

GREECE: AESCHYLUS

Does democracy ensure the triumph of right over might as Aeschylus maintains in *The Eumenides*?



Viewpoint: Yes. In *The Eumenides*, Aeschylus presents the foundations of a concept of justice based on law and procedure.

Viewpoint: No. The institution of law and procedure is merely the formalization of power.

Nothing seems more opposed to our civilized sense of Justice than the following summary of the law(lessness) of the jungle: *Might makes Right*. Throughout history, philosophers have debated about the possibility for human institutions to open a space where the weak would be protected from the oppression of the strong. Does force prevail in the human world as it permeates all of nature? Can we ever be equal towards the law, in spite of our uneven actual strengths? Or can the definition and enforcement of rights successfully keep force at bay? And if we do believe that Justice is indeed possible, what is the best way to administer it? Is retaliation (an-eye-for-an-eye) a valid principle of equity, or is it a denial of justice? How should an institution be structured in order to make justice real?

Aeschylus' tragedy *The Eumenides* (performed in 458 B.C.E.) provides a remarkably rich kaleidoscope where one can catch a glimpse of the main arguments developed on these issues over the last four hundred years of Western philosophy. Set against this background, the play seems to stage both the *necessity* and the *impossibility* of providing Justice through the mediation of democratic institutions.

On the one hand, *The Eumenides* appears to be a celebration of Athenian democracy: after generations of murders and revenge, the play ends with the pacifying foundation of a tribunal, the Areopagus, which was a central feature of the city's legislative and political life. The spectators of 458 B.C.E. were therefore shown the origins of the human institution which was making Justice real in their world. Moreover, the plot puts a spectacular emphasis on some procedures (open debate of ideas, casting of votes equal in value in spite of the inequality of the voters) which confirm and strengthen the democratic principles on which the city's constitution was built. On the face of it, the play ends on a triumph of Right and Reason over Might and Fury.

At the same time, however, Aeschylus made several narrative and poetic choices, which reveal the highly problematic nature of these democratic institutions. Instead of showing the voting process and the adversarial legal system under their most convincing light, he seems to have undermined the foundation on which a tribunal like the Areopagus can claim to stand: in a subtle and roundabout way which anticipates much of what has been recently (re)asserted by postmodern philosophers, Aeschylus depicts justice more as a veil for power than as a measure of right. Rhetoric, arbitrariness, and bad faith play a bigger role in the solution of the conflict than rational arguments and honesty: under its self-congratulating surface, the ending's "triumph" appears rather as a fragile victory in a hard-fought power struggle.

Can Justice be grounded on anything else than Might? Aeschylus raises the question without solving it. Yet as he explores it, he maps a territory on which later philosophers will endlessly tread.

—Yves Citton



Viewpoint:
Yes. In *The Eumenides*, Aeschylus presents the foundations of a concept of justice based on law and procedure.

As the overall plot of Aeschylus' trilogy clearly suggests, questions of Justice arise only after one has overcome the mechanical and self-destructing logic of retaliation, displayed in *Agamemnon* and *The Libation-Bearers*, the first and the second parts of the *Oresteia*. In the first tragedy, King Agamemnon, who led the Greeks to their victory against the Trojans, comes back home to his palace only to be slain by his wife, Clytaemnestra, and her lover, Aegisthus. Clytaemnestra cannot forgive Agamemnon for the murder of their daughter Iphigenia, sacrificed to bring good winds to the Greek fleet on its way to war while Aegisthus pursues a family vendetta which goes back to crimes committed between their fathers. The endless cycle of vengeance continues into the next generation when, in the second play, Agamemnon's son, Orestes, returns from exile to exact revenge on his mother and her accomplice. So far, justice is conceived merely under its primitive form of an eye for an eye: the victim's blood can only be expiated by the perpetrator's murder, whose relatives then call for more blood, with the extinction of each clan as the only end in sight.

The third play of the trilogy, *The Eumenides*, stages a successful attempt to break this circle, and sets in place a new approach to justice. During its first half, Orestes is chased by the Erinyes (also known as the Furies), bloodthirsty deities in charge of avenging Clytaemnestra's murder. A personification of retaliation, the Erinyes look no further than to Orestes' objective deeds: thou killed (your mother), therefore thou shall be killed. After having placed himself under the protection of Apollo and Athena, Orestes arrives in Athens, where his "case" will give rise to the constitution of a tribunal, the Areopagus. In accepting this "institutionalisation," the furious and savage Erinyes will be eventually transmuted into the gentle and civilized Eumenides.

