

Revenge and The Law

PS 268

Fall 2007

Professor Roger Berkowitz

Tu, Th: 1:00 -2:20 pm

Olin 201

Office Hours: Tuesday 3-4; Wednesday 2-4 and by Appointment

Office: Seymour 102

Phone: x7413

E-mail: berkowitz@bard.edu

Revenge and Law

To speak of revenge in a course on law is to lay bare an open wound at the heart of law. On the one hand, law is built upon the exclusion of vengeance. On the other hand, revenge remains a constant presence in criminal law. In spite of the best efforts of philosophers, moralists, and jurists to banish it, revenge remains an irrepressible social and legal force. This course asks the question: Can revenge be a just motive for criminal punishment? By considering those in the victims' rights movements who argue for the importance and justice of "legalizing" and thus legitimating revenge, we ask whether justice is actually something other than legalized revenge. To do so, we explore the phenomenon of revenge as it has been practiced, imagined, and conceived throughout history. Through a close reading of texts, films, and works of art, we will ask: why does revenge persist as an ideal of justice despite the best efforts of lawyers to banish it?

Texts: Aeschylus, *Oresteia*; Max Scheler, *Ressentiment*; Hegel, *Philosophy of Right* ; Jonathan Edwards, *Sinners in the Hands of an Angry God*; *Carmen and Other Stories*, Prosper Mérimée. *Violence and the Sacred* by Rene Girard (trans. by Patrick Gregory). Alexander Dumas, *The Count of Monte Cristo* (trans. Robin Buss). Shakespeare. *Hamlet*.

Requirements: There will be a number of short papers assigned over the course of the semester. In addition, there will be a mid-term exam and a final paper.

Part One

Weeks I-III

The Criminal Law Paradigm

Primary Texts

- Hegel, *Philosophy of Right*, §82-104.
- Robert Nozick, *Philosophical Explanations*, “Retributive Punishment,” pgs. 363-397.
- Immanuel Kant, *The Metaphysics of Morals*, trans. By Mary Gregor, Pt. I, chp.2, §E, #1, “On the Right to Punish and to Grant Clemency,” pages104-109 (6:331-337).

Additional Texts

- C.S. Lewis, *The Problem of Pain*, Pt. VI, *Human Pain*, pgs. 78 ff.
- St. Anselm of Canterbury, *Cur Deus Homo (Why God Became Man)*. (I.11-15; 20-21; II, 18).
- Jonathan Edwards, “Sinners in the Hands of an Angry God”.
- The Holy Bible: Exodus 21; Matthew 5; Romans 12
- David Daube, “Eye for an Eye.”
- R.W. Dale, *The Atonement*, pg. 373-387.

Part Two

Weeks IV-V

The Breakdown of the Criminal Justice Paradigm and the Victims’ Rights Movement

Primary Texts

- The Accused* (dir. Jonathan Kaplan)
- Booth v. Maryland* 482 U.S. 496 (1987)
- Payne v. Tennessee*, 501 U.S. 808

Additional texts

- George Bernard Shaw, “Imprisonment,” pgs. 857-862; 868-883; 901-911.
- George P. Fletcher, *With Justice for Some*, 1-36 (295-296).
- “Vengeance, Victims, and the Identities of Law,” Austin Sarat. In *Social & Legal Studies* 6, 1997, pages 163-190.
- Jennifer Culbert, “The Sacred Name of Pain: The Role of Victim Impact Evidence in Death Sentencing Decisions” in *Pain, Death, and the Law*, ed. Austin Sarat (Ann Arbor: University of Michigan Press, 2001)
- Sara Manaugh, *The Vengeful Logic of Modern Criminal Restitution Law, Culture and the Humanities*, Oct 2005; 1: 359 - 375.

Part Three

Week VI

The Sociology of Revenge: The Self Help Model and the Marketplace of Honor

Primary texts

- William Ian Miller, *In the Defense of Revenge*.
- David Daube, "Money and Justiciability," in David Daube, *Collected Studies in Roman Law* 1341-55 (1991) Frankfurt am Main : Klostermann, 1991.
- Arthur S. Diamond, *An Eye for an Eye, Iraq* vol. 19, pg. 151 (1957)
- Geoffrey MacCormack, *Revenge and Compensation in Early Law*, 21 Am.J.Comp. L. 69 (1973).

Additional Texts

- William Ian Miller, *An Eye for an Eye*, pgs. 1-8; 24-30.
- Miller, William Ian, *Bloodtaking and Peacemaking: Feud, Law, and Society in Saga Iceland*. Chap. 1 (pgs. 13-41)
- Max Weber, *Economy and Society*, Chp. IX, Political Communities, v. 2, pgs. 901-910.
- Oliver Wendell Holmes, *The Common Law*, Lecture I, paragraphs 4 & 5.
- John Elster, "Norms of Revenge"
- Karl Shoemaker, "Revenge as a "Medium Good" in the 12th Century."

Part Four

Week VII

Revenge and Justice: Honor

Primary Texts

- Prosper Mérimée, *Columba*.
- Mario Puzo, *The Godfather* (9-12; 362-364).
- Edward L. Ayers, "Honor and Its Adversaries" in *Vengeance and Justice*, pgs. 9-33.
- William Vollman, "Defense of Honor," v. II, 13-23; "Paintings of Napoleon," 43-57.
- Djilas, *Land Without Justice*, pgs. 3-23.

Week VIII

Revenge and Justice: Action

Primary Text

- Hamlet
- Hannah Arendt, Eichmann in Jerusalem (Epilogue)

Week IX

Revenge and Justice III: The Claim to Divinity

Primary Texts

- Mystic River, (dir. Clint Eastwood).
- “The Value of Vindictiveness,” by Karen Horney. *American Journal of Psychoanalysis*, 1948. Vol. 8. Pgs. 3-12.

Additional Text

- Roger Berkowitz and Drucilla Cornell, “Parables of Revenge”

Week X

Revenge and Justice III: Cowboy Vengeance

- The Searchers (dir. John Ford)
- The Jack Bull (dir. John Badham)

Week XI

Revenge and Justice IV: Divine Retribution

- Alexander Dumas, *The Count of Monte Cristo*
- Linda Ross Meyer, “The New Revenge and the Old Retribution: Insights from Monte Cristo.”

Part V

Against Revenge

Week XII-XIII

Ressentiment and Equality

- Max Scheler, *Ressentiment*.
- Fyodor Dostoevsky, *Underground Man*, Part I. chp. 3.
- William Gaddis, *A Frolic of His Own* (excerpts).

Week XIV

Sacrifice and The Cycle of Violence

Primary Texts

- *Violence and the Sacred* by Rene Girard (trans. by Patrick Gregory).
- *Behind the Sun*, dir. (Walter Salles).

Additional Text

- Jennifer Culbert, “Reprising Revenge.”
- Bible: Josh 7:26; 2 Sam. 21; 2 Sam. 24
- Djilas, pgs. 73-82.

Week XV-XVI

Revenge and the State

- Aeschylus, *The Oresteia*
- Shai Lavi, “The Jews are Coming”