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*At Vindicta Bonum Vita Jucundius Ipsa**

1. The veil on *vindicta*

An abstract description of the functioning of *vindicta*, detached from various cultural contexts in which it is embedded and where it appears as a social, psychological and ethical process, would retain the basic mechanism through which a subject who suffers a harm, prejudice or wrong responds symmetrically and seeks revenge by causing a harm, prejudice or wrong to the other, either proportional to the one that himself suffered or disproportional, by annihilating the other. The underlying logic of *vindicta* follows the rule of reciprocity – the act of the offender creates an unbalance which can be restored only by a symmetrical response (Gill & Postlethwaite & Seaford 1998). However, that which is symmetrical is the act of responding to the harm suffered, not the harm inflicted to the other through *vindicta*, which only became proportional through a later introduction in the functioning of the rule of reciprocity of *lex talionis*. The initial recourse to *vindicta* of the one who firstly suffered a prejudice degenerated into a cycle of reciprocal private revenges, since taking revenge caused a harm to the other which in itself called for revenge.

Various critiques of *vindicta* are always within reach and, with deep roots in European history, compose the core of the shared clichés of contemporary legal and moral thinking: a mere unilateral emanation of force, discretionary and dispropor-

* 'But revenge is a good more delightful than life itself' – Decimus Junius Juvenalis (Juvenal), *Satirae*

tionate, defying *suum cuique tribuere*, *nemo iudex in causa sua* and *res judicata*, an irrational means undermining its purpose, driven by *pathos*, and for all these reasons and many more, undisputedly disconnected from Justice and in contradiction with Law. A right to private revenge recognized to subjects is mostly un conceivable and in a stark contrast with contemporary legal procedures, primarily concerned with containing such a disruptive practice which so blatantly contravenes the social order, disturbing both moral and legal sensibilities.

If the immediate rejection and labeling of revenge as reprehensible is a matter of evidence, a sort of contemporary moral reflex which goes beyond any form of mediation, it is so due to a consistent criticism entwined with juridical reasoning throughout history which led to the general denunciation, gradual abandonment and replacement of *vindicta* with means of public, state administered justice distributed through a *tertium*, a judge, who would decide on the competing claims of the parties. The nowadays obvious contradiction between revenge and Justice was gradually built around oppositions such as emotional/rational, retaliation/balance, personal/impersonal, subjective/objective and impartial, private/public, cycle/closure. However, neither the nowadays known fact that historically Justice and revenge were once one and the same, nor the deconstruction of those underlying oppositions could dilute the sharp rejection and the spontaneous disavowal of revenge. It would seem that Justice itself relies on *vindicta* as its absolute contradiction, requiring the erasure of all their previous mutual connections as a necessary means to safeguard its integrity, if not purity.

2. Nietzsche and morality – power, the descriptive, the normative

If one of the gleaming insights of Nietzsche would catch the eye, it would delay the moral reflex and attenuate the edges of a hasty evaluation of *vindicta* and, if not withhold moral charges altogether, at least lift the thick veil thrown on a seething, complex mechanism. In his 108 aphorism of *Beyond Good and Evil* he states that “*There are no moral phenomena at all, but only a moral interpretation of phenomena*” (Nietzsche 2015, 91). What Nietzsche affirms is that facts alone do not possess an intrinsic moral dimension and do not exhibit moral features themselves. The moral value is always added subsequently by pinning facts to a specific moral grid. Morality and the moral justifications of states of affair in the world only come after and in addition to that which already occurs in reality. In a similar manner, the sheer factual description of *vindicta*, one of the particular applications of the universal rule of reciprocity, which triggers the symmetrical response to the harm suffered, does not bear any moral value in itself. However reprehensible it may appear to contemporary legal and moral thinking, not only that *vindicta* in itself bears no moral value, but at a certain point in European history it was even ascribed moral worth and justifications, considered a legitimate means to gain Justice and, as such, it relied on a junction of a particular understanding of truth with a specific moral evaluation. As Nietzsche indicates in his *Genealogy of Morals* and *Beyond Good and Evil*, these junctions of justice, truth and moral worth constitutive to *vindicta* were connected through and generated by power alone and were embodied by a particular kind of subjectivity which, as Nietzsche indicates, is to be found in Greek Antiquity for the first time in European culture.

Nietzsche's aphorism, which suggests the derivative nature of morality from facts, allows for an evasion of all the incisive contemporary criticism of *vindicta*. It enables a reduction of all secondary interpretations, moral or legal, to the factual, the constituent basis of the descriptive, as the only appropriate starting point for any subsequent normative construction. Following the Nietzschean insight that states of affairs in the world do not themselves possess moral value, it becomes unclear when and how the rule of reciprocity at work in revenge became normative from a simple generalization deriving from facts. The fact that the offended subject resorted to *vindicta* means, firstly, that it simply was in his power to do so, without any indication on whether or how the subject related to or acknowledged the rule of reciprocity: there are, especially in ancient societies, those who have the power to take revenge for the various harms suffered, in which case the rule of reciprocity is merely descriptive and derived from the practice of *vindicta* itself. However, from this basis alone, from the fact that revenge was taken only by those who had the power to do so, a subsequent normative dimension of reciprocity of *vindicta* emerged: in addition to having the power to take revenge, the subject himself and others have come to relate in a certain way to the rule of reciprocity and regard *vindicta* either as an obligation or as an entitlement to act accordingly.