What is this new conception of justice set up in the last scenes of the *Oresteia*? As the first exchange between Orestes and Athena clearly shows, we turn away from the mechanical application of a simple rule (retaliation, blood for

blood), enforced by the victim's clan. Instead, we now face a question identified as too complex and inextricable to be resolved according to pre-existing rules. When Athena is called to judge whether Orestes acted righteously or not (v.468), her first reaction is to suspend her personal judgment on the case and use instead her discrimination to institute a collective body, a tribunal made up of Athenian citizens in charge of seeking the truth and of avoiding injustice (v.484). We therefore trade the lethal fascination of dual relations (between the perpetrator and the victim, caught in endless reversals) for a triadic structure mediating the conflictual claims of the accuser (the Erinyes) and the defendant (Orestes, and his advocate-inspirer Apollo) with the addition of a third, exterior, and superior party (Athena and the Areopagus).

We should briefly pause on the modern echoes of this constitutional moment depicted in the play. In the move from Argos (the scene of the crimes) to Athens (the place of judgment), one can already foresee David Hume's and Adam Smith's insistence on approaching justice as a matter of *distance*: if my sense of what is right depends on a moral sentiment, as such authors claim, my judgment will constantly be swayed by the propensity we all have to prefer the near over the remote (my son over my cousin, my relative over a stranger, my neighbor over a person living on another continent). In order to be just, and to allow one's moral sense to express itself without distortion, one must therefore take the point of view of an "impartial spectator"—a point of view embodied, in the play, by the Athenian citizens (who represented on stage the actual spectators sitting in the theater), or, in today's trials, by a jury of peers.

In the conflicting parties agreeing to recognize Athena as their superior arbiter, one can already recognize Thomas Hobbes' theoretical gesture of founding the possibility of Justice on an original *contract*: I renounce my universal (natural) right to do whatever I see fit my purpose if you vow to do the same and agree with me to transfer our faculty of judgment to a third party (the Sovereign, the State) in charge of propounding and enforcing laws. We will then call "just" the actions that respect these laws and "unjust" those which transgress them. The benefits of such an agreement are not only peace, the possibility of economic cooperation and development, but also Justice itself, conceived as a political equalization of our unequal natural

endowments: in Jean-Jacques Rousseau's words, the social contract "substitutes for such physical inequality as nature may have set up between men, an equality that is moral and legitimate, [so] that men, who may be unequal in strength or intelligence, become every one equal by convention and legal right" (*The Social Contract*, Book I, Chapter 9).

With this new structure come several basic rules of conduct, starting with one recently presented by Stuart Hampshire as the only remaining universal definition of justice still acceptable in our multicultural societies: "Hear the other party!" To be just in one's deeds and not only in one's words, as Athena tells the Erinyes, one must hear both sides when they disagree (v.428). Justice appears therefore to consist less in a substantial definition of what is fair than in a *procedure*: the result of the process will be deemed "just" or "fair," independently of its concrete outcome, as long as the formal rules of procedure specified to adjudicate the matter have been respected.

Such a formalist approach is deeply ingrained in all modern conceptions of justice. It seems obvious to all of us that, in order for an arbitration between conflictual claims to be receivable as just, one expects formal, written laws and guidelines to spell out beforehand the ways in which the investigation and the sentence will be carried out. The discretionary power of the judge, entrusted to see the singular substance of each case beyond the formal category of the law, is only acceptable within the narrow margins left by the tightly knit fabric of a code, jurisprudence, and over-layering of precedents. The original position of Apollo (before the translocation to Athens), exonerating Orestes without being accountable for his decision, seems to us today as incompatible with justice—in all its arbitrariness and in its exposure to the swayings of self-interest and irrational inclinations—as that of the Erinyes, in their mechanical application of a blind and inflexible law. Justice has to be located somewhere in the middle: constrained in its application by a framework of formally spelled-out procedures, while remaining adaptable to the specificity of each singular case—in a constant tension where Aristotle has located the essence of "Equity," defined as a correction of the law where it is defective owing to its necessary universality.

