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The Myth of Retributive Justice

Brian Slattery, *Osgoode Hall Law School, York University*



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Commentary: The Myth of Retributive Justice

BRIAN SLATTERY

Osgoode Hall Law School, York University

Deprive children of stories and you leave them unscripted, anxious stutterers in their actions as in their words.... Mythology, in its original sense, is at the heart of things.

Alasdair MacIntyre ¹

I

In a classic fairy tale, Grimm tells how two children, Hansel and Gretel, were deserted by their impoverished parents in a forest and taken captive by a wicked witch. The witch plotted to cook them in her oven and eat them. She shut Hansel in a little cage to fatten him up, and made Gretel her servant. One day, she told Gretel that she wanted to bake some bread. She pushed poor Gretel up to the oven, from which the flames were already shooting fiercely, and told her to crawl in to see if it was hot enough yet. But Gretel saw what the witch was up to and played dumb, pretending she didn't know how to get inside. 'Goose, goose!' cried the witch, 'the oven is big enough — why, look, I can even get in myself.' And she stuck her head in the oven. Seeing her chance, Gretel gave the witch a shove, so that she fell right into the oven and was burned to death. Gretel ran to Hansel as fast as she could, and opened his cage, crying: 'Hansel, we are saved! The old witch is dead!' The two children gathered up as many of the witch's pearls and precious stones as they could and made their way out of the forest to their home. Then, says Grimm: 'All their troubles were at an end and they lived together in perfect happiness.'²

In fairy tales, villains usually come to a bad end, snared in a trap of their own making, or visited with a disaster nicely suited to their particular villainy. Read a story of this kind to children and you will be struck by the profound

satisfaction with which this predictable turn of events is greeted. Yet, if children cheer when the villain is done in, they are just as satisfied when the hero manages to get the villain by the throat but takes pity and spares him.

These tales of retribution and mercy, even reduced to their barest bones, seem to have an intrinsic significance; they seem to strike some inner chord, to resonate with something fundamental in our inarticulate understanding of the world, to reveal something about the basic make-up of the world.³ This is not to suggest that they are 'realistic' in the ordinary sense. They do not tell us what 'really happens' in the world of experience, where the villain all too often flourishes and the innocent are trampled underfoot. To complain, with the popular song, that 'we've been poisoned by these fairy tales' is to miss the point.⁴ Fairy tales reveal to us the injustice of the human world by testifying to the true nature of justice. If we didn't know that villains *ought* to get their comeuppance, we'd have no reason to think it wrong that they often escape to enjoy their spoils. Tales of retribution and mercy speak of the reality of a world beyond the world of everyday experience; so doing, they show the world of experience in its true light. In the best sense of the word, they are 'myths': stories that, even when told in their simplest form, carry a profound inner significance.⁵

The myth of retributive justice is an imaginative universal that lies at the root of the conceptual universal, the idea of retributive justice.⁶ Unless we are struck imaginatively by the story where the villain gets his due (or is spared by the hero), we will not be persuaded by rational arguments about retributive justice and mercy. We will simply fail to see what the fuss is all about. This is not necessarily to say that myths are self-justifying, that our imaginative grasp of the inevitability of a certain course of events provides a sufficient basis for accepting its rightness, for I am not sure this is the case. At the least, it may be worthwhile identifying what it is about the myth that strikes us as meaningful and relating this to other truths and stories. This reflective process may refine our original understanding of the myth, and perhaps transform it. But it would be wrong to suppose that the truths embodied in myth are always (or perhaps ever) open to rational justification.

A myth is narrative in form. It has a beginning, a middle, and an end. Its meaning is bound up with a world of time, a world in which the significance of one event is revealed or completed by an earlier or later event. The links between these events are not conceptual or logical. The fate of the villain is not 'contained' within his misdeeds in the way that the conclusion of an argument is contained in its premises. If the denouement of a mythic story in some sense 'follows' from the plot, it is not in any logical sense. In what sense, then, can it be said to follow?

