

To Avenge, to Forgive or to Judge? Literary Variations

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The topics of justice, judges and trials have not ceased to inspire literature, theatre and cinema. Is it possible to put some order into such abundant material? Can the great literary archetypes help us to draw some dividing lines between the justice that one delivers to oneself and the one delivered by an institutional third party, between official justice, equity, forgiveness, and revenge?

This contribution aims to set a few milestones of this ambitious project, on the basis of a double distinction. The first is well known: it distinguishes between private justice and official justice (usually statist). The second is inspired by the philosophy of Paul Ricoeur who, reflecting on the meaning of the act of judging, assigns it a dual function that, for brevity's sake, we shall provisionally call 'distribution' [*répartition*] and 'participation' [*participation*]. However, this essay does not address the function of 'veridiction' exercised by the justice system (to establish the relevant facts of the case) prior to its function of 'jurisdiction' (i.e. to declare the law and the right, according to Paul Ricoeur's two axes), and as essential as the latter. Such a study would require work at least equivalent to the one now under way. It suffices to recall from the outset the conventional (and therefore constructed) nature of the judicial truth, as testified by the adage *res iudicata pro veritate habetur*.

With the help of the double-entry table we shall offer a grid of analysis that a quick glance through world literature will allow us to simultaneously illustrate, modify, and subvert. This is so because, while works of fiction provide some paradigmatic evidence of this or that element in the grid, they also offer an infinite gradation of situations which will soon complicate the always-too-reductionist theoretical distinctions.

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1. Paul Ricoeur and the two functions of the act of judging

In a text as short as it is deep, Paul Ricoeur inquires about the functions of the act of judging (Ricoeur 2000, 127-132). Based on a kind of phenomenology of judgment, he distinguishes a short-term end ‘in virtue of which judging signifies deciding, with an eye to ending uncertainty’, to which he contrasts a long-term end, ‘namely, the contribution of a judgment to public peace’ (Ricoeur 2000, 127). In the first sense, the *arrêt* puts an end to a virtually endless debate, by a decision that will become final after the period for appeals runs out and which law-enforcement agencies [*force publique*] will cooperate in executing. In so doing, the judge will have fulfilled the first function: he will have assigned the share belonging to each, in application of the old adage with which the Romans defined the role of law: *suum cuique tribuere* [to attribute to each his own]. The judge will have allocated the shares or remedied those improperly held by one or the other—in a nutshell: he will have decided between [*départagé*] the parties. The judge thus functions as an essential institution of society that John Rawls precisely describes as a vast system of distribution of shares. In this first sense, judging is therefore the act that separates, that decides between (in German, *Urteil*, judgment, is explicitly formed from *Teil*, which means part).

However, the act of judging is not exhausted by this dividing function. While it is true that, fundamentally, the judgment occurs against a background of social conflict and latent violence, it is also necessary that the legal process and the judgment that closes it pursue a broader function as an institutional alternative to violence, starting with the violence of the justice that an individual deals himself. On these conditions, continues Ricoeur, ‘it turns out that the horizon of the act of judging is finally something more than security—it is *social peace*’ (Ricoeur 2000, 131). Not just the provisional pacification that results from the arrangement imposed by the law of the strongest, but the harmony restored after the fact that a mutual recognition has taken place: regardless of the fate of their case, each of the protagonists ought to be able to admit that the judicial decision is not an act of violence, but of recognition of their respective points of view. At this stage, we move to a higher conception of society: no longer just a scheme of allocation of shares synonymous with distributive justice, but society understood as a scheme of cooperation: through distribution, but beyond it, through procedure, but beyond it, allow us to strive towards something like a ‘common good’, which precisely makes the social bond. A good, paradoxically, made out of eminently shareable [*partageable*] values. In this respect, the communitarian dimension has taken over from the procedural dimension, incapable by itself of warding off violence.

In sum, judicial *allocation* [*partage judiciaire*] is at one and the same time the apportioning of *parts* (which separate) and that which makes us *take part* [*prendre part*] in the same society, that is to say, that which brings us closer (Ricoeur 2000, 132). From apportionment springs an emergent property, more important than the share falling due to each: concord reestablished and cooperation renewed.