On top of the inherent instability of a "just" (formal) law in constant need of "adjustments" in the name of equity, the increasingly multicultural nature of our societies brings another set of fundamental problems. If Hampshire considers the "Hear the other side" principle as the only satisfactory foundation to postmodern justice, it is because any substantial definition of the just



ATHENA IS CALLED TO JUDGE

The matter is too great, if any mortal thinks to pass judgment on it; [470] no, it is not lawful even for me to decide on cases of murder that is followed by the quick anger of the Furies, especially since you, by rites fully performed, have come a pure and harmless suppliant to my house; and so I respect you, since you do not bring harm to my city. [475] Yet these women have an office that does not permit them to be dismissed lightly; and if they fail to win their cause, the venom from their resentment will fall upon the ground, an intolerable, perpetual plague afterwards in the land.

So stands the case: [480] either course—to let them stay, to drive them out—brings disaster and perplexity to me. But since this matter has fallen here, I will select judges of homicide bound by oath, and I will establish this tribunal for all time. Summon your witnesses and proofs, [485] sworn evidence to support your case; and I will return when I have chosen the best of my citizens, for them to decide this matter truly, after they take an oath that they will pronounce no judgment contrary to justice.

Source: Aeschylus, *Aeschylus*, volume 2: *Eumenides*, translated by Herbert Weir Smyth (Cambridge, Mass.: Harvard University Press, 1926).

relies on basic assumptions about values which often differ from one culture to the next: within many communities, today as well as in the past, it is "unjust" not to acknowledge the gifts of God and not to thank Him for them; within others, it is unjust to slaughter animals for the mere pleasure of our human palates. How is one to define "The Just" in a society where all these contradictory systems of belief must somehow coexist in peace? It is no coincidence if, over the last thirty years, theories of justice have tended to give an increasing weight to procedural approaches, since it allows them to specify what is Right without having to define what is Good. Plus, Hampshire adds, it seems that all societies do integrate, at one level or another, basic institutions allowing for conflicting claims to be expressed and taken into consideration—which gives to the "Hear the other side" principle a *de facto* universal value.

It appears therefore that the grounding of the notion of Right in our societies rests on the process staged by Aeschylus in *The Eumenides*. In conformity with Athena's opening statements, our basic collective position is to say that we do not know beforehand who is right and who is wrong. Some social groups call for harsh punish-

ments, for mandatory sentences, for the death penalty, and for retaliatory military expeditions; others believe that people trapped in poverty deserve help and education rather than prison sentences and bombs. Like Athena, our solution consists in suspending our judgment and in delegating our power to judge the outcome of a debate. The “good” way to deal with urban crime or foreign aggressions is trusted to come out of the “right” procedure: democracy. Let us hear each party’s arguments in their conflictual claims, and let us allow the rule of sheer numbers to settle the issue. It is striking that, in the play, Athena’s vote is only one among many, with the sole marginal privilege of being a tie-breaker: in a spectacular homage to the egalitarian principle of the Athenian democracy, the goddess Athena puts herself on par with mere humans. This rule of sheer numbers can seem counterintuitive: a god knows more and better than a human being, a philosopher knows more and better than a shoemaker, and it would make sense to give their voice more power in the decision-making process. The play seems to overcome such objections, and presents directly the “right” procedure as that where the best solution will emerge from a mechanism which equalizes the differences in power (physical strength, skills, knowledge, and wisdom).

We seem thus projected into the (neo)Kantian universe of our early twenty-first century Western democracies. Laws and political institutions must consider all human beings as formally equal. Their differences, in terms of power and capacities, can have bearings on their status within the economic sphere, but are denied to have any consequence in the abstract sphere of their political and legal rights: everybody is allowed to receive a fair trial, to vote, to express her opinions, and to meet with others and publicize her views. For most of us, justice in a society consists precisely in the fact that this sphere of legal and political Rights is protected from the pressures of (physical, financial, and economic) Might: if you can kill me, ruin me, fire me, jail me because I do not think, speak or vote in a manner that pleases you, my “basic human rights” are deemed violated. The too many countries in which such abuses of power commonly take place are reputed not to be democratic: they are not “just” societies because they fail to open this protected space of debate which is the essence of our “public sphere.”