The normative layer of the rule of reciprocity derived from the previous descriptive one implied that facts, empirical states of affair in the world started to be evaluated by subjects, and doubled, intertwined with various interpretations. *Vindicta* was not anymore just something in the power of certain subjects, but turned into a moral and juridical phenomenon in Nietzschean terms, by being considered as an expression of what it should be.

This emergence of the normative from the descriptive occurred as incipient means to make sense of the world: since the rule of reciprocity was part of the given reality describing the very mechanism which organized the social world, the primary cultural means of the subjects in ascribing meaning to the blind factual social phenomenon in which they were immersed was to relate to it, to interpret it not just as an ingredient of what it is, but also as a result of what it should be. As such, the empirical, factual level of the descriptive, void of social moral meaning, was gradually filled by subjects themselves with their own normative interpretations of facts.

The normative dimension of *vindicta* suffered a continuous transformation in time starting from the initial interpretation of the ubiquitous nature of the practice of private revenge as an obligation – states of affairs in the world are as they are only because they have to be the way they are: from the fact that all subjects who had the power to resort to revenge did so, emerged, firstly, the normative duty to take revenge. Only later was it incorporated in the normative dimension the idea of an entitlement to take revenge, which implied both the possibility to resort to revenge or not and also the possibility to claim that revenge is owed by a third party if it was not in the power of the offended subject to resort himself to *vindicta*.

The normative emerging from the descriptive, turning *vindicta* from an empirical observation of facts in the world into a moral and juridical phenomenon, also opened up a space for its condemnation, which eventually led to its prohibition. As such, the further temporal segmentation of the normative deriving from the descriptive, starting from *vindicta* as a duty and later as an entitlement, continued with the possibility of its prohibition, which eventually became effective and turned into the contemporary normative *status quo*.

3. ***Adversus Fortuna – Inde datae leges, ne fortiori omnia posset***

Power emerges as a primary criterion from the factual unfolding of *vindicta* underpinning the rule of reciprocity as descriptive. By the whim of Tyche or Fortuna, the Greek goddess of fate, chance, hazard and her Roman equivalent*, power divided subjects into those who had the power to resort to *vindicta* and those who did not. This division, which solidified and became permanent forming social groups, was gradually overlapped by the division deriving from the normative character of the rule of reciprocity, which emerged from the way in which subjects related to states of affairs in the world governed by the descriptive rule of reciprocity. The subjective positioning to the factual rule of reciprocity allowed it to be perceived as normative, at first, as imposing an obligation to resort to revenge. This fundamental division, powerful/not powerful, belonging to the descriptive, related to the duty to take revenge belonging to the normative derived from the descriptive, and constituted the fundamental grid which allowed the further emergence of subsequent specific subjectivities with their particular readings of the grid and employing different notions of truth and Justice.

Depending on the fact that they either had or not the power to resort to *vindicta*, subjects positioned differently towards the duty to take revenge. This factual possibility alone, the power to resort to *vindicta* grounded divergent moral interpretations and came to gradually advance divergent notions of truth and justice – the subjects who could resort to it were naturally inclined to

* for an extensive analysis of Fortuna see *supra* 'Fortuna versus Justitia – Preliminaries to a Genealogy of European Private Law', p. 7.

morally approve revenge and those who could not, to condemn it.

However, since it was firstly understood as a duty, those who could not fulfill their moral obligation were interested mostly not in directly prohibiting revenge altogether, which would have been an endeavor destined to fail, but to craft such a moral interpretation in the light of which their own non-use of revenge due to their permanent lack of power would appear as a morally acceptable act. Therefore, the first objective was to change the normative status of revenge from a duty, an obligation to resort to revenge, into an entitlement. Through this normative transformation, the empirical fact that those who had the required power resorted to *vindicta* was interpreted not as an exercise of their power, but as an exercise of their right, which contained also the possibility of not taking revenge, while those who lacked the power and could not take revenge appeared to exert their free will in choosing not to exercise their right to reciprocal response to the harm suffered. However, since the rule of reciprocity demanded retaliation for the harm suffered, and since those who did not have the power to take revenge were unable to reciprocate, the normative framing of revenge in terms of entitlement allowed not only for the non-combative attitude to be interpreted as a deliberate option, but also to constitute the ground for claims for revenge taken in their name by a *tertium* who would retaliate on their behalf. A *tertium* had to mediate between conflicting parties in order to assure the functioning of the rule of reciprocity for those who did not have the power to take revenge themselves. The idea of the impartial arbiter or judge interfering in the private disputes of subjects originates in this factual impotency, in this lack of power and helplessness. From this basis, the failure to observe the normative duty to take revenge for the harm suffered shifted its meaning from an inability and a dishonoring act into an expression of a choice to refuse to retaliate, and later,

into a demand for Justice and subsequently for truth, which were to be delivered by *tertium*, both justice and truth being placed outside the reach of each of the competing subjects, as transcending their particular claims.