Before considering this question, we need to note that the myth of retributive justice takes at least two forms. In one ancient version, someone who

violates the order of the cosmos is *inevitably* punished by the Gods or Fate or Nature, in somewhat the same way in which a person who plunges her hand into a fire is inevitably burned. It may take some time for retribution to be realized, but it always comes in the end. And although the dispensers of justice may happen to be human beings, they act not in their own capacity but as instruments of the cosmic order. So, in Chinua Achebe's novel, *Things Fall Apart*,⁷ Okonkwo's gun accidentally explodes in the midst of a funeral, tragically killing the deceased's young son. Okonkwo is forced to flee into exile with his family, and the following day a large crowd of men storm his compound, destroying his houses and animals. Achebe notes:

It was the justice of the earth goddess, and they were merely her messengers. They had no hatred in their hearts against Okonkwo. His greatest friend, Obierika, was among them. They were merely cleansing the land which Okonkwo had polluted with the blood of a clansman.... And if the clan did not exact punishment for an offence against the great goddess, her wrath was loosed on all the land and not just on the offender. As the elders said, if one finger brought oil it soiled the others.

By contrast, in the second kind of myth the evildoer is brought to justice by human heroes, who act of their own free will and not merely as instruments of the Gods, and who risk failure in their quest. Justice is not inevitable, but the product of a free and precarious human effort. The theme emerges strongly in the stories told of the outlaw, Robin Hood. Here, for example, is the speech Robin makes over the body of his ancient enemy, Sir Guy of Gisborne, whom he has managed to dispatch with his sword after narrowly escaping death at Sir Guy's hands:

'A swift death, and a cleaner one than you deserve!', said he, quietly. 'Howsoever, there you lie, Sir Guy of Gisborne. No more will you torture humble folk who have no defence against you. Slain men, and men branded and mutilated, the aching hearts of women, and little children left alone in the world — all these are avenged, Sir Guy; and so I thank the sweet Mother of Our Lord!'⁸

But Robin falls victim to the forces of evil in the end. He is betrayed by his cousin, the Abbess Ursula, to whom he has gone for a medicinal bleeding. She opens a vein in his arm, gives him a drugged drink, and leaves him to die. Little John discovers Robin as he lies at the point of death and swears revenge against Ursula. But Robin shakes his head weakly: 'Little John, I never harmed any woman in my life, and it shall not be done in my name after my death.'⁹

Of course, many stories blend these two forms of the myth, so that the hero is portrayed as endeavouring to realize in human society the underlying order of the cosmos. However, the basic difference between the versions lies in the extent to which they recognize the role of human freedom, the risk of failure, and, not least, the possibility of mercy. For just as heroes may exact retribution, they may also choose to forego it.

So, on the first version of the myth, the fate of the evildoer flows from his acts simply because it is natural that such should happen: a disruption in the cosmic order inevitably leads to an event whereby that order is restored. On the second version, justice emerges only through the efforts of humans to realize by their free acts an ideal form of justice that may in some sense already 'exist' in another realm, but clearly does not exist in human society and is far from inevitable.

These two forms of the myth of retributive justice embody different visions of humanity and our place in the cosmos. In both versions, the ultimate reality is in some sense 'just,' but in the second version this justice has yet to be realized in the human sphere. Both versions allow for the possibility of human freedom, but only in the second is it an essential feature. Both versions recognize the existence of evil or disorder, but only in the second is there the real possibility that evil may triumph in the human sphere or remain unrequited.

We are now in a better position to respond to our earlier query: In what sense does retribution 'follow' from the wrongful deed? On the first version of the myth, the relationship between the wrong and the punishment is one of simple causality, albeit one that modern science would be loathe to acknowledge. That is, the myth suggests that, as a pure matter of cause and effect, punishment flows necessarily from the wrongful act. The situation is quite different with the second version of the myth. Here the punishment of the wrongdoer is viewed not as inevitable but open to doubt, the result of free human action which may be frustrated, abandoned, or foregone. So, in what sense can it be said that the punishment, if it occurs at all, 'follows' from the evil act? The answer seems to be that it is 'deserved.' I will have more to say about this in a moment.

But first it should be noted that only the second version of the myth is relevant to theories that set out to *justify* retribution rather than merely describe it. For only on the second myth does punishment require a justification. On the first, one would no more think of trying to justify the implacable processes of Fate than one would of vindicating the fire that burns the incautious hand. It is the fact that, on the second version, the hero may *choose* to seek or not seek retribution that gives the process of justification its point. So our discussion henceforth will confine itself to this version of the myth.