If Athena may appear as the inventor of modern justice, it is therefore less because she tames the savage beasts of blind retaliation than because she manages to stage their bloodthirsty doctrine as one voice among others, within a rational debate on crimes and punishments. Through the Kantian project of Enlightenment

(give every human being the freedom to exchange ideas, and, as a consequence, mankind will collectively rise towards higher levels of truth and happiness), we reach the model of open democracy articulated by Jürgen Habermas, centered on the public sphere conceived as a space where a rational debate on collective means and ends is trusted to guide our socio-political development. Athena here represents this form of Reason conceived as a process rather than as a fixed faculty: “rational” whatever decision may come out of a debate where everybody respects the basic rules of polite and serious discussions (let the other party speak, pay full attention to its views, allow yourself to modify your opinion in light of convincing arguments, etc.). In this sense, it is precisely because human beings are *not* fully rational that we need a democratic debate: rationality is not located in any of the participants, nor anywhere else outside of the compromises reached through the confrontation of their imperfect reasons.

This debate is analytical in nature: Orestes must explain his motivations; the Erinyes must spell out the consequences of letting such criminals go free; and Apollo must build theories about the relative importance of husbands and wives, mothers and fathers. The adversarial procedure allows for the uncovering of logical inconsistencies in each party’s discourse: the Erinyes are quick to point out that Zeus, whom Apollo invoked to vindicate fathers’ rights, bears little authority on the issue, since he chained and suppressed his own father Cronos (v.641). Yet this process of counter-argumentation is precisely what allows for collective rationality to grow and improve. Had Athena (or Apollo, or any other character) known beforehand how to solve the issue between Orestes and the Erinyes, the play would have had nothing to represent. The debate generated by Athena produced a solution which nobody could provide outside of it: it produced a rationality which did not pre-exist.

One might think that the basic issue of justice has not yet been addressed: is it “just” that Orestes be allowed to walk free after having killed his own mother? We can argue *ad infinitum* about his claim to have been purified by slaughtering a few animals as expiatory victims, or about the type of punishment that would “compensate” for the murder of a mother, or about the punishment deserved by Clytemnestra herself, or about Apollo’s responsibility in the whole course of events—and countless other substantial issues of the same type. The function of the trial is precisely to close such an endless discussion (and allow us to move forward, and to free the living from the weight of the dead). What makes the sentence “just” is the procedural fact that Orestes’ and the Erinyes’ “rights” dur-

ing the trial were respected by the due process it followed.

Now, if one were to ask what guarantees that these procedures themselves were “just” or “fair,” one would have to return to the notion of contract, seen above through its Hobbesian echo: both Orestes and the Erinyes formally agree to accept Athena’s decision (whatever it would be). The ultimate foundation for the rights enjoyed by individuals consists in contracts to which they have willingly subscribed: only on this basis can institutions of justice be constructed. Contracts always involve risks and trade-offs (the Erinyes may have been better off, had they refused Athena’s arbitration), but the benefits to be expected from the institutions of justice greatly outweigh these risks, and fully justify the trust put into them.

In summary, the second half of *The Eumenides* remarkably illustrates what has come to be accepted as the essence of justice in our modern Western democracies. To keep at bay both the self-destructive logic of mechanic retaliation and the oppressive logic of force, justice requires the constitution of a space devoted to adversarial and rational debates, where reason is reputed to come out of numbers (through democratic voting procedures). This artificial space, resulting from a human process of “institution” depicted in the play, goes *against* the laws of nature, insofar as it overcomes both the “law of the jungle” and the natural drives of our (vengeful) passions. This space is necessary and sufficient to endow each individual with a number of “rights,” independently from that individual’s actual strengths and weaknesses. Athena’s gesture illustrates the only way we humans can build a social space free from the two symmetrical evils she evokes in establishing the Areopagus, anarchy and tyranny (v.696). Twenty-five centuries later, this assertion of Rights against the pressure of Might remains the best way for us to work towards a more just world.

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Viewpoint:

No. The institution of law and procedure is merely the formalization of power.

Aeschylus’ *Eumenides* does indeed offer a remarkable model to illustrate the notion of justice in our Western tradition, but far from providing us with its foundations, it radically undermines its credibility. Under the surface of a

patriotic celebration of Athens’ democratic institutions, the play invites us to reflect about the trappings of judiciary procedures and, ultimately about the fragility of democracy. As much as it anticipates certain central tenets of modern liberalism, the tragedy is to be located in a long and strong tradition which—from Carneades to Blaise Pascal, Benedict de Spinoza, Karl Marx, Friedrich Nietzsche, and more recently Michel Foucault, Gilles Deleuze or Alain Badiou—denounces the delusions of a faith in “justice” and of any approach based on the notion of “rights.” Let us take the main articulations of the “liberal” reading and see how the play systematically undermines the principles it appears to establish.