In interpreting the normative duty to take revenge in contrast with their constant state of being unable to do so, the weak moralized their factual incapacity to respond – it was valued as forgiveness while in the same time a response to the harm suffered was projected in an afterlife through a *tertium*, a God, who would punish both the offenders and those who would resort to *vindicta*. It was not that the weak could not have responded to the harm suffered even though they wanted to, but that God himself prohibited *vindicta*, claiming for himself the exclusive attribute to retaliate and punish. With this moral interpretation it was introduced the possibility of the prohibition of *vindicta* in reality: those who could not resort to it were valued not as passive victims, but as active forgivers, and those who could take revenge were condemned as usurping an attribute of God. Nevertheless, because forgiveness refuses the satisfaction of *vindicta* in reality, it generates resentment, which constitutes, in the first place, as Nietzsche argues, the subjectivity of those who lack power. Resentment becomes a creative force generating values, framing the relation of the weak both to those who are more powerful and to themselves: firstly, they resent the power of their masters, and, secondly, they resent even more their own lack of power, their own incapacity to take revenge against their masters. In relation to themselves, because of their inability to respond in this life, the weak invented the idea of an afterlife and of divine justice secured by God, which would compensate their weakness and avenge them after death. In relation to the powerful, the practice of *vindicta* becomes morally reprehensible as usurping God himself. Nietzsche refers to Christianity as an instance of slave morality and the biblical

verses themselves provide abundant textual references to account for this interpretation*: Romans 12:19 – “*Never take your own revenge, beloved, but leave room for the wrath of God, for it is written, `Vengeance is mine, I will repay` says the Lord*”, Deuteronomy 32:35 – “*Vengeance is Mine, and retribution, In due time their foot will slip; For the day of their calamity is near, And the impending things are hastening upon them.*”, Deuteronomy 32:41 – “*If I sharpen My flashing sword, And My hand takes hold on justice, I will render vengeance on My adversaries, And I will repay those who hate Me.*”, Leviticus 26:25 – “*I will also bring upon you a sword which will execute vengeance for the covenant; and when you gather together into your cities, I will send pestilence among you, so that you shall be delivered into enemy hands.*”, Isaiah 35:4 – “*Say to those with anxious heart, `Take courage, fear not Behold, your God will come with vengeance; The recompense of God will come, But He will save you.*”

In contrast to that normative interpretation, those who could resort to *vindicta* were usually the powerful, part of the social elite, and developed, as Nietzsche suggests, a specific moral interpretation of facts – the duty to take revenge was valued as morally good, since it permitted the successful exertion of power, and, as such, it was considered a legitimate and adequate means to gain justice and satisfaction and allowed for an immediate discharge of resentment. Nietzsche refers to “(...) *that enthusiastic impulsiveness in anger, love, reverence, gratitude, and revenge by which noble souls have at all times recognized one another. Ressentiment itself, if it should appear in the noble man, consummates*

* For additional examples of biblical verses depicting God and his vengeance see: Hebrews 10:30, Jeremiah 51:56, Nahum 1:2, Psalm 94:1, Psalm 99:8, 2 Thessalonians 1:8, Jeremiah 51:11, Jeremiah 50:28, Jeremiah 5:29, Jeremiah 9:9, Jeremiah 5:9, Isaiah 1:24, Isaiah 47:3, Ezekiel 25:14, Ezekiel 25:17, Isaiah 59:17, Micah 5:15, Nahum 1:9, Isaiah 34:8, Jeremiah 46:10, Jeremiah 51:6, Isaiah 61:2, Isaiah 63:4, Luke 21:22

and exhausts itself in an immediate reaction, and therefore does not poison." (Nietzsche 2016, 67-68).

The Homeric epics represent an adequate illustration of a literary translation of the descriptive into the normative, where the subjects who spin the epics are divided by the power criterion and resort to *vindicta* as the only means to get justice. *Iliad* and *Odyssey* depict the Greek social organization in the absence of a state, as Plato suggests in *The Laws*, governed exclusively by the rule of revenge. Firstly, the normative level of the Homeric epics reveals that there was a duty to take revenge, governed and restricted by rules which assured a balance between lenience and severity: for Achilles, Agamemnon or Odysseus, *vindicta* was not simply an emanation of unlimited subjective anger but also a matter of necessary reciprocity and punishment taken in behalf of the subject or of the group. The fact that subjects related to *vindicta* as a duty is shown in *Iliad* in the scene where Menelaos, whose suffering caused the Trojan war, inclined to accept a ransom for sparing a captive Trojan, is reminded by his brother, Agamemnon, that the proper revenge is death to all Trojans – which is to say there is a duty to take revenge, and that proper revenge implied a certain degree of severity. Such a degree of severity was exceeded when Achilles took revenge for the death of Patroklos by killing Hektor and dragging his body in front of the walls of Troy, which caused the interference of Gods in order to stop Achilles from further vengeance and to convince him to return Hektor's body to his father, Priam (Stanton 1984, 26-27).

