

POETIC JUSTICE, LEGAL JUSTICE (OR: WHAT POETS AND LAWYERS MIGHT HAVE IN COMMON)

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Abstract

In this paper, the author introduces its main subject, which is the idea of justice in both poetry and law, by comparing the role of both poets and lawyers in the the movement of reinforcing the morality in a society. To analyze this idea, the professor uses the language of myth, which has a great deal in common with both pursuits.

By telling the myth of Philoctetes, the author introduces that both poets and lawyers have in common a certain crave after justice, and what differs each one is the manner of satisfying this craving. Then, by comparing the characters of the myth with poets and lawyers, he describes the disparities between the both. Then, by analyzing and comparing the character Philoctetes with the poetic persona of the poem used as an example, he shows that the poetic subject tends to be an individual who suffered injustices, suffered from loneliness and distress, and when seeking for a better solution to his pain, reveals his longing for justice.

The lawyer, in his turn, is someone with a great sense of a job to do, and wants to get it done. Even if he feels a sincere attachment to the ideals of justice, he is not usually someone who has been gravely wounded by injustice. Like the kind of artist we all admire, he embodies in his work, and in his life, something of the rectifying urge.

Keywords: poets, lawyers, law, justice, poetic justice, myth

The term “poetic justice” was coined neither by a lawyer nor a poet—nor even in Aristotle’s *Poetics*— but by an English drama critic, Thomas Rymer in his 1678 work entitled *The Tragedies of the Last Age Considered*, a work in which he described how a work should inspire proper moral behavior in its audience by illustrating the triumph of good over evil.

Nearly three hundred years later, in a 1934 essay entitled “Poets Without Laurels,” in *The Yale Review*, the poet John Crowe Ransom wrote of the classical role of the poet that “The poet proposed to make virtue delicious. He compounded a moral effect with an aesthetic effect. The total effect was not a pure one, but was rich, and highly relished. The name of the moral effect was goodness; the name of the aesthetic effect was beauty. Perhaps they did not have to co-exist, but the planners of society saw to it that they should; they called upon the artists to reinforce morality with charm.”

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I suppose it is true that not too many lawyers have been accused of the effort to reinforce morality with charm—though I’m convinced that more than a few of those I know, and have known, are thoroughly capable of it. (I have, by the way, met more than my share of poets who seemed to me neither particularly moral, nor particularly charming.) But I want to speak here, not so much about any absolute connection between poets and lawyers, about the idea of justice in both poetry and law. And I want to do so by using a device that has a great deal in common with both pursuits—namely, the language of myth.

The myth I’m going to talk about is that of Philoctetes, the youthful follower of Heracles who ignited the flames to Heracles’ funeral pyre and whose story is eloquently told in the play by Sophocles that bears his name. I will outline the story in brief and ask the reader to willingly to suspend his or her disbelief for a few moments and trust that I will make the connection between Philoctetes and the lawyer and the poet.

The major details of the story are as follows: the demigod Heracles had been given a bow by Apollo that never missed its mark. When, poisoned by Deianeira’s robe, he had himself cremated in Mount Oeta, he assigned Philoctetes the task of lighting the funeral pyre and rewarded him by bequeathing his valuable weapon to him. Thus equipped, Philoctetes set out with Agamemnon and Menelaus to wage war against Troy. But as the Greeks stopped off on the tiny island of Cryse to make a sacrifice to the local deity, Philoctetes was bitten in the foot by a snake. The wound grew particularly malignant and began to smell and suppurate grotesquely, until finally Philoctetes’ heart-rending groans made it impossible to carry out the sacrifice, and the horrible smell from the wound makes it unbearable to be near him. Unable to tolerate his pitiful presence any longer, his companions stopped at the neighboring island of Lemnos, removed Philoctetes from the ship, and sailed on to Troy without him.

Philoctetes remained on Lemnos for ten years, during which time the mysterious wound refused to heal. In the meantime the Greeks—who were having a hard time of it at Troy following the deaths of Ajax and Achilles—had kidnapped the Trojan soothsayer, who revealed to them that they would never take Troy until they had sent for Achilles’ son, Neoptolemus, given him his father’s armor, and brought Philoctetes’ bow back with them to Troy.