The institution of a space of rights protected from the pressures of might. On the face of it, with the constitution of the tribunal of the Areopagus, Athena neutralizes both the state of war originally prevailing between Orestes and the Erinyes, and the unequal relation of power tilted in favor of a troop of goddesses against a mere human. The question is: what made this neutralization possible? The answer is clear: it is only a particular *relation of power* which has allowed for this space of “right” to be implemented. It is because Orestes secured the support of a god, Apollo, that he found himself in a position to resist the goddesses. The Areopagus is not a place where the state of war is suspended or neutralized: the ongoing rivalry between the old earthly deities represented by the Erinyes and the new Olympian gods permeates the proceedings through and through. Athena and her Athenians, the supposedly “third” party in charge of being the “impartial spectator” ideally positioned to arbitrate the conflict in a fair (since distant and disinterested) manner, are in fact bound to side with the goddess’ fellow-Olympians. The fact that the tribunal’s location and name refer to Ares, the god of war, is no coincidence: judiciary and political proceedings are merely “war by other means.”

Under the surface of *legal* arguments about the murder of Clytaemnestra, the background of *political* power-struggles infiltrates virtually every turn of the plot. Behind countless pompous evocations of Justice and Righteousness, Aeschylus insists on revealing the complex negotiations, trade-offs, and dirty deals which—much more than issues of guilt or fairness—will settle the outcome of the trial. Athena’s first words on stage (v.397) tell us that she was just given new land around Troy by the leaders of the victorious Greek army (led by Agamemnon)—a way for Aeschylus to justify Athens’ claims on its colony of Sigeum, which will start paying tributes to the metropolis eight years after the performance of the play. Orestes’ last words echo the goddess’

opening statements, since he leaves the stage promising an ever-lasting alliance between Argos and Athens (vv.762–774). While the jurors are casting their votes, Apollo and the Erinyes exchange threats of reprisals against the city, in case the decision would stand with the other party (vv.711–730). As for the whole last quarter of the play (vv.778–1047), it is entirely devoted to buying off the Erinyes' alliance: for the price of a temple and a few processions, the Furies will not carry out their threat to poison and ravage the city. What is so openly displayed in this particular case by Aeschylus remains true (but more or less successfully hidden) in any legal and political settlement: conflicts of interests and thirst for revenge are not put to rest by abstract appeals to justice, but by the concrete push-and-shove of complex power struggles.

Right equals Might. Is it possible, though, to abandon all illusions about Rights, and build a political philosophy based on the sole reality of Might? This is precisely the challenge faced by the Spinozist tradition. For Spinoza, nothing is beyond the basic laws of nature according to which Might (and only Might) makes Right. The human, social, political world is not an independent island, isolated from the rest of the universe, but a part of nature where all the laws of natural necessity apply. The traditional foundations for notions like justice, responsibility, merit, desert, or free will are radically undermined by the acknowledgment of the fact that humans, like wolves, are constrained by physical causes to do, think, or will, this rather than that. Our only specificity, as humans, is to be located in our brain's capacity to reason, i.e., in our capacity to understand things by their causes. Thanks to this capacity, two processes of empowerment can go hand in hand: the one that allows us to be less easily carried away by our irrational affects and the one that gives us a better grasp on the causal relations that determine our behavior. It is here that Spinoza encounters the eponymous stake of Aeschylus' play, the transformation of the furious Erinyes into the peaceful Eumenides: their name announces Spinoza's program of pacifying, improving, and bettering a mind conceived both as a principle of life and as the source of our passions. The domestication of the affects (vengeance, resentment, and hate) which permeated the first parts of the trilogy requires compromises, negotiations, pressures, and lures, which are not a matter of Justice, but of Intelligence. Athena knows well that she owes her final victory over the Erinyes, not to her Righteousness, but to her expertise in Persuasion (v.970): she knows better than anyone that Intelligence requires flexibility as well as cunning, and that it excludes the obsessive rigidity on procedural matters which characterizes those who put excessive emphasis on the notion of right.