2.A double-entry table

We are now able to present a double-entry table of justice and its variants, by crossing a vertical axis that distinguishes between institutional justice and private justice, with a horizontal axis that takes into account the presence of one or both functions of the act of judging, including failure of one or the other. Eight cells or figures may thus be identified.

Figures 1 and 2 aim at the model of ‘ideal’ justice that combines fair distribution of shares with the function of integration or restoration of social peace. Aeschylus’ *The Eumenides* recounts the constitution of such a form of public justice that breaks away from the ancient law of retaliation. The author has not identified any literary example of an equivalent private model, but illustrations should be easy to find.

Figures 3 and 4, which aim at forms of justice, public and private, dealing exclusively with compensation for civil wrongs (short-term function), arise from a concern with mere balance, or with the status quo: the social order has been disturbed by a fault or damage that has to be repaired. Evil for evil, tit for tat—thus, the evil is ‘maintained’. Figure 4 (private revenge) proves to be particularly well documented in literature, with an important variant: the justice dealt to oneself, by suicide generally.

Figures 5 and 6 illustrate a model of forgiveness, which is more frequent on a private level than in the public domain. This model is characterized not by balance but by excess: excess of gift, relinquishment, and forgiveness. The logic of give and take is left behind and the aim is to procure the emergent property that is the restoration of the social bond.

In contrast, figures 7 and 8 describe in turn the absence of the two functions attached to the act of judging, marking the model of absence of justice: default or denial of justice. Here, literature proves to be particularly rich, both as regards public order with the portrayal of all kinds of partisan and venal judges, and in the private order with a crescendo of perversion culminating in the stories of perverse justice that abound in the writings of Marquis de Sade.

	INSTITUTIONAL JUSTICE	PRIVATE JUSTICE
ACCUMULATION OF BOTH FUNCTIONS: DISTRIBUTION/ PARTICIPATION	1. - AESCHYLUS, <i>The Eumenides</i>	2.
DISTRIBUTION ONLY	3. - FRANÇOIS MAURIAC, <i>Thérèse Desqueyroux</i> - NATHANIEL HAWTHORNE, <i>The Scarlet Letter</i>	4. Private Vengeance: - SHAKESPEARE - RACINE - VON KLEIST <u>Variant</u> : justice delivered to oneself - FRIEDRICH DÜRRENMATT, <i>A Dangerous Game</i> - AMÉLIE NOTHOMB, <i>Cosmétique de l'Ennemi</i> - DOSTOYEVSKY, <i>Crime and Punishment</i>
PARTICIPATION ONLY	5. The South African Truth and Reconciliation Commission (TRC)	6. Forgiveness: - HERMAN MELVILLE, <i>Billy Budd, Sailor</i> - LEON TOLSTOY, <i>Resurrection</i> - ERNST WIECHERT, <i>The Judge</i>
ABSENCE OF THE TWO FUNCTIONS	7. Partisan or venal judges who pervert justice: - SHAKESPEARE, <i>Measure for Measure</i> , <i>The Merchant of Venice</i> , <i>Richard II</i> - Von KLEIST, <i>The Broken Jug</i> - LA FONTAINE, <i>The Oyster and the Pleaders</i> , <i>The Cat, the Weasel and the Little Rabbit</i>	8. Oblivion: - MILAN KUNDERA, <i>The Joke</i> Immanent Justice: - KAFKA, <i>The Trial</i> Perverse Justice: - SADE, <i>Stories of Justine and Juliette</i>

3. Accumulation of both functions: The ideal model

In Aeschylus' *Eumenides*, a tragedy written in 460 BC, we can find one of the most paradigmatic examples of constitution of a court (the *Areopagus*) capable of overcoming the ancient law of retaliation during the case of Orestes the mother-slayer and of pronouncing a verdict of acquittal after exchange of rational arguments (Ost 2004, 91-151). In this case, the first function of justice (to settle a dispute by

allocating each their due) is both fulfilled and surpassed; this is because the judgment handed down is not confined to ‘putting things back to their original state’; rather, the verdict re-ties the civic bond and, so to speak, even contributes to reinforcing social peace. It is this last point, less well known but fundamental, that I would like to highlight. On the side of Orestes, the matter is clear: snatched from the avenging arm of the Erinyes, he is first welcomed as a suppliant by the city of Athens, then led to explain himself before the court, and finally reinstated into the community of the living even though he was threatened by frenzy and the underworld.