Secondly, power permeates all levels of the Homeric epics, from the subjects who resort to *vindicta*, as embodiments of power, either gods, members of the social or military elite, heroes or noblemen, to the world itself, which was based on blurred distinctions between the realm of gods and the one of men, most men being themselves descendents of gods. If the Homeric epics

imply a literary translation of the descriptive into the normative, the use of *vindicta* between gods reflects the practice of revenge among the powerful, and the use of *vindicta* by gods against men reflects the revenge of the powerful against those who do not have power. Even though *vindicta* is seen as an act of Justice governing the Greek world in the absence of Law, the Homeric epics reveal nevertheless that revenge is a successful means only in the hands of the powerful.

If, for Nietzsche, the very claim for justice from a *tertium* emerges from those subjects who lack the power to resort to *vindicta* in order to gain justice for themselves and, as a consequence, they establish their own moral interpretation as revenge against their aristocratic masters, Publius Ovidius Naso suggests that the Law was instituted precisely against this asymmetry of *vindicta* used by the powerful against their inferior – *Inde datae leges, ne fortior omnia posset* (Ovidius, *Fasti* III, 279). Although Ovidius does not refer directly to revenge, if the purpose of Law was to prevent the powerful to always have their way, this was especially a demand of the weak and particularly applicable to *vindicta*, since it was the favourite means of the powerful to settle their disputes through their innate, easy and spontaneous recourse to force.

4. Heidegger and truth – *aesthesis, noein, logos*

The connection between the powerful and private revenge is encapsulated in the Latin word *vindicta*, meaning vengeance, punishment, and which is composed of *vim, vis* and *dico, dicere* – the first one meaning power, force, energy, and the latter, to say, declare, state, affirm, assert. With these two semantic support

pillars, *vindicta* referred to the power to answer back to that which the subject perceived as injustice. It presupposed the power to affirm, the force to assert the subject's reading of reality in order to punish. *Vindicta* implied that revenge was taken by affirming an unilateral reading of facts, by imposing through power the subjective truth. Even though *vindicta* was not restricted to the powerful, they would have been the natural holders of the required power to make their version of facts the only one remaining, to make their specific reading of reality opposable to others and, by doing so, to affect reality itself.

Vindicta, as a means of the powerful, was not only identified with Justice and considered morally good, but it was also considered an expression of truth. The powerful subject held a specific understanding of truth, one deeply anchored in the descriptive rule of reciprocity, and which reflected the specific positioning of the powerful subject as a *dominus*, master, dominant winner of the world he inhabited. Since the empirical was translated into the normative in the form of a duty, only the powerful were capable of successfully fulfilling it and, as such, they regarded it as a means of justice, demanded recognition for it from the others and these would constitute the essential ingredients of what would become honour.

If through Nietzsche it becomes possible to operate a reduction of secondary normative interpretations, moral and legal, to the primary factual of the descriptive, through Heidegger a similar gesture becomes possible with regard to truth. Heidegger was concerned with finding the primary location of truth in Greek thought, suspecting that the notion of truth which became dominant and, from a certain perspective, exclusive in European thinking, occults a more fundamental understanding of truth. Heidegger shows that the Greek distinguished between, on one side, *aesthesis*, which is mere perception, without being doubled by interpretation, and, on the

other side, interpretation, the realm of *logos*. Heidegger argues that, for the Greek, *aesthesis* together with *noein*, which means intuition, are always true, since through them it is always immediately revealed that which is perceived or intuited. As such, *aesthesis* or *noein* can never raise the problem of falsehood, but only issues/problems regarding the inadequacy or the lack of *aesthesis* or *noein* altogether. It is only interpretation, which takes place in *logos*, in the order of language, secondary to *aesthesis* and *noein*, that can be false: since the function of *logos* was to allow something to be seen in discourse, to make it accessible and to reveal it to others through linguistic expressions, it introduced the possibility of falsehood (Heidegger 2012, 42-45). With Aristotle, truth was placed at the level of linguistic expressions of judgments and as a property of assertions constructed using reason, and this understanding of *logos* replaced its primary meaning of letting something be seen for others.