Justice as a formal procedure. On the face of it, within the protected space of the newly instituted tribunal, due process is followed: the conflicting parties are indeed allowed to present their rationale, to bring and cross-examine witnesses, to hear and counter the rhetorical moves of the opposite side. Nobody draws a sword during the proceedings, which remain on the whole a civilized exchange of arguments with only minor slips into invectives and insults. After having listened to both parties, the jurors cast their vote in what appears to be a remarkably proper secret ballot. Let us even give Athena the benefit of the doubt regarding the composition of the Areopagus: she genuinely chose the "best" among her citizens (487), without discreetly pre-selecting or programming the jury to agree with her views. Does it mean that, since the procedure (accepted without qualm by both parties) was respected to the letter, the result was *by the sole fact of this formal respect* in conformity with justice?

We could first stress the striking fact that, in this celebration of Athenian democracy, Aeschylus decided to present a case of democratic *gridlock*: in a remarkably dramatic (and puzzling) move, he had the ballot result in a split vote, so that the opinion of the goddess, after having been spectacularly equalized to that of a mere human, ends up counting double (in view of her superior nature). Apart from this last-minute procedural twist, which tilts the case in favor of Orestes, the main question raised by this split vote is that of the law of sheer numbers as a source of legitimacy in democracy. When the electors are split almost evenly between two positions (as it is the case in most modern Western democracies), does the marginal difference of a few percent really allow us to believe that the winners carry a more "rational" proposal than the losing side?

Rationality and the democratic debate which leads to a more fundamental, and yet more concrete, problem: how "rational" was the exchange of arguments which resulted in Orestes' exoneration? Here again, Aeschylus seems to do all he can to prevent us from being fooled by the mirage of justice. Apart from Orestes and the Erinyes, who present their version of the case in rather simple and direct one-liners, most of the argumentative action is provided by Apollo. After the opening gesticulations, where he pompously invokes Truth, Justice and Zeus' authority, he spends most of his time splitting hairs about the differences between Agamemnon's murder and Clytaemnestra's: the institutional bond of marriage should be stronger than the natural bond of blood (vv.213–223); a king, killed by deceit upon his return from a victorious war, cannot be compared with a mere woman,

lecherous and deceitful, whose reign raised the indignation of her people (vv.625–639); anyway, Science amply demonstrates that the mother is not really the parent, but only the indifferent vessel to which the father lends his precious seed for a temporary period of primitive development (vv.657–663); if a living proof of this biological theory was needed, Apollo concludes, it would be standing right in front of everyone in this tribunal, since Athena herself was born without a mother (vv.663–666).

It is clearly more as the leader of the Muses, and as an expert rhetorician, than as the god of light that Apollo intervenes in the trial: Reason has little to do with his train of thought. It is highly significant that Aeschylus should use the two same words of “witness” (*tekméria*) and “proof” (*tekmérion*) both to have Athena devise the formal procedure in charge of guaranteeing the justice of the outcome (v.485) and to have Apollo abuse such terms in his moment of most outrageous sophistry (v.662–664). As Stanley Fish suggested, the institutional space of legal argumentation is protected from the force and violence of the outside world only to see force reappear in its most intimate core: rhetoric. Even if we were to admit that Apollo’s recourse to biology was credible, and “rational,” within the theories in favor in 458 B.C.E., this would only make it clearer that the force of a logical argument, the force of Reason itself, is no guarantee of any “absolute” epistemic validity: it only means that this argument happens to be dominant within this cultural context. If gender biases are prevalent in a society, no tribunal and no formal rules of procedure about proofs and witnesses can prevent the violence of sexist prejudices to permeate the reasoning of the most “scrupulous” and most “objective” jurors, since their definition of reason will be structured along such prejudices: in Fish’s words, “force turns out to be the content of the mechanism designed to control it” (p. 516).

For those who would still see the adversarial-democratic procedure as a mediation of rationality, Aeschylus took the trouble to have Athena “justify” her vote in favor of Orestes. And what is striking in her “final judgment” is that her opinion in no way considers the objective merits of each party’s argument, but openly presents itself as a pure expression of idiosyncratic prejudice: “my vote I shall add to Orestes’ side. For mother have I none that gave me birth, and in all things, save wedlock, I am for the male with all my soul, and am entirely on the father’s side” (vv.735–738).

