Nietzsche, Violence and Justice: Towards a Rehabilitation of *Dike*

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Abstract

At the risk of engaging in a gross generalization, it can be argued that post-WWII philosophy, and in particular post-structuralist thought, tends to adhere to a passive model of justice that emphasizes phenomena like the Other (in its various forms), forgiveness, and the undermining of traditional metaphysics. In employing themes like 'undecidability', thinkers like Jacques Derrida often refer to a certain Nietzsche: the Nietzsche who set himself against the metaphysical tradition. There is, however, another Nietzsche, a Nietzsche that prized the human capacity for judging. I argue that the position of this Nietzsche seems to have drawn his inspiration from the ancient concept of dike, *rather than the gentler notion of* epiekia.

If ethics is, according to Levinas and Derrida, the domain of the infinite, justice is the domain of the limit. For although the word 'justice' appears frequently in so many contemporary texts on the topic, what seems to understood by it corresponds more closely to the ethical domain. And justice understood as ethics, does violence to both concepts. For this reason, I refer to two major classical 'definitions' of justice, namely *epiekia* and *dike*. The latter is, of course, the better known, and yet in our times, the most neglected. *Epiekia*, by contrast, is seldom mentioned by name, but it appears to be the dimension of justice that has dominated discussion on the topic since WWII and especially so in the post-structuralist revolution. This concept can be defined in general as merciful and caring judgement, or in particular according to Aristotle: 'It is *epieikeia* to pardon human feelings and look to the lawgiver, not to the law, to the spirit and not to the letter, to the intention and not to the action, to the whole and not to the part, to remember good rather than evil'[1] This definition seems to find a modern counterpart in concepts such as 'hospitality' 'the Other/other' in its various forms, mercy, cosmopolitanism and forgiveness that keep resurfacing in contemporary texts that purport to deal with justice.

As important as these terms are, justice cannot be limited to what amounts to an embracing of what has been excluded by a particular

configuration - metaphysical or otherwise. The emphasis on *epiekia* comes at the expense of the older concept of *dike*, which could be defined along the lines of the Latin tag *suum cuique tribure* or simply - to each his own according to merit.

For *epiekia* without *dike* is ethics. The excessive emphasis on the 'positive' dimension of justice completes (or continues) what may (after Odo Marquard) be called the 'advance of Inclusive Reason'. This refers to the change from the classical distinction between the 'more' and the 'lesser' realities, to the gradual allowance of the latter, following Leibnitz's *Essais de théodicée* of 1710. These 'negative' ('evil') aspects became gradually positive: be it evil in the epistemological sense (the false, the fictional), the aesthetic (ugliness), the ethical (the immoral) and importantly for our purpose, in the judicial sense, the 'Other' - whatever any prevailing order excludes. And in our times, justice is very often, far too simply, taken as the removal of *any* barrier, be it metaphysical or political.

By doing this, the negativity of exclusivity is exchanged for the negativity of the amorphous. For all his usage of the tragic, Derrida ignores the most fundamental tragic lesson: that excess requires at least a degree of a temporary but essential stability. Derrida's use of tragedy appears to be very one-sided: the vulnerability of the subject in the face of the events is emphasised at the expense of a richer understanding of tragedy, an understanding which I hope to demonstrate, has important implications for how we define justice. For tragedy is also about judgement and finality. Letting this dimension fall into oblivion is the danger of the postmetaphysical ethics of Derrida and Levinas. Bearing in mind that their philosophy arose in response to some of the most horrific events of the twentieth century, I will turn to Nietzsche and the role of the limit in his thought in order to question the tendency to equate the establishment of limits, distinctions and hierarchies with violence and injustice. According to Henry Staten 'Deconstruction is not a defence of formlessness, but a regulated overflowing of established boundaries'.[2] All the same, I believe that, with the theme of excess dominating much of post-structuralist thought - excess presents itself not only in Derrida, but also in Banchot, Irigiray, Cixous, and even Foucault, the limit is called for.