Truth understood exclusively in relation to *logos* as reason in this Aristotelian understanding, which became dominant in European cultures, is at the basis and fundamentally structures contemporary European Law and Justice. If the normative emerging from the descriptive, by interpreting what it is as a result of what it should be, firstly introduced a duty and, later, an entitlement to take revenge, before prohibiting *vindicta* altogether, so did truth as *logos* understood as reason, before being the tool for its eventual interdiction, was at first responsible for the introduction of proportionality in retaliation, through *lex talionis*, a rational limit in the functioning of the rule of reciprocity, prohibiting the unlimited response to the harm suffered, and, later, for the introduction of *nemo iudex in causa sua*, *suum cuique tribuere* and *res iudicata pro veritate habetur*. Just as, in relation to the rule of reciprocity, the descriptive is the fundamental layer, empirical, factual and governed by power, allowing for secondary normative interpretations to occur and to

introduce moral distinctions between good and bad, just and unjust, so are *aesthesis* and *noein* fundamental in relation to truth, allowing for interpretations through *logos* as rational discourse to introduce the distinction between true and false. Just as the unmediated versions of perception, *aesthesis*, and thinking as intuition, *noein*, are always true and never false, because only the mediation through *logos* enables the possibility of falsehood, so is the use of *vindicta* by the powerful in the descriptive, factual level always good and just, because only the mediation through the normative introduces the possibility of moral malice. At the descriptive level, where the rule of reciprocity is governed by power and where revenge cannot be ascribed a moral value, truth is located in the subject of *aesthesis*, where the harm suffered is perceived unmediated and which triggers vengeance as an immediate reaction. At the descriptive level, the truth of *vindicta* is based on *aesthesis*, the directly perceived pain inflicted onto the subject. The emergence of the normative from the descriptive, which introduces the moral dimension of good and bad, just and unjust, takes place only through *logos*, which conceals the truth of *aesthesis* proper to *vindicta* and replaces it with interpretations which suspend revenge and guide it to a moral, just, rational response.

Logos, with the original function Heidegger identified in the Greek thinking, as a means to let something be revealed to others through language, was used equally by the powerful subjects in order to appropriate the normative duty to take revenge, ascribe it moral worth and justness and create a correlative culture of honour and pride, and by those who did not have the power to take revenge in order to morally value their impotency in taking revenge, a process which culminated with the creation of a legal culture corresponding to their moral evaluations, which prohibited *vindicta* through Law. Just as Nietzsche contemplated the dominance of slave morality over master morality in

European culture, the moral criticism of revenge over other normative evaluations of *vindicta*, Heidegger contemplated the dominance of *logos* as reason over *aesthesis* or *noein* in European culture. Heidegger's analysis shows a *logos* which allows something to be seen for others through linguistic means guided by reason, a discourse which articulates the contemporary Law and morality, in opposition to *vim dico*, *vis dicere*, the affirmation of power, which presupposes a *logos* closely related to the *aesthesis* of the harm suffered and to power, intrinsic to the subject of *vindicta*.

5. Scheler and the subject of *vindicta* – *arete*, *aristoi*

Just as the descriptive with the power criterion constituted the basis for the normative, the etymological aura of *vindicta* suggests that power also constituted the basis for a particular kind of subject, who would have had the necessary force to effectively assert and impose his truth on the opponent, who could resort to *vim dico*. This particular kind of subjectivity was not articulated on power alone, even though power was the primary ingredient, but emerged at the junction of power, truth and justice, the elements which underpin *vindicta*. This particular type of subjectivity presupposed firstly that the subject who would produce his truth through *aesthesis* would consider it an inseparable part of his identity, by willing to risk his life in order to defend it, secondly, that he would himself have the necessary power, *vis*, to assert his personal truth and impose it, *dico*, through *vindicta*, and, thirdly, that this act would not amount to a form of private justice reducible to an arbitrary and personal use of force, but considered as an act of Justice. This kind of subject would have had to equally integrate and embody all

three before resorting to *vindicta*, in order to effectively impose the truth on the opponent and in order for this act to be respected, valued and adopted by the others as a legitimate means to gain Justice and settle disputes.

If *vindicta* was considered a judicial practice and not just a discretionary use of force after it got dismantled as such through various moral critiques, it was only because power, truth and justice were constitutive to the subject of *vim dico*, inseparable parts of his identity. As something generated by the subject, *vindicta* was an effect infused with the same properties as its *causa*: the constitutive elements of the subject would transfer to his acts, or, in a symmetrical perspective, the subject himself, as embodiment of power, truth and justice, would actualize all three through *vindicta*.

Max Scheler refers to this subject as “the noble man”, the one who “has a completely naïve and non-reflective awareness of his own value and of his fullness of being, an obscure conviction which enriches every conscious moment of his existence, as if he were autonomously rooted in the universe. (...) It is a way of ‘holding on’ to one’s value, of seizing and ‘preserving’ it deliberately. (...) His naïve self-confidence is by no means ‘compounded’ of a series of positive valuations based on specific qualities, talents, and virtues: it is originally directed at his very essence and being. [his naïve awareness of his own value] (...) needs no justification or proof by achievements or abilities. Achievements merely serve to confirm it. (...) The noble man experiences value prior to any comparison (...)” (Scheler 1998, 41-42)