The Greeks then sent for Neoptolemus, whom Odysseus attempted to persuade to go to Lemnos and lure the bow from the wretched cripple by trickery and deceit. Odysseus’ argument was what certain legal scholars would describe as “result-oriented,” namely that the ends justify the means and that the only way for the Greeks to take Troy was for Neoptolemus to obey his wishes. Neoptolemus, however, though he at first agreed to do the evil deed, could not. So great were his sympathies with the suffering man, that at the very moment when he ought to have fled with the bow, he realized that the bow was useless without Philoctetes himself.

Neoptolemus thus persuaded the Greeks to take both Philoctetes and the bow with them to Troy. Once there, Philoctetes was healed by the son of the physician Asclepius, slayed Paris in one-to-one combat, and became, along with his savior Neoptolemus, the hero of the fall of Troy.

Now what, you might ask, does all this have to do with lawyers and poets? Everything, I would suggest to you. Because the way I see the myth of Philoctetes and the twin, intersecting realms of the law and poet, is as fundamentally concerned with two realms of justice, namely, those of Lemnos and Troy, and with two complementary, and mutually necessary, means of arriving at them.

I say this because it seems to me that if there is one thing that both the "good" lawyer and the "good" poet share, it is that certain craving after justice. And I would suggest to you that—less for reasons of comparative nobility or lack thereof and more for reasons of individual destiny—it is merely their manner of satisfying this craving that differs. As the lawyer-poet Archibald MacLeish put it: "The law has one way of looking at it. Poetry has another. But the seeing is the same."³

Philoctetes, from the time of his wounding until his departure from Lemnos, is living in certain archetypal ways the life of the poet and artist as we tend to think of it. He has been wounded, not abstractly, but in his very person, and, in his bereavement at the grave injustice that has been dealt him, there is little else he can do but remain alone on Lemnos and "sing"—or, rather, scream—to anyone who will listen, of his injuries. He is in some sense the very "metaphysician in the dark" that another noted lawyer-poet, Wallace Stevens, spoke of in describing the modern poet.⁴ And as the immortal American poet Walt Whitman did, he too sings of himself—but almost exclusively of his own pain.

Philoctetes embodies in many ways the popular conception of the poet as solipsistic, obsessed with his own pain, isolated from his fellow man, self-pitying . . . and lonely. But (and here is the crux of the matter) he also has a good reason for his condition. He has been wounded; he has been abandoned; he is in profound agony and pain. He has been the victim of injustice. The primary question for him, as for any such victim, is: How can I leave my injury behind? How can I transform my own pain into a vehicle for justice?

I make several assumptions here that may, though I hope not, in fact be untrue: that artists have a great deal in common with the Philoctetes we find stranded in Lemnos; lawyers have more in common with Agamemnon, Menelaus, and Odysseus; "exceptional" poets and lawyers have a great deal in common with both Neoptolemus and Philoctetes after they have left Lemnos and during the conquest of Troy. This assumption is of course a generalization and subject to all the usual caveats, but I trust that it is accurate enough to be valid for my purposes, and apologize to those offended by the oversimplification.

³ MacLeish, *supra* note 1, at 87.

⁴ STEVENS, "Of Modern Poetry," in **Wallace The Collected Poems of Wallace Stevens 240** (New York: Vintage Books, 1982).

Most artists, I and others have found, are people who have been wounded quite personally somewhere early in their lives. I say this not as grounds for pity or indulgence but merely as a statement of fact based on my knowledge of many of the artists I know. What has suffered along with those wounds-- and along with the individual himself-- is the wish that every person, poet or lawyer, innately shares from earliest childhood—the wish for justice. Something unfair has been done to the person; his basic notion of "just desserts" has been gravely wounded. He can no longer believe, in his new state of lost innocence, that all is in fact right with the world.

This sense of having been unfairly treated by life, of having one's sense of justice primally violated, is vividly portrayed in the following poem by the poet John Hollander:

The Court of Love: Special Sessions
Imprisoned in this court of law,
I hear the guarded lawyers drone
On in a halting monotone
And may not even read or draw,

But, the sole juror of my case,
Sequestered in my present fate,
Wearily I deliberate
The future's blank and silent face.

Though turnkey Time may set me free
From the dark courts of the loins and heart,
I shall not ever have the part
Of Justice which is Equity.