In his now famous text on the question of justice, 'Force of Law: The Mystical Foundations of Authority', Derrida makes the following provocative statement: 'Justice in itself, if such a thing exists, outside or beyond the law, is not deconstructible. No more than deconstruction itself, if such a thing exists. Deconstruction is justice'.[3] This enigmatic statement proceeds from the distinction between the law, which Derrida not only holds to be deconstructible, but essential to be deconstructed if any claim towards progress is to be made, and justice, which cannot be deconstructed, but in

the name of which all deconstruction is undertaken. Employing a quasi-transcendental register, Derrida maintains that justice is the undeconstructible condition for the possibility of deconstruction, for 'nothing is more just than what I today call deconstruction'[4]. Justice is defined in customary paradoxical fashion as the experience of that which cannot be experienced, that which is 'mystical', 'the impossible', or 'aporia'. In other words, justice is an 'experience' of the undecidable. This experience however, does not merely pertain to some theoretical terrain but always arises in relation to a particular entity, to the singularity of the Other. This is the moment when Levinas becomes relevant - on p. 22 of 'Force of Law' Derrida cites Levinas's famous definition of justice as defining and being refined by the ethical relation to the Other, 'la relation avec autrui – c'est la justice'.[5] In other words, justice, according to this definition, arises in the particular and irreducible relationship to the Other, as a response to suffering that demands an infinite responsibility.

What is often forgotten, is that Levinas *does* distinguish between justice and ethics. In the 1987 preface to the German translation of *Totalité et Infini* Levinas points out that in this particular work, justice functions as a synonym for the ethical. However, in later publications like *Autrement qu'être ou au-delà de l'essence* justice is distinguished from the ethical relation, where Levinas argues that the question of justice arises when a third party arrives on the scene, obliging one to choose between competing ethical claims. The arrival of a third party acts as a reminder that the ethical relation is always already situated in a specific social and political context. But even this distinction does not go far enough in my opinion, to separate the specificity of justice from ethics. For philosophy to take refuge in the realm of ethics, albeit through a phenomenological rather than a transcendental register, and then to proceed to equate it with justice brings about dangers and possibilities of further injustice of its own.

The particular injustice that I have in mind is one feared by the Greeks from the earliest days of their tragic thought, and that is the injustice rendered by a lack of measure, or *sōphrōsyne*. This virtue plays a primary part in many of the Greek tragedies, and the absence of this quality ranks with *hubris* as one of the prime tragic flaws. Throughout Aeschylus and Sophocles, excess manifest itself either in the form of sublime horror (the *miasma* or pollution that requires the hand of justice to reset order, or as vice, for example the excessive rage of Ajax when he is denied Achilles's armour in the eponymous play by Sophocles. In this play in particular, we see one passion tempered by another: rage tempered by madness sent by Athena. For there is something terrible and inhuman about excess.

The idea of the limit, which appears to be anathema to Derrida's conception of justice, was certainly essential to the Hellenic ideal of what

justice should be. I would go as far as to suggest that a necessary counterpoint to the deconstructive/ Levinasian idea of 'justice' as something infinite, sublime, the domain of the unceasing appeal of the Other, would be to associate justice with the classical notion of measure, especially as this theme operates in Nietzsche.

There can be no question that Nietzsche stands as one of the central figures to whom Derrida traces his intellectual genealogy. He credits Nietzsche in whose work one finds 'the systematic distrust as concerns the entirety of metaphysics, the formal vision of philosophical discourse, the concept of the philosopher-artist, the rhetorical and philological questions put to the history of philosophy, the suspiciousness concerning the value of truth, of meaning, and of Being, of the 'meaning of Being', the attention to the economic phenomena of force and of difference of forces, etc'.[6] Throughout his *oeuvre*, especially up to *La Carte Postale*, Derrida makes frequent use of Nietzsche in his attempt to deconstruct the logocentric tendencies of Western metaphysical thinking. Nietzsche often appears as an alternative to the nostalgic longing for full presence that Derrida detects at the heart of Western philosophy. 'Nietzsche' has become shorthand for the very possibility of thinking otherwise, and often serves as an alternative to Heidegger in Derrida's texts. One of the most important options that Nietzsche provides is an alternative to the more traditional Rousseauian myth of a 'fall' from a state of nature'. At first it appears that the Nietzschean plea for a morality based not on revenge but on expenditure demands everything *but* limits. Take George Bataille's reading of the *Genealogy of Morals* in his *The Accursed Share:*

> Nietzsche is on the side of those who give, and his thought cannot be isolated from the movement that tried to promote a resumption of life in the moment, in opposition to the bourgeoisie, which accumulates...Nietzsche's gift is the one that nothing limits, it is the sovereign gift, that of subjectivity.