Were we to push our anachronistic reading of the play one notch further, we could describe Clytaemnestra, and her (female) representatives, the Erinyes, as *victims*, in the manner Jean-Fran-

çois Lyotard pairs this term with *plaintiff*. In a sexist society, a woman is a victim because the wrong that is inflicted upon her (killing, forced sex, harassment, explicit, or hidden barriers to education and employment) cannot be proven in front of any court of law because this wrong is not receivable nor even visible from the point of view of the dominant ideology (for which it is only natural, reasonable, and “just” to have women submit to their husband’s sexual drives and do housework instead of writing philosophy). In any society, says Lyotard, “hard” issues of justice always elude the institutional frame of tribunals and parliaments: they cannot be reduced to mere *litigations*, where an impartial judge can settle a case along standards and value-systems shared by both parties; they rather take the form of a *differend*, where each party carries standards and value-systems which are incompatible, and between which the judge will have to take side, losing therefore his position of superior arbiter. It is a telling symptom that, in Aeschylus’ play, Athena should end up explicitly casting her vote as a daughter of Zeus: she has always-already taken a side in the conflict by the sole fact that her worldview is that of an Olympian, as opposed to that of the old earthly deities represented by the Erinyes. Similarly, a “secular” judge has always-already taken side, even before a religious “fanatic” is presented to his court because he can only judge him in accordance with his secular conception of the rule of law: in such differends, the institutional space of the tribunal imposes by force its dominant values on its victim. When one is faced with a differend, justice simply *cannot* be done.

Here again, as our societies become increasingly multicultural, it would be foolish to trust the formal apparatuses of tribunals and the rational debates taking place in the public sphere fairly to arbitrate the countless differends to come. The main case made by Lyotard or Fish against Habermas’ views is that the definition of what is “rational” and of what should be the basic rules of a debate excludes and represses beforehand several opinions and worldviews (in spite of the tolerance claimed by our enlightened rationality). This rather academic discussion leads to diverging practical strategies in the struggle for justice: while, in the eyes of the liberal tradition, the action should take place within the frame of the current institutions and amend them from the inside, for the more radical thinkers of postmodernity, the fight for justice requires one to challenge the outside boundaries that limit any existing institution. In their view, justice will not be made by tribunals or in parliaments, but in the streets, through extra-legal actions putting pressure on the media and on the dominant ideology.

The delusion of justice. The most subversive vistas of postmodernism may in fact take us back to the essence of the Greek tragedy: what indeed is a tragedy, if not a differend in its Lyotardian definition, that is, a conflict in which both parties carry standards and justifications which are equally valid, but incompatible, and between which any choice is bound to be unjust? This leads us to consider an option spelled out by the Ancients themselves, most (in)famously by Carneades: there simply is no justice in this world—and anybody who keeps looking for it not only wastes his time, but is a fool likely to be taken advantage of.

While Blaise Pascal refused to go that far, he articulated on three levels this position of radical scepticism, which still inspires many thinkers. The *average man* believes that there is, “out there,” an objective (divine, transcendent, or natural) model of justice, which the laws and customs of his country more or less approach. The *half-wise* knows that customs, laws and definitions of the just vary from culture to culture, and he realizes “there is no justice per se,” but only agreements and “shared understandings” within given communities to consider this or that as good or evil, holy or taboo: this half-wisdom is factually correct, but socially dangerous, since its advocates tend to go around denouncing the arbitrariness of existing laws, and therefore undermine the social order. The (really) *wise man*, for his part, realizes both that there is no objective standard of justice *and* that it is necessary for humans to be fooled into believing in the existence of such a standard: the faith in justice is not founded in reason, but it nevertheless has desirable social and moral effects, and it would be more foolish not to be fooled by it than to give into its delusion. The fact that *this* law is “the” law is always a result of power struggles and not a consequence of its conformity with eternal justice—but the law should be obeyed, nevertheless, because it is the law, not because it is just. Force and justice are inextricably linked to each other: we can try to use force justly or to give power to justice, but those who pretend to separate them, or to isolate one from the other, might as well try to live without breathing.

In this perspective, the ambiguities of Aeschylus’ play make it a perfect illustration of Pascal’s views. To the average Athenian citizen, it confirmed and strengthened the foundation of his faith in the city’s judicial and political system as a celebration of Athenian self-instituting democracy. To the half-wise postmodern critic, it simultaneously reveals the highly fragile and problematic nature of democratic institutions. To the true deconstructionist, the tragedy offers a powerful illustration of the necessary delusions

of justice: it shows *both* the emancipatory power inherent to the constitution of a space for adversarial, rational, and democratic debate, *and* the radical insufficiency of approaching justice only in terms of contracts, procedure, and formal rights.

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