How, then, can retribution be 'deserved' by a wrongdoer, and what sort of relationship does this posit between the wrongful act and the punishment? I have argued that retribution does not follow from the crime either as a matter of simple logic or as a matter of cause and effect. Just as clearly the relationship between the two events is not one of means and ends, for the villain obviously does not do his evil deeds *in order to* be punished. Of course, one may justify punishment by reference to the purposes it supposedly serves, such as deterrence, reform, or restraint. But such purposes are necessarily directed at the achievement of ends that lie in the future. The peculiarity of the idea of retribution is that it asserts a necessary connection between the wrongful deed and punishment *simpliciter*, without reference to any future goal. What might this connection be?

As my narrative has already suggested, I think that the connection is a mythic one, which does not lend itself readily to rational analysis, but which, for all that, is quite real. I propose this rough definition: a mythic relationship is one that displays an intrinsically significant connection between successive acts or events, where that connection is not one of logical entailment, causality, or means and ends. The nature of a mythic relationship may perhaps be clarified by such rational processes as reflection and comparison, but I doubt that the relationship itself is capable of 'justification.' For justification seems to presuppose the existence of conceptual, teleological, or perhaps causal connections, which in this case are absent.

Let me sharpen my point. I want to argue not only that the idea of retributive justice finds its psychological roots in the realm of myth, but that it cannot escape entirely from that realm. The retributive view holds that punishment is justified simply by the fact that a crime was committed, rather than by reference to some future goal or timeless conceptual link. Crime and punishment are bonded indissolubly *in time*. Their order cannot be reversed without destroying their specific characters. They cannot be displayed as simultaneous realities without draining them of their significance. Punishment comes *after* crime. Such is the reality affirmed by myth.

II

If this reasoning is correct, we may expect that a theory of retributive justice will often have two features. First, it will tacitly or openly rely on the *symbolic meanings* of the wrongful act and the act of retribution. Second, it will have some little difficulty explaining the connection between these two, and in the end be driven to *metaphor*, not always recognized or acknowledged as such.

Both points are nicely illustrated by Jean Hampton's expressive theory of punishment, presented in an earlier paper in this work.¹⁰ Hampton says: 'The wrongfulness of the action consists in the fact that it is expressing something false about the victim's value.'¹¹ The prominent use of the word 'express' here and elsewhere might lead you to think that the meaning of the wrongful act is the one 'intended' by the wrongdoer. But that, I think, is not the case. Although the wrongful act may involve an intentional element, its meaning is an objective one, which may not be consciously intended or realized by the wrongdoer. As Hampton writes: 'I want to argue that regardless of whether or not a wrongdoer intended her act to be demeaning, her act nonetheless counts as immoral if it sends a false message about the value of the victim relative to the criminal.'¹²

Not only may the 'message' differ from that intended by the wrongdoer, it may also differ from that consciously understood by the victim. For Hampton would presumably want to say that an act may send a certain message about the victim's value, even if the victim fails to get the message, or gets a different message. In short, a wrongful act has an objective meaning, albeit one which is relative to a particular society or culture. Significantly, Hampton characterizes this meaning as *symbolic*.¹³

What holds true of the wrongful act holds true of the retribution it brings on. As Hampton says: '... just as the crime has symbolic meaning, so too does the punishment. The crime represents the victim as demeaned relative to the wrongdoer; the punishment "takes back" the demeaning message.'¹⁴ What then is the message conveyed by the punishment? Hampton replies: 'The retributive punisher uses the infliction of suffering to symbolize the subjugation of the subjugator, the domination of the one who dominated the victim. And the message carried in this subjugation is "What you did to her, she can do to you. So you're equal."¹⁵ As with the wrongful deed, the symbolic meaning of the retribution is objective (given a certain cultural context), and may differ from that intended by the person meting out the punishment or from that understood by the wrongdoer.¹⁶

So Hampton is talking about the relationship between the symbolic meanings of two acts separated in time, a relationship that in some sense is a necessary one. The wrongful act *requires* retribution, be it punishment or mercy. Now, on the view presented earlier, a genuine relationship between two symbolic acts is likely mythic, if it is not logical, teleological, or causal. Such a relationship can be exemplified or perhaps clarified, but is not susceptible of rational justification. If this view is correct, we might expect that Hampton will encounter some difficulty in explaining in rational terms why wrongdoing requires retribution.

