so as to produce the evanescent illusion that civic faction has been overcome by civic unity. For the Athenians, the Orestes trilogy must have been cathartic in that way. It analyzed their contemporary condition by contrasting it with an ominously magnified past condition. Thus the present condition of pollution, however ominous in itself, could be seen as the endpoint of a teleological narrative of improvement. By analyzing societal pollution in terms of mythic characters who were implicated in horrific narratives of sacrifice, guilt, and vindication, *The Oresteia* makes the uneasiness of the present feel like a solution to the problems of the past. The contemporary modes of justice are thus seen as having risen above the earlier drastic modes. It is easy to imagine with what exultation the audience must have embraced the pageantry of Aeschylus’s final scene, with everyone at the end feeling purged and purified as they march elatedly in torchlight procession

toward the hopeful next phase, even if in fact the pageant only mirrors the essence of legal practices pretty much already in place.

Tragedy tries to purge and purify civic pollution, but deep down it knows the truth. Catharsis is transitory; miasma is eternal. Rational justice also tries to purge and purify civic pollution, but rule of law can only go so far. The competing vocabularies of value—familial, social, factional, universal—are incommensurable most of the time. But somebody has to determine the scope and circumference of a dispute by translating adversarial vocabularies into the vocabulary of the law and deciding which party is to prevail in a particular case. To the observer, the arguments often seem fraudulently technical, like the pleadings of Orestes, and the judgments often seem prejudicially arbitrary, like the deciding vote of Athena. But even if the realm of law is necessarily the realm of pollution, Aeschylus reminds us that some miasmata are considerably less toxic than others. To a greater extent than your fellow citizens and with a much more deeply felt intensity, you, in your roles as lawyers, judges, and students of law, dwell in miasma—criminal, civil, family, and so forth. If the legal profession does not always get the solemn tragic dignification it mostly deserves, it frequently does get the caustic comic corrective that popular opinion and the media relentlessly provide. What can I say? Such is the burden of being an archetype.

NOTE

¹ I would like to acknowledge my indebtedness to those scholars who actually know something about classical literature and law—Richard Posner, Martha Nussbaum, James Boyd White, Joseph Tussman, and Kenneth Burke. In a paper presented in the early 1980's, if memory serves, Tussman put the spin of a political philosopher on the case of Orestes. Especially resonant with me were his ideas about the literalism of the archetype and its refusal of metaphor, the relationship between cultural stories and cultural amnesia, the deceptions of presentism, and the difference between morality and legality. In this paper I try to build on his insights. As for Kenneth Burke, his influence on my thinking is so pervasive it would be impossible to give an appropriate acknowledgement. Nevertheless, his view of tragedy as the “representative anecdote” of the human condition is the *sine qua non* of this paper. Also relevant is his essay “Form and Persecution in the *Oresteia*,” an essay which is reprinted in his *Language as Symbolic Action: Essays on Life, Literature, and Method* (1966). There he sees the Furies as the subconscious of the state. I have modified his idea somewhat in seeing them as the subconscious of the law, but the essential point remains the same. He also shows how matriarchal fury is transformed into patriarchal justice and how tragedy is a realistic strategy for temporarily purging and purifying a state of civic pollution that is endemic to all social orders, the real subject of tragedy being the uneasy tensions of the present as put into perspective by the magnified horrors of the past.