In the second essay of the *Genealogy* Nietzsche turns towards the economic origins of guilt and bad conscience in 'the oldest and most personal relationship, that of buyer and seller, creditor and debtor' (*GM* II, 8). The moral concept guilt, conceived as a debt that is essentially unredeemable, is shown to have its origins in the economic-legal notion of a debt as something that can, and should be repaid, this, for Nietzsche explains the earliest account of punishment, which as retribution emerges from the inability to repay the debt. Because 'everything has its price and *all* things can be paid for' (*GM* II, 8), the debtors, having made a promise to pay - a promise they cannot keep, are obliged to offer something else instead, such as their body, their freedom or even their life. The concept *Schuld* that translates as both debt and guilt, is thus revealed to operate within the logic of compensation that establish equivalence between creditor and debtor.

Like guilt, Nietzsche sees the origin of what is commonly understood as justice in the relationship between debtor and creditor. The contractual relationship makes comparative evaluations of relative worth possible and it allowed primitive society to arrive at the oldest and most naive moral canon of *justice* [*Gerechtigkeit*] the beginning of all fairness on earth the *lex talionis* an eye for an eye. In the early *Origins of Justice* Nietzsche gives a neat summary of the egoistic and economic origin of justice:

> Justice (fairness) originates between parties of approximately equal power where there is no clearly recognizable superiority of force and a contest would result in mutual injury producing no decisive outcome the idea rises of coming to an understanding and negotiating over another's demands: the characteristic of exchange is the original characteristic of justice. each satisfies the other, inasmuch as each acquires what he values more than the other does. One gives to the other what he wants to have, to be henceforth his own, and in return receives what one oneself desires. Justice is thus requital and exchange under the presupposition of an approximately equal power position: revenge therefore belongs originally within the domain of justice it is an exchange. Gratitude likewise.

But I wish to suggest that the 'thinkers of excess' like Blanchot and Derrida is far too often, far too literally taken as an 'heir' to Nietzsche, and that this happens at the expense of a certain 'negative' Nietzsche. This is the Nietzsche of the limit, in whose thought limit and the virtue of *sōphrōsyne* play a vital role. Contemporary texts on virtue ethics tend to ignore the role of elements like judgement and censure in the establishment of codes of honour and criteria for achievement. This is where questions of violence become relevant. For there can be no virtue without contempt.

Furthermore, it is important to note that although Nietzsche asks how many parasites a body can bear, he nevertheless does not refrain from *calling* them parasites, deeming them inferior.

After Foucault it is hardly necessary to labour the point that all political systems are systems of authority and discipline. The important point is rather the qualitative objective of the political system. Why does society exist? And what type of human being does it seek to cultivate? What quality does it seek to captivate. The teaching of the one tradition that preaches the dignity and value of every individual and the equality of all beings - Christianity - is a religion that is based on an organizational structure that is deeply hierarchical, fraught with division and conflict - its greatest redeeming feature.

Nietzsche's anti-humanism assess the value of human life in terms of whether it represents an ascending or descending mode of life. The individual gains value by placing himself in the service of creation of culture. This is the basis of Nietzsche's aristocraticism, as well as the principle upon which he bases his unorthodox, illiberal and anti-Christian notion of justice.

'Justice', Nietzsche declares from the *Nachlass*, 'is the function of a panoramic power (*Macht*) which looks beyond the narrow perspectives of good and evil in order to *preserve something that is more than this or that person*'. (*KSA* 11, p. 188).