So it is not surprising that, at this critical juncture in her argument, Hampton resorts to metaphor. In an interesting passage she observes:

This conception of retribution as the infliction of suffering designed to deny the wrongdoer's denial of the victim's value fits nicely with remarks Hegel makes about retributive punishment. Hegel argues that punishment seeks to 'annul' the crime. On the face of it, this remark is puzzling: how could an act that takes place now make a past act go away (for no present act can make a past act disappear)? On my view, Hegel's language is suggestively metaphorical; I would interpret 'annulling the crime' to mean annulling or denying the message implicit in the act that makes it a crime.¹⁷

The observation that Hegel is speaking metaphorically seems apt. To say that punishment 'annuls' the crime suggests a teleological rationale, whereby the punishment is justified by reference to some future goal. But the supposed goal of obliterating a past act is, of course, factually unattainable, and the conceit relies on a metaphorical device which converts temporal relations to spatial ones—as if a past event were an ugly object close at hand that one could pick up and smash. More precisely, the metaphor brings into the present a past event and, displaying it simultaneously with the act of punishment or mercy, subjects it to the latter's salvaging power.

Interestingly, Hampton's own efforts to explain retribution seem no less metaphorical. To speak of punishment as 'denying' the message implicit in the crime is to suggest once again that the relationship between crime and punishment is teleological, as if the symbolic meaning of a crime was a falsehood, scrawled on a wall, that one could reach out and erase or a proposition that one could negate. But a past act can no more be denied than it can be annulled, for what is done is done and cannot be undone. And if, as Hampton concedes, punishment were merely a matter of negating a false proposition implied by the crime, a public pronouncement of the victim's equal worth would arguably do the trick just as well.¹⁸

We are left with a question: Is the belief in the existence of a genuine link between crime and punishment credible if the link cannot be justified in teleological, logical, or causal terms? We seem to be driven to the conclusion *either* that the link does not exist, in which case the myth of retributive justice is false and misleading, *or* that the link is of an entirely different character, one not readily accessible to analysis and justification. Which of these conclusions we adopt depends on the extent to which we are willing to credit our intuitive responses to stories of retribution and mercy and to assess them in their own terms rather than in terms of established analytical categories. If we join with our kids in cheering when the wicked queen gets her due, yet deny that our intuitive reaction has any genuine significance, we may well be true to our rationalist premises. But perhaps we fall into a deeper contradiction.

Notes

1. Alasdair MacIntyre, *After Virtue*, 2nd ed. (Notre Dame, IND: University of Notre Dame Press 1984), 216
2. I have followed the translation by Randall Jarrell reprinted in Lore Segal and Maurice Sendak, eds., *The Juniper Tree and Other Tales from Grimm* (New York: Farrar, Straus and Giroux 1976) 152-68.
3. For a thoughtful discussion of children's reactions to those modern fairy tales, Hollywood films, see Robert Coles, *The Moral Life of Children* (New York: Atlantic Monthly Press 1986) Chapter II, 'Movies and Moral Energy.'
4. Don Henley and B.R. Hornsby, 'The End of the Innocence,' Cass County Music/Zappa Music ASCAP, 1987
5. The general point about myths is developed by C.S. Lewis in his engaging work, *An Experiment in Criticism* (Cambridge University Press 1961), 40-49. Lewis notes that this use of the term 'myth' is a little unusual: not everything that anthropologists would call 'myths' would meet this standard, while certain stories not ordinarily considered myths (such as *Dr. Jekyll and Mr. Hyde*) have strong mythic qualities in this sense.
6. The terminology is borrowed from Alasdair MacIntyre, *Whose Justice? Which Rationality?* (Notre Dame IND: University of Notre Dame Press 1988), 57; 88.
7. Chinua Achebe, *Things Fall Apart* (New York/London: Heinemann 1989), 86-87
8. Rosemary Sutcliff, *The Chronicles of Robin Hood* (Oxford University Press 1950), 248
9. *Ibid.*, 275
10. See Jean Hampton, 'An Expressive Theory of Retribution' in this volume.
11. *Ibid.*, 9-10
12. *Ibid.*, 8
13. *Ibid.*, 13
14. *Ibid.*, 13
15. *Ibid.*, 13
16. *Ibid.*, 21
17. *Ibid.*, 15
18. *Ibid.*, 15-16