Scheler’s insight locates in a specific type of subjectivity the previous Heideggerian and Nietzschean remarks on truth, morality and justice. In relation to Heidegger, “the noble man” analysed by Scheler is characterized by a complete “naïve and non-reflective awareness of his own value and of his fullness of being” and thus is placed in a privileged position to the truth of *aesthesis* and *noein*, as opposed to the secondary interpretation

through *logos*; in relation to Nietzsche, “the noble man” lacks resentment and is defined by the contrast to the subjectivity of “the common man”, which, as Nietzsche argued when describing the slave morality, is grounded precisely on resentment: “The noble man’s naive self-confidence, which is as natural to him as tension is to the muscles, permits him calmly to assimilate the merits of others in all the fullness of their substance and configuration. He never ‘grudges’ them their merits. On the contrary: he rejoices in their virtues and feels that they make the world more worthy of love.(...) he can afford to admit that another person has certain “qualities” superior to his own or is more ‘gifted’ in some respects—indeed in all respects. (...) On the other hand, the ‘common’ man (in the exact acceptance of the term) can only experience his value and that of another if he relates the two, and he clearly perceives only those qualities which constitute possible differences. (...) the common man [experiences value] in and through a comparison. For the latter, the relation is the selective precondition for apprehending any value. Every value is a relative thing, ‘higher’ or ‘lower’, ‘more’ or ‘less’ than his own. He arrives at value judgments by comparing himself to others and others to himself” (Scheler 1998, 41-42)

The subjectivity described by Scheler, which integrates both Heideggerian and Nietzschean insights, had various concrete references throughout European history and polymorphous cultural representations: warrior, aristocrat, knight, king, crusader, artist, priest, monk, prophet, God himself. However, the confluence point of power, truth and justice as constitutive ingredients of the subject of *vindicta* can be found in the etymology of the ancient Greek *aristoi*, *arete* and *aristokratia*, words with a remarkable weight in European culture. *Aristoi* refers to the elite of the ancient Greek society, to those who were the best in terms of birth, rank and nobility. Along with *kratos*, the word for power, *aristoi* would form *aristokratia*, which referred to those in the front lines who commanded and led the

armies, proving the highly regarded virtue of bravery, *arete*. Without specifically naming bravery or relating to virtues, Nietzsche refers to the noble man as having “a certain imprudence, perhaps a bold recklessness whether in the face of danger or of the enemy” (Nietzsche 2016, 67). In the Homeric *Iliad* and *Odyssey*, *arete* is used in the description of heroes and nobles and in reference to their eminent attributes of strength and bravery. Thus, in an immediate connection with exemplary martial figures, as an anonymous leading position within the military hierarchy or as mythological exceptional warriors, *arete* was primarily associated with power. However, also in the Homeric poems and gravitating around heroic profiles, *arete* is generally associated with effectiveness, implying the capacity of the subject to mobilize his entire spectrum of personal abilities in achieving a specific goal. With this specific meaning of effectiveness, the word is situated in a close proximity to truth, implying precisely the possibility of actualizing it: this faculty of the subject to command and focus his potentialities in obtaining concrete effects in the real world refers to his innate power to impose on reality his particular interpretation of it, which is nothing but the power to impose truth. *Vindicta* is, therefore, a form of *dicere*, of communicating truth through power, where *arete* is the quality of the subject to use his force, *vis*, to effectively make the *aesthesis* of the pain suffered by him and caused by the other to be caused by him and felt by the other.

If the meaning of *arete* covered the superlative ability and superiority in relation to both power and truth, and *aristoi* referred to the elite, *aristokratia* implied all that, but also indicated an innate moral excellence. The etymological semantic spectrum and the cultural discourse overlap in this regard, assuming that the subject of nobility is constituted by this inseparable link between power and morality, nevertheless with a rather Nietzschean relation of causality between the two: as a human

expression of the superlative, the aristocrat was considered good because he was, at first, powerful, and not the other way around. *Arete* has come to imply, along with the martial virtues in relation to power, also moral virtue.

The gradual semantic conjunction of power, truth, moral virtue and justice is revealed through a subsequent association of *arete* with *dikaiosyne*, which refers to Justice, and *sophrosyne*, which refers to self-restraint. Plato would develop his moral philosophy considering *arete* as a virtue in relation to justice and self-restraint, but, even before Plato, this connection was established through the mythological personification of *arete* as the goddess of virtue, sister of *Homonoia*, the goddess of harmony, concord, unity, and the daughter of *Praxidike*, the goddess of justice, of judicial punishment and vengeance.

6. *Justitia versus vindicta*

If the Homeric subject, hero or nobleman, was a model of the subject of *vindicta* as an embodiment of power, truth and justice, the gradual process of marginalization which would eventually lead to the prohibition of *vindicta* would reflect a correlative gradual process of expropriation of the subject of his constitutive ingredients, of his increasing alienation from what was part of his identity.