Nihilism chiefly signals a crisis in authority. In the wake of the death of God, Zarathustra holds, man vainly seeks idols that will provide a new metaphysical foundation for morals. In *Zarathustra* Nietzsche dramatises the predicament in which modern humanity finds itself and shows both the necessity and virtual impossibility of instigating a new legislation. How can new values be fashioned and legislated when the transcendental basis that would support them has been undermined? In an age of nihilism, it is of cardinal importance to rethink the value of truth, but equally of the value of morality, justice and the law. Throughout the book Nietzsche has Zarathustra constantly call into question the legitimacy of his own authority, thus keeping the question of his identity open. In *Ecce Homo* Nietzsche describes Zarathustra as a 'type' - he is the ideal of a spirit' who plays naively and impulsively with everything that has so far been called holy, good, divine and untouchable. Such a type will appear inhuman when it comes into touch with the 'earthly seriousness' that has presented itself so far in conventional morality. It was the Persian philosopher Zoroaster who has first introduced the struggle between good and evil into the workings of the cosmos and who first translated morality into metaphysics. As it was he who created the most fateful of errors, morality, it is he who must be first to recognise and overcome it. (*EH* Why I Am a Destiny).

On the many occasions in the notes from the period of composition of Zarathustra, Nietzsche portrays Zarathustra as a 'lawgiver' (*Gesetzgeber*) ranking him alongside figures like Jesus, Moses, Buddha and Muhammad. (*KSA* 9: p. 642). In Greek thought the lawgiver or legislator is the archetype of the political hero and the symbol of what uninhibited, if self-controlled greatness might achieve. He is the figure who suddenly appears to save the polis from disintegration and decay and to re-establish it on fresh foundation.

One of the best ways to illustrate how themes of judgement and violence operate in Nietzsche, and how he deals with problems like excess, is to look at the question of style. In a section from *the Gay Science* entitled 'One Thing is Necessary' Nietzsche begins: "To 'give style' to one's character - a great and rare art' (*GS* 290). In this particular context, style is not merely an aesthetic category, and to give 'style' to one's character is more than a question of aestheticism. In *The Case of Wagner* Nietzsche refers to style as a 'higher lawfulness' (*höhre Gesetzlichkeit, CW* 8). Although Nietzsche makes it clear that there is no 'right' style, no 'style in itself' (*EH,* III), the mere imposition of an ordering principle on one's chaos

of contradictory drives it not sufficient to regard it as the attribution of value. Instead, a 'higher lawfulness', and 'order of rank' is imposed from a certain perspective, which according to Nietzsche can be either life-enhancing or life-denying. The imposition of a decadent style ultimately leads to the dissolution of the whole and the impoverishment of life. By contrast, the grand stylist, the *master of self-legislation*, is able to control a 'multiplicity of drives' (*WP* 966) through the imposition of a life-enhancing order of rank upon these drives. It is still conceivable that punishment plays a role in this process, but not as part of the system of restorative justice, but in a role hitherto hardly acknowledged: as the manifestation of contempt. For is the refusal to be acknowledged, to be dismissed, that insult, not the ultimate punishment? Even if it is a 'punishment' beyond the logic of the free autonomous subject and his petty talk of good and evil? Consider the following fable by Aesop:

> A gnat alighted on a bull's horn. And it stayed for a long time. After a while it felt like moving on, and he asked the bull whether he would like it to go now. 'I did not notice when you came,' answered the bull, 'and I shall not notice if you go'.

I agree with Derrida that no political form can or should attempt to embody justice, justice should not be relegated as an abstract ideal on the outside of the public realm, but as the guiding principle, a meaning giving standard - albeit preliminary and up for revision - within it.

With this should come the acceptance that no concept of justice can, by definition, all-encompassing, and that some form of exclusion will always be the tragic price to pay to have a concept of justice as point of reference in the first place.

Endnotes

1. MacIntyre, A. *A Short History of Ethics*. London 1966, p.27.

2. Staten, H. *Wittgenstein and Derrida*. Lincoln: The University of Nebraska Press, 1984, p.34.

3. Derrida, J. 'Force of Law: The Mystical Foundations of Authority'. in Cornell, Rosenfeld and Carlson (eds.) *Deconstruction and the Possibility of Justice*. London and New York: Routledge, 1992.

4. Derrida, J. *ibid*, p.21.

5. Derrida, J. *ibid*, p.22.

6. Derrida, J. *Margins of Philosophy*, translated by A. Bass. Chicago: Chicago University Press, 1982.