Waiting is virtuous, act is crime
In life where justice is reversed:
For me the sentence has come first,
The verdict will emerge in time.⁵

You may notice how similar the speaker's language is to the language Philoctetes might have used to describe his predicament on Lemnos. The speaker here is "imprisoned," "sequestered," "weary," isolated, and believes—with all the classic passivity of the archetypal victim—that only "Waiting is virtuous, act is crime / In life where justice is reversed." His faith in justice of any sort has been wounded, and, worse yet, he believes there's absolutely nothing he can do about it.

There is, however, an alternative to contemplating "the future's blank and silent face." It is the alternative Philoctetes chooses, and it emerges from a basic urge that is elicited when one's sense of justice is gravely wounded—the urge to rectify that injustice. And now I'd like to read you a poem of my own that seems to be about that very urge and about the impetus for art that finds its root in it. The poem is called "Skototropic,"⁶ a word

⁵ HOLLANDER, John; "The Court of Love: Special Sessions," 145 Poetry 95 (November, 1984).

⁶ BLUMENTHAL, Michael; *Against Romance* 70 (New York: Viking, 1987).

derived from the twin Greek roots of trope, which means "turning" and skotos, which means "darkness" or "gloom." It is in other words the direct opposite of phototropic, and some plants have even been known to exhibit skototropic behavior as part of their survival strategy. Here's the poem:

A deep thing blazons toward its name to find relief,
And cold, in a mythic way, it moves through dark,
As if it knew that darkness has a bad name all in vain,
That a deep thing plunges in a deepened way toward light,
The way plankton move in darkness through the polyped deep,
The way a climber, on the dark side of a peak, moves first
Through caves, ravines, encampments of the shade; the way
The early hurts, in dark, release the rectifying urge
That sets the words to song to speak its name. It moves
Through dark, because the dark is there, because the dark
Describes a sense of light deferred, because it is
A taproot to the light, whose light is dark inverted
Just as prayer is song. It moves. It rests. It slithers
Toward its source, as if the dark could echo lightward
In a tethered way. And then, at last, it rises toward
The light—a kindled thing that rectifies its birth,
A burning that inflames all that it marks:
So dark a thing that moves it moves the dark.

As you can see, I've talked about the "rectifying urge that sets the words to song"—that same urge that Philoctetes and anyone who has been wounded must in some manner possess. But the wounds themselves are incidental to my more general point that the artist is archetypically someone whose sense of justice has been violated and whose urge is to rectify that violation by reinventing his world through his art. The problem with the artist-- and also with Philoctetes when he is off on Lemnos bemoaning his wounds— is that he isn't doing anyone, least of all himself, any good.

Now let's move for a moment to the situation of the lawyer. I am going to refer to a kind of archetypal lawyer, if there is such an animal—not particularly high-minded, not particularly low-minded, but just the type we, along with the legal scholars, call "result oriented." This lawyer—much like Agamemnon, Menelaus, and Odysseus in Sophocles's play—is not at all a "bad guy." He is merely a person who feels he has a job to do and wants to get it done. Though he may feel a sincere attachment to the ideals of justice and to what we lawyers call process values, he is not usually someone who has been gravely and personally wounded by injustice, or, if he is, his response is probably more akin to vengeance or denial than rectification. He wants to get on with the conquest of Troy and then go home and have a good, stiff martini.

Neoptolemus, however, is not that kind of fellow, and neither is Philoctetes. That is why their story is the stuff of poetry—and of law. Neoptolemus, you will remember, was Achilles' son, whose original motive for visiting Lemnos was to lure the bow away from Philoctetes by deceit. Compared with Philoctetes, he is not among the badly wounded. But—and here is the key—he is not only willing to venture onto the ghetto that is Lemnos but,

while there, is converted to a state of such sympathy for the wounded man that he endeavors to rescue, rather than deceive, him. In the words of the critic Edmund Wilson, Neoptolemus is the only one among the Greeks "guileless enough and human enough to treat [Philoctetes], not as a monster, nor yet as a mere magical property which is wanted for the accomplishment of some end, but simply as another man, whose sufferings elicit his sympathy and whose courage and pride he admires."⁷

Neoptolemus, like so many lawyers we have all known and desire to know more of, takes what Wilson calls "the risk to his cause which is involved in the recognition of his common humanity with the sick man."⁸ Alone among the Greeks it is he who is able to actualize John Donne's justly famous precept that "no man is an island, entire of itself; everyman is a piece of the continent, a part of the main."⁹ And this enterprise, I might add, consists not just a few hours of pro bono work, but of an endeavor in which he risks both life and limb.