If, as Publius Ovidius Naso noticed, *Inde datae leges, ne fortiori omnia posset*, the private revenge, which would, at a certain point, even translate the symmetry of *lex talionis*, was reduced to an arbitrary private use of force, disconnected from its ties to Justice, since Justice was not something to be gained from the particular standing of the competing parties, but placed outside the subjects and decided upon from an external position of a *tertium*. The subject was refused not only the use of power as

means of obtaining Justice, but also the faculty of producing his own truth and of imposing it as part of his identity – the prohibition of *vindicta* was based on the fact that *nemo iudex in causa sua*, on the Law that demanded that no one would decide himself on what is true or just, even if one had the power to do so. Neutralizing the power of the powerful, denying their faculty of producing and imposing truth and reducing the act of *vindicta* to force, the role of the *tertium* was to mediate between competing claims of subjects, conflicting versions on facts, different degrees of correspondence to reality, to choose and produce the truth and finally impose it on the parties and others.

As the matters of settling private disputes shifted from private means of *vindicta* to institutional, Law-centered, public ones, so did the meaning of Justice shift from the private to the public sphere – from an emanation of the subject of *vindicta*, *aristos*, the ones who proved *arete*, whose identity was constituted on Justice itself and making any act a just one simply by being caused by the one who is just, the public meaning of Justice was grounded on certain moral values which the centralized power assumed to observe and protect. Justice became a matter of Law, not of subjects, and it implied *suum cuique tribuere*, which subjects themselves could not establish alone, but through a *tertium*. If it was not possible through a legal prohibition to effectively repress the use of power, the disconnection of *vindicta* from Justice, which was to be gained only through a *tertium*, left the private revenge with the personal purpose of gaining satisfaction. However, the idea that subjects can take matters of justice in their own hands became generally incompatible with the political power, which, at first, assumed the role to authorize the recourse to *vindicta*, and only later entirely banned the practice and assumed the exclusive role of producing a unique and definitive judicial truth – *res iudicata pro veritate habetur*. Law absorbed *vindicta* in its own mechanism

once the political power reflected the *logos* of the ones who did not have the power to resort to revenge, their moral interpretation of revenge and their understanding of truth and justice. However, it was neither the violence of the retaliation, the irrational disproportion of the response, nor the idea of punishing the offender that the introduction of Law sought to repress, but the connection of *vindicta* to the powerful as their favourite means to settle disputes.

Although the moral *logos* of those who lacked power was used to both justify the prohibition and express an equivalent correlative critique of *vindicta*, the prohibition of revenge was originally aimed at counteracting the doings of Tyche/Fortuna, the asymmetry of power distributed unevenly in the subjects. As Walter Benjamin argued, the purpose of the political power is to gain a monopoly on *vis* by substituting the natural violence of the subjects as means to natural purposes with the legal violence, which is prescribed by Law. Whenever such violence is exerted *contra legem*, it is affecting the politically recognized power itself (Derrida & Benjamin 2004, 7-9). Whenever a subject establishes himself the connection between his interpretation of reality and reality itself, it has no importance whether the text of the Law plays any role in the process, if it is the Law itself that the subject applies to reality, if it would have been identical with the judiciary decision given in that particular matter or whether it is an arbitrary act of punishment by the powerful or, on the contrary, by the weak. It is not the interpretation itself that the subject imposes in reality that threatens the judicial truth through Law, but the unique remarkable property of *vindicta* of establishing the truth through the most immediate and clear connection with reality, which modern judicial practices cannot obtain. From the point of view of the monopoly on violence, the subject cannot resort to *vindicta* without simultaneously posing a threat to the political power; all contractual theories of state, even

if they imagine differently the hypotheses of the state of nature, nevertheless rely on a renouncement of the natural freedom in the benefit of a centralized authority, with the condition that all individuals do the same, the act of renouncement simultaneously constituting the political power and the individual as a subject of authority. And this does not imply that the subject is prohibited access to violence altogether, but that he can only resort to legal violence, the one allowed by Law and accessible to all subjects. As such, Law may even recognize, in various forms, an explicit right to *vindicta* or appropriate, internalize or legitimize its mechanism of imposing truth, as it was the case with the practice of duel, recognized by Law to members of aristocracy throughout the European cultures from early medieval times until the end of the First World War*.

Through the introduction of a *tertium*, the judicial truth through Law implied a series of mediations which *vindicta* short-circuited: firstly, all claims of Justice had to be conveyed through *logos* as reason, which was regarded by the subject as an equivocal detour to his truth, secondly, in the process of establishing the judicial truth the *tertium* would have to include the conflicting demands of the other party as well, thirdly, the judicial truth established by the *tertium* could have been a compromise, a mixed reading of reality incorporating elements of the opposing party as well, and, fourthly, once the judicial truth was established, even if it would have corresponded entirely with the one of the subject, it would have been imposed and recognized from outside, not as an emanation of the subject himself, but as an act of the deciding *tertium*. As such, the prohibition of *vindicta* opened the space for the universalisation of the kind of subjectivity which lacked power and accumulated

* for an extensive analysis of duel see *supra* 'The Deadly Game. Deciphering Duel and its Impossible Legal Prohibition through Nietzsche and Hegel', p. 41.

resentment: the removal of power from the identity of the subject made it impossible for him to impose his truth, the removal of truth as internal to him made his reading of reality arbitrary and turned it into a claim, and the removal of justice made the use of power in imposing the subjective truth arbitrary and a mere act of gaining satisfaction. Even though the subject gave up *dicere*, the possibility of communicating and establishing himself the correspondence to reality of his reading of facts, *vis*, the power to do so, *aesthesis*, the internal algorithm of creating the truth as part of his identity and the identification of *vindicta* with Justice, the memory of such potential never faded in the historical development of the legal techniques of producing and imposing the judicial truth through Law.