But reconciliation and reintegration were even more difficult to obtain on the side of the Erinyes, who saw themselves being robbed of one of their natural victims and ultimately humiliated by a verdict signalling the decline of their authority in Athens. Athena would have to show uncommon tenacity to calm down the ‘Furies of long memory’ and finally accomplish the spectacular reversal which would transform them into the kindly protectors of the city (*Eumenides*). All the categories of persuasion (*peitho*) would be covered in 140 verses and no less than four long speeches. The most urgent is first to restore the honour of the losing side: ‘you have not been beaten’¹ (795); the result of the casting of ballots in fact brings no dishonour on them. Then comes a humble supplication (‘do not [...] bring the bulk of your hatred down on it [this land]’, 800), matched with a promise (‘In complete honesty I promise you a place [...] to accept devotion offered by your citizens’, 804-807). But nothing is accomplished; the Erinyes resolutely resume their menacing wailings.

Athena then adopts a different approach: she pretends to understand their rage, which doubtless explains their greater wisdom. Never mind: she predicts unequalled prosperity for Athens and again invites the Erinyes to join in this good fortune: ‘[you] shall win from female and male processions more than all lands of men beside could ever give’ (856-857). Again—refusal. ‘I will not weary of telling you all the good things I offer’, responds Pallas Athena, determined to fight it out: ‘if you hold Persuasion has her sacred place of worship, in the sweet beguilement of my voice, then you might stay with us’ (885-887). This time, Athena seems to have scored a point; a rift opens in the determination of the Furies’ chorus: ‘what is the place you say is mine? Shall I have definite powers?’, they ask (892, 894). And finally this last question: ‘You guarantee such honor for the rest of time?’ (898).

Thus persuasion has done its work; the Erinyes are thenceforth prevailed upon to intone a hymn of goodwill instead of their dirge for the dead, a hymn without lyre and of dismal memory. All can now turn about: sowing, harvesting, prosperity are evoked in place of what was nothing but blood, leprosy and infection during the earlier 3600 verses. In the mouth of those henceforth called the ‘Eumenides’, favourable words, benevolent oracles and good graces have taken the place of previously unsparing curses: ‘Let there not be civil strife [...] Let them render grace for grace’ (984).²

1 Translations and line numbers refer to Grene & Lattimore (eds) 1953 [Editors’ note].

2 Translation slightly modified [Editors’ note].

4. To apportion, to compensate or to retaliate: the model of the status quo

Is justice at the height of its mission when limited to ‘allocating to each their own’? Many authors have replied negatively to this question. For, in restricting itself to restoring the social balance, this kind of justice does not look into the motivation of the main characters, nor does it question the inherent justice of the order it restores. Here it would be necessary to reflect on the fertile distinction between *litigation* and *differend* presented in this regard by Jean-François Lyotard. While *litigation* is subject to a code of principles and values common to the two parties, so that it normally leads to compensation of the *litigant* who has suffered *damage* (this itself being assessable according to accepted scales), a *differend*, on the other hand, remains intractable: it is not subsumed under a common rule, so that the *wrong* [*tort*] suffered by the *victim* remains uncompensated, and often even inexpressible (Lyotard 1983).

An author in the shape of François Mauriac has taken this critique to a point of radicality rarely equalled. An attentive observer of the justice system (in either civil cases, criminal trials, or even political ones, notably post-war lustration, or concerning national liberation movements), Mauriac is persuaded that human justice is ‘the most horrible thing that there is in the world’ when not inspired by compassion (Mauriac 2010, 894).