So Neoptolemus is the kind of lawyer we all hope for—someone who sees, and feels, his own affinity with the poor, the oppressed, and the victims of injustice everywhere and who embodies in his relationship to the law the knowledge, "There but for the grace of God go I." Like the kind of artist we all admire, he embodies in his work, and in his life, something of the rectifying urge.

But what about Philoctetes? you might ask. Is it his role merely to be wounded, pathetic, self-pitying, and, ultimately, rescued? Clearly, I would argue, not. Because what the myth tells us is that Philoctetes doesn't simply remain on Lemnos bemoaning his fate, but leaves the place of his psychic and physical imprisonment. And by that leaving he is cured.

The poet Edwin Muir, speaking in his wonderful book, *The Estate of Poetry*, places a similar movement in a less mythic light. "There remains the temptation for poets to turn inward into poetry," he writes, "to lock themselves into a hygienic prison where they speak only to one another, and to the critic, their stern warder." But, Muir continues, "In the end a poet must create his audience, and to do that he must turn outward."¹⁰

Wendell Berry, a poet who abandoned what he considered the Lemnos of academic life for the more grounded realm of his ancestral Kentucky farm, puts this movement yet another way and modifies it to include the dialogue between Philoctetes and Neoptolemus. "Access to that world," he writes:

is sanity. To be trapped in one's own mind is insanity. . . . But to be trapped outside one's mind, in wildness unmitigated by a human culture that

⁷ DABNEY, Lewis M.; (ed.); "Philoctetes: The Wound and the Bow," in **The Portable Edmund Wilson 418-436**, at 436 (New York: Viking Press, 1983).

⁸ *Id.* at 436.

⁹ DONNE, John; "Devotion Number 17," in **Devotions Upon Emergent Occasions 87-89**, At 87 (New York: Oxford University Press, 1987)(Anthony Raspa ed.)(rewritten in contemporary English by the author).

¹⁰ MUIR, Edwin; **The Estate of Poetry 109** (Cambridge, Massachusetts: Harvard University Press, 1962).

prepares us to be there, is the opposite kind of insanity. The first kind makes us lonely, anomalous, useless, and hopeless. The second makes us monstrous. To be trapped in the mind is to be like Shelley in his worst fits of self-pity. To be trapped outside is to be like Macbeth after the murder of Duncan. What is lost, either way, is essential knowledge, essential remembrance, essential restraint.¹¹

It is precisely this kind of essential knowledge—the knowledge both of what it is like to be stranded on Lemnos and of what it is like to be out of the world—that Philoctetes and Neoptolemus bring to each other and that the lawyer and the artist, in turn, can share. I would argue that the poet, if he is truly to create an audience for himself and to serve the most worthy aspects of poetic justice, must learn to leave Lemnos as well, and that the lawyer, if he is to be worthy of the highest ideals of justice, must learn what it is like to visit there. I would contend that lawyer and poet are, ideally, in much the same relationship to one another as are body and soul in this further passage from Wendell Berry:

[B]ody and soul delight as well as suffer in each other and are in a sense each other's crisis; that to attempt or pretend to divide them is foolhardy, dangerous, and evil. The real task is to bring them into unity or harmony, and this is to be done by the cultivation of virtues, both practical and spiritual, which are enjoined upon us by what are called divine commandments or moral laws, and which may be understood as a set of instructions for preserving our place and our places and ourselves in them.¹²

It is a relationship that, at its best, much like the relationship of Philoctetes to Neoptolemus, seems far preferable to the one postulated by W.H. Auden in his poem "Law like Love":

And always the loud angry crowd
Very angry and very loud
Law is We,
And always the soft idiot softly Me.¹³

Philoctetes refuses to remain "the soft idiot" crying "softly Me." He decides to move out of his private rage at the injustice in the public sphere. By refusing to continue to see himself as a victim of injustice, he becomes a cured man and a perpetrator of justice.

Yet the ways in which those potential allies, poets and lawyers, function within their respective spheres have always been, and I suspect will always remain, quite different. For while lawyers, as they must, appeal for their authority to human law, poets—if they are to remain part of the cultural means by which we preserve the possibilities of harmony and justice—must appeal to what we frequently call a higher, but could perhaps simply call only another, kind of law. And it may well be that the truly memorable human moments—moments of a less ethereal and more humanly tainted justice, such as the conquest of Troy or the preservation of the

¹¹ BERRY, Wendell; "Poetry and Place," in **Standing by Words** 179-180 (San Francisco: North Point Press, 1983).