7. A journey to Aegina – *vim vi repellere licet*

Regardless of the contemporary legal prohibition of private revenge in European Law, the intrinsic structure of *vindicta*, the fusion of *aesthesis* as a source of truth, *vis* and *dicere*, even if disconnected from a particular subjectivity constituted by power, remains irreducible to the very legal *logos* which condemns it: all European legal systems equally ban *vindicta*, but recognize a right to self-defense, universalised to any subject. Self-defense finds its *logos* in Roman law: *Lex Duodecim Tabularum*, the Law of the XII Tables, states in the provision 12 of Table VIII regarding *Torts and delicts* that “If a thief commits a theft by night, if the owner kills the thief, the thief shall be killed lawfully”; in Justinian’s *Digest* 43.16.1.27, *Ulpianus libro sexagensimo nono ad edictum*, Ulpianus states that “*Vim vi repellere licet Cassius scribit idque jus natura comparator: apparet autem, inquit, ex eo arma armis repellere licet*”, meaning that “*Cassius writes that it is permissible to repel force by force, and this right is conferred by nature. From this it*

appears, he says, that arms may be repelled by arms.” (Hausmaninger & Gamauf 2012, 102). The principle of ‘*vim vi repellere licet*’ was, similarly to *vindicta*, grounded on a specific form of power, *dominium*, and related to a specific kind of powerful subject: *dominium* is the power recognized to *pater familias*, the head of the household, to have sole ownership over the goods and the members of his family alike*. As such, any attack on his personal property or on any member of his family was perceived, *aesthesis*, as a personal attack against *pater familias*, who was recognized by Law the right to use force, *vis*, as a defensive response, *dicere*, to the offense. Also, Gaius states in *Digest* 9.2.4 that “*adversus periculum naturalis ratio permittit se defendere*”, meaning that “*natural reason permits the defense of oneself against danger*” (Hausmaninger & Gamauf 2012, 102). Nevertheless, it is Paulus who refers to the limits of Law in *Digest* 9.2.45.4, stating that “*vim enim vi defendere omnes leges omniaque jura permittunt*”, meaning “*all laws and legal regimes permit defense by force against force*” (Hausmaninger & Gamauf 2012, 102). Law is therefore constituted by the prohibition of *vindicta*, the exclusion of *vis dicere* as a response to the harm suffered, while simultaneously having to include the response by force as a defense against force.

The principle which grounds the contemporary legally permissible self-defense corresponds entirely in its intrinsic articulations to *vindicta: vis, dicere, aesthesis*. However, in order for the response to not be regarded as a criminal offense, it has to fulfill specific conditions both itself and in relation to the attack: the response has to be directed against the attacker and has to be proportional to the attack; also, the attack has to be material, as in real and not just perceived, direct, as in unmediated, unblocked by anything, immediate, as in actual, and unjust.

* for an extensive analysis of the power of *pater familias* in Roman law see *infra* ‘The Diffusion of the Archaic Gift into Early Roman Law Institutions. From Animism to *Mancipatio* and *Nexum, via Potestas*’, p. 283.

Exclusively within these limits, the subject is legally recognized the possibility to take matters of justice in his own hands and respond to the harm he is being exposed to, insofar as he has the power to do so.

The drive which finds a legal recognition of self-defense is the fear of the imminent material, nevertheless future danger, rooted in a biological self-preservation instinct, not the anger or the restoration of self worth caused by the awareness of a harm already suffered in the past by the one who resorts to *vindicta*: in self-defense, the one who responds must be faced with a threat of use of force or with an actual show of force from the attacker, and only against this virtuality is he legally recognized a proportional response. If the attacker realizes the threat and inflicts the harm, a response would not be considered defensive and, as such, even as an instant, immediate reaction, it would cross the legal boundary as revenge and would be qualified as a criminal offence. The ingredients of self-defense and *vindicta* are not different from the stand point of the responding subject: the same amount of force used to repel the attack in self-defense is prohibited as revenge, the same harm before and after its actualization is differently valued through legal lenses and the same person who would act on impulse in self-defense is presumed an amount of deliberation when the same impulse would command retaliation. Both the one who has the power to repel by force the threat and the one who is exposed to an immediate threat but lacks any power to defend himself becoming a victim are legally protected. If, however, the same person who has the power to respond does not anticipate the threat and becomes a victim, and, immediately after the attack, pursues retaliation, this act would