Justice of this kind is nothing but another manifestation of the supreme law of ‘mutual cannibalism’ that rules human history (Mauriac is known in this respect to have shared Pascal’s tragic conception of human nature, being convinced that evil is naturally an integral part of man, so that history is but the infinite repetition of Cain’s crime).

More concretely, that kind of justice appeared to him as impersonal, inhuman, and mechanical. It stigmatises, labels, reifies, and diminishes precisely on account that it loathes putting itself in the shoes of the accused and therefore proves all the more incapable of forgiving him. Any such justice is nothing after all but reproduction of the established order (whether it is the privileges of the wealthy within the system of private property, or the hegemony of the strongest in the public sphere): in compensating the imbalance caused to the established order, this kind of justice reinforces and legitimises that order indefinitely. In confining itself within an almost arithmetic logic of equivalence of faults, it is but the official and institutional version of private vengeance and lynching (cf. Michel 2010, 37 and ff.).

Far from assuring the conditions of mutual recognition of the victim and the guilty (actual or potential), the real function of this kind of legalistic justice is to exclude those individuals deemed not to be integrated in the social order (this analysis is all the more significant considering that it comes from an author hardly suspected of militant leftism). Mauriac qualifies this sham justice as the ‘justice of Pilate’—the conscientious agent of the state who has been washing his hands for two thousand years; a justice which merely gives the appearance of *impartiality*.

Mauriac’s novel *Thérèse Desqueyroux* (1927) is without a doubt the most illustrative of this critique of statist ‘Pilate’s justice’. While giving the appearance of

a just decision, this is limited in fact to leaving the case to private family revenge, which places this work at the hinge between Figures 3 and 4. Thérèse, a provincial bourgeois who is stifled in the cloying atmosphere of her in-laws, tries to poison her husband; the crime fails and a judicial investigation opens. To preserve the honour of the family, the husband, supported by his own, withdraws his complaint in order to deceive the justice system, so that after a sloppy investigation, a decision to dismiss the proceedings is issued. That way Thérèse is given over to her own, to the vengeance of her own—a dish best served cold. Long years of condemnation to silence await her, confined as she is now within the prison of an act that received neither recognition nor official sanction. Everything happens, in fact, at the end of this decision to dismiss, as if nothing had happened, not even the intervention of the justice system. But what this denial of justice ultimately reveals is the objective complicity of this system with an order of families, which Mauriac's entire work depicts in its violent inhumanity.

The same lesson emerges from *The Scarlet Letter* (1850), the great novel by the American writer Nathaniel Hawthorne. The scarlet letter is the sign of infamy that from now on adorns the bodice of Esther, a proud young woman guilty of adultery in a New World Puritan community in the seventeenth century. Ostracized by the community, Esther bears her ordeal with dignity in the company of her small daughter, the child of sin. The deepest mystery reigns, however, as to the identity of the father. We find out gradually that he is the young pastor of the community, an inspired preacher whom everybody takes for a saint. Far from assuring him impunity, the anonymity behind which he is hiding is for him a far worse torture than the one Esther is enduring. Remorse is eating him away inside more cruelly even than the external stigma of his companion. This is especially so—the terrible truth is revealed little by little—since the unfortunate pastor lives in company of an old doctor (none other than Esther's ex-husband), who has pierced through his secret and submits the pastor to a daily vengeance that will eventually consume him. Here again, it would undoubtedly have been better to endure public sanction and the atonement of guilt exposed.

The transition thus occurs naturally to figure 4, the realm of private justice limited to the function of compensation. For thousands of years humanity has settled its conflicts by means of clan, family or private vengeance. Still in classical Greece, one and the same term, *dikē*, designates both vengeance and justice. Often channelled and moderated by a set of customary rules, vengeance does not appear indeed as irrational: striking blow for blow—with the same intensity and with the same forms—it is in its own way part of the contractual logic of give and take, and it reproduces the great human law of reciprocity. Moreover, in traditional and closed societies bound together by inflexible honour codes, vengeance appears even as a sacred duty to restore violated honour. The problem, to be sure, is that absent the intervention of the institutional third party it is difficult to ensure respect for its equilibriums, so that one can imagine endless discussions about the reality of the fault and the extent of the damage. It can be maintained, then, that, from the

fact of being kept alive from generation to generation, the spirit of revenge ends up producing a hatred that feeds on itself, and generates a mirroring violence that nothing can stop.

Likewise, the topic of revenge traverses world literature with extraordinary recurrence. Many works by Shakespeare, Racine and von Kleist there found the best of their inspiration. Space is here too short to discuss any of these texts. It will suffice here to draw attention to an interesting variant of this fourth figure: the kind of justice dispensed to oneself, usually by suicide. As if, referred to the court of his own conscience, the individual sought neither alibi nor mitigating circumstances.

Friedrich Dürrenmatt's *A Dangerous Game* [*Die Panne*] will illustrate this point (but many other works could be cited, such as Amélie Nothomb's *Cosmétique de l'Ennemi*). During one of his trips in the provinces a sales representative, unable to find a place in a hotel, is hosted by a retired judge. The latter invites him to share a dinner he organizes monthly with a prosecutor and a lawyer, both retired like him. During the meal they improvise a game to which the three friends seem well accustomed: a fictitious trial in which the guest is invited to take part. What would he have to fear from the rest: isn't he just an ordinary salesman? However, in the course of a skilfully conducted cross-examination it appears that the man may well have been the cause—indirect but probable—of a heart attack that killed his boss. Lawyer and prosecutor then engage in a passionate battle that concludes with the death sentence pronounced by the judge. The game ends in a good general mood, with the three agents of justice pleased at having been able to engage once again in their favourite activity. But when they knock at the door of the salesman's room in order to show him the written record of his conviction, they will find him hanged... Apparently the man's conscience turned out to be more inflexible than the small company of legal professionals.

It would also be necessary to re-read Dostoyevsky's *Crime and Punishment* in this light: what pushes Raskolnikov to confess his crime if not the need to confess, and by the same token, by the desire to pay his debt and thereby reintegrate in the society of men?

5. Deciding to take part. Forgiveness, the model of an emerging property

Sometimes reality resembles fiction: what better example, in order to illustrate a statist system of justice that rejects being constrained by the classical role of adjudication-retribution and rises straight away to forgiveness—token of reconciliation and concord—than the famous Commission for Truth and Reconciliation set up in South Africa by Nelson Mandela and Archbishop Desmond Tutu in the aftermath of the apartheid system? Such a commission, which aims to combine full confessions, civil reparations, forgiveness asked from, and granted by, the victims, and penal amnesty, can be analysed at the same time as a gesture of memory and a stake in the future. The forgiveness that is accomplished does not hide any facts and assures full recognition

of the victim, but in making credible the perspective of an alternative future without resentment it enables protagonists to break away from a destiny of disaster. After the passage and by means of this experience, the importance of *narrative* in the workings of justice must be underlined: the issue is one of constructing a narrative which, in the absence of an absolutely exact truth of the facts, (Who would tell all the truth? We know, on the other hand, that the judicial truth does not at all exhaust the factual truths) will make sense for the protagonists and be accepted by the community. The issue is one of ‘putting the right [*justes*] words on facts’ and also of ‘declaring’ [*dire*] the responsibility or the guilt of those concerned.

Let us recognize nonetheless that forgiveness is more often the doing of individuals and private justice. Often, moreover, it issues from the failures of public justice (when the facts are legally prescribed by the terms of the law, for example, or when, in the gravest cases of mass-crimes, real reparation is simply impossible), or after its disqualification. In the writings of an author as radically utopian as Leon Tolstoy, forgiveness is an evangelical requirement that is the only acceptable reaction in the face of evil, since it is for God alone to judge, and every human system that were to try it would be, by nature, corrupting and itself criminogenic (this is the entire theme of *Resurrection*).

The German writer Ernst Wiechert, in a novel entitled *The Judge* [*Der Richter*], also appeals to forgiveness as the only possible alternative to miscarriage of justice. In Nazi Germany, on the eve of the War, an investigative judge discovers that the guilty party in the political assassination he is investigating is none other than his own son; this knowledge soon begins to confuse him, and, assuming his role both as father and judge, he persuades his son (named—is it a coincidence?—Christian) to turn himself in. But in a delinquent Germany, where evil has taken the place of good, there is no one to prosecute him—he is rather congratulated on having executed a political opponent. It remains for the father to appear with Christian before the ‘highest court’, the victim’s parents. Christian will ultimately be forgiven by them; as for the judge, he sends his resignation letter to his superiors the next morning; the final lines are thus conceived: ‘Where there is no justice, there is no place for law, or for the judge’ (Wiechert 1962).³

We shall find another singular example of the combination of private forgiveness and failure of official justice in *Billy Budd, Sailor* by Herman Melville. This short sea novel suggests the idea of justice as a necessary evil in a world marked by the universal guilt of original sin. Recruited by force on to a British warship during the time of the Directory and in the aftermath of a wave of mutinies that left their mark, Billy Budd is wrongly accused of mutiny by the master-at-arms on board. Unable to defend himself verbally, the sailor strikes a blow that proves fatal to the officer who accuses him. He is judged straight away by a court martial presided over by Captain Vere; all are convinced of the sailor’s innocence, but his death sentence is nevertheless decided because there is no point in showing the crew the least sign

³ Editors’ translation.

of weakness in such times of war and in the aftermath of a period of mutinies. At daybreak, Billy is hanged by the ship's yardarm.

At first, we can read this tale as a fierce critique of summary military justice that knowingly condemns an innocent man to death for the sake of martial law and military discipline. But Melville invites us to go beyond this first interpretation, and invites us to make a Christian-like reading of the sacrifice of the son (Billy) by the father (Vere) in expiation for the fault of the original sin that weighs on all, the innocent included. How otherwise to understand the final words of Billy Budd 'God bless Captain Vere!' and Melville adds this observation: while Billy rose, 'the East was shot thro' with a soft glory as of the fleece of the Lamb of God seen in mystical vision'. Everything happens as if, in this atmosphere of mercy concerning the common original sin, Billy was brought to forgive the justice of men, as if as a Christlike figure he assured redemption of the universal guilt of judges.

6. Neither of the two functions. Denial of justice or flawed model

The extreme alternative to justice is resolution of conflict that fulfils neither of the two functions of compensation and reintegration. This brings us to the paroxysm of perversion of the institution; touching the limits of dehumanization.

When such 'justice' is delivered by sworn judges, within the legal forms and the legal framework, the corruption of the institution is at its peak. Literature, which does not shrink from reversals by going to the limit, provides many examples. Shakespeare in particular draws an impressive gallery of portraits of partial and biased judges, personally interested in the object of the trial, often because they are themselves the culprits that they pretend to prosecute. An example of this is Richard II, in the eponymous play, who arbitrates (before putting an end to it arbitrarily) a judicial duel in the form of an ordeal between two of his vassals who accuse each other of a murder of which the real culprit is the King himself, as no one is unaware.

We could also mention the misnamed Angelo, who condemns Claudio to death on the grounds of fornication in *Measure for Measure*, while he himself proposes the condemned man's salvation to the sister, a young novice nun, whose virtue he aims to take as well.

We could also recall the famous Portia, who in *The Merchant of Venice* inflicts an impressive lesson of equity on the ill-fated Shylock, the local Jewish usurer, thus contributing to his unjust condemnation, in which Portia herself has a close interest.

The topic of the guilty judge conducting his own trial also constitutes the subject, this time in a comic mode, of von Kleist's *The Broken Jug* [*Der Zerbrochne Krug*].

And how can we not mention the multiple venal judges who haunt Jean de la Fontaine's *Fables*? Thus Justice Nincompoop in his *The Oyster and the Pleaders* [*L'huitre et les Plaideurs*] who, having swallowed the oyster, leaves each of them no more than a shell—'without costs'—he remarks. Or again Judge Rascal (*The Cat, the Weasel and the Little Rabbit*) [*Le Chat, la Belette et le Petit Lapin*] who caused the

litigants to be of one mind by devouring one and the other, and by appropriating for himself, 'without any other form of trial', the burrow over which they quarreled.

The descent to the underworld continues when literature addresses the absence of the two functions within the framework of private justice, completely de-institutionalised. Actually, the concept and the very term 'justice' are only used ironically in this context, as if to signal a radical flaw. A full inventory of the various forms of such anti-justice remains to be made. Here it suffices to provide three manifestations.

Admittedly, the first might seem rather trivial. It is inscribed within the simple register of *oblivion* and renunciation, as if a sleepy weariness or powerlessness had taken the place of justice. This is perhaps the key to understanding Milan Kundera's peculiar novel *The Joke* [Žert], in which ultimately the terrible abuses of the communist regime in Eastern Europe find no effective verbalization, or process capable of repairing their ravages. Only oblivion, as a lethal veil, covers the field of ruins. But we must be wary of oblivion when it takes the form of repression, which leads to brutal and devastating 'retaliation by the repressed'. A 'past that does not pass' is the most fertile ground for the violence of tomorrow.

Amnesia deceives justice in a sense even more elemental than those suggested by Ricoeur's distinction: assuring no recognition to the facts, it translates a denial of truth (or even simply of reality) into a denial of justice. In annihilating the past, in reducing memory to nothing, amnesia definitely rules out the possibility that justice will be done one day.

Franz Kafka's *The Trial* [Der Prozess] leads us to the edge of another abyss. What do those absurd and grotesque snatches reveal of the judicial process which Joseph K. confronts during the twelve months that the preliminary investigation of his case lasts? It is not so much the malfunctioning of the justice system (Kafka is well beyond that conventional criticism) as the truly terrifying manifestation of an 'immanent justice' anchored within our most archaic fears. This immanent justice reflects what may be called a 'law of necessity' which strikes without motive the innocent and the guilty alike, and is inscribed in a pre-logical mentality where fault is indistinguishable from error, madness, illness, and misfortune. According to one of the meanings in the German language, the process (*Das Prozess*) is to be comprehended as a morbid *process*, imprescriptible and without remission, rather than as an institutional judicial procedure. What it accomplishes is a *metamorphosis* (like the novel of the same title) that is as physical as it is spiritual: the progressive transformation of the innocent into the guilty, just as Gregor wakes up one morning inside the shell of a cockroach. Here, the fault-stain, as the model of the ancient Greek *hamartia*, is at once hereditary (it can be passed on from generation to generation) and contagious (it strikes without cause by mere proximity). This form of justice, which Kafka painfully confronted all his life as testified in his *Diaries*, is a cruel lottery which distributes 1001 kinds of misfortune as a prize.

After oblivion and immanent justice, we can still move down a notch and evoke the *perverse justice* that aims at procuring evil for evil's sake, such as described

in certain demonic pages of Sade, notably in the *Stories* of Justine and Juliette. The big and small masters that the two sisters meet, in the convents, in the factories, in the salons and boudoirs, do not cease to issue over-precise regulations which they know are impossible to obey. Hence they derive pleasure from their wholly arbitrary application according to their whims, increasing their unwarranted privileges as much as their vexatious punishments. In this context, the simulacra of justice in which Sadean doers-of-justice engage are the final culmination of a perverse law they have succeeded in replacing for the common law of the city. As in Sodom and Gomorrah, the currency (symbolic currency, law, language, economy) that is exchanged in the Sadean universe is stamped by the seal, purely solipsistic, of ruthless tyrants.

The path that we have just traced, however stimulating, surely remains largely incomplete: only certain paths have been tracked of the immense literary continent, with regard to an object itself so multifaceted. In the end, its main utility, in the manner of a 'Mendeleev's table', resides in its heuristic function: the numerous empty cells that it contains (for there can be no doubt that the eight figures distinguished do not at all exhaust the complexity of the act of judging) appeal to the need for continuing the search. Not so much with the purpose of accumulating species in the manner of a philatelist or entomologist, as for deepening our understanding of the human; since the times of Cain and Abel called to choose between vengeance, judgment, or forgiveness.

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