¹² *Id.* at 177.

¹³ AUDEN, W.H.; **Selected Poems** 89-91, at 90 (New York: Vintage Books, New Edition, 1979)(Edward Mendelson ed.).

environment—occur when those two realms meet, and touch, one another as they do in the lives of Philoctetes and Neoptolemus.

For the poetic part of justice, as yet another great poet-lawyer, Kafka, has reminded us, differs from the legal part in both origin and function. Kafka more than any other writer reminds us that memory is an integral part of any system of justice, that it is precisely the act of forgetting that makes it possible for law to be applied indiscriminately and therefore unjustly. And if Philoctetes stands for nothing else, he stands as a perpetual reminder that injustice exists and must be remembered.

In the Greek myth, which is also ours, he represents the poetic aspect of justice itself, rooted in memory and therefore in conscience. Philoctetes' task—the poet's task—is to provide a living testimony (and it is no accident here that the legal term and the poetic one are the same) that justice is indeed not perfect and that in real life the sentence often does precede the verdict, as John Hollander suggests.

So Philoctetes' heartrending and relentless screams, though they must, if only for his own sake, come to an end, represent a kind of poetic injunction to the "lawyer" (Neoptolemus) who will "argue" his case—an injunction to remember. And the return of the Greeks to Lemnos, where they must listen to those screams if they are to capture the much needed weapon, is nothing less than their acknowledgment that they must admit memory into their scheme of justice if justice is to prevail.

Philoctetes is of course not Neoptolemus any more than Neoptolemus is Philoctetes. But when a higher harmony than either can attain alone is offered to them and when the demands, not of a perfect justice but of a humanly attainable one, are at stake, they are able, by each moving in the other's direction, to meet on the ground of their common humanity, something to offer, each with something to learn. Only then are they finally able to heed Ezra Pound's unifying dictum to:

Pull down thy vanity, it is not man
Made courage, or made order, or made grace. . . .
Learn of the green world what can be thy place
In scaled invention or true artistry¹⁴

Joined, they achieve what neither alone is capable of—creating a force that, while it is not enough to move mountains, may at least achieve the poetically, and legally, possible: the moving of men and women. And that in the end may be the most perfect kind of justice we, as either poets or lawyers, can hope to achieve. And it may be, I like to think, what drove us to those sisterly and beautiful pursuits to begin with.

¹⁴ POUND, Ezra "The Pisan Cantos," in **The Cantos of Ezra Pound** [cantos 81] 95-100, at 99. (New York: New Directions Book, 1956).

JUSTIÇA POÉTICA, JUSTIÇA LEGAL (OU: O QUE POETAS E ADVOGADOS PODEM TER EM COMUM)

Resumo

Neste artigo, o autor apresenta o seu tema principal, que é a idéia de justiça, tanto a poesia e no direito, comparando-se o papel de ambos os poetas e advogados no movimento de reforçar a moralidade na sociedade. Para analisar essa idéia, o professor usa a linguagem do mito, que tem muito em comum com ambas as atividades. Ao contar o mito de Philoctetes, o autor introduz que ambos os poetas e os advogados têm em comum um certo anseio por justiça, e o que difere cada um é a maneira de satisfazer esse desejo. Em seguida, comparando os personagens do mito com poetas e os advogados, ele descreve as disparidades entre os dois. Então, analisando e comparando o personagem Philoctetes com o eu lírico do poema usado como um exemplo, ele mostra que o sujeito poético tende a ser um indivíduo que sofreu injustiças, sofria de solidão e angústia, e quando procurando uma melhor solução para sua dor, revela seu desejo de justiça.

O advogado, por sua vez, é alguém com um grande sentido de um trabalho a fazer, e quer fazê-lo. Mesmo que ele sinta um apego sincero aos ideais de justiça, ele não é geralmente alguém que tenha sido gravemente ferido pela injustiça. Como o tipo de artista que todos nós admiramos, ele incorpora em seu trabalho e em sua vida, algo do desejo de retificação.

Palavras-chave: poetas, advogados, direito, justiça, justiça poética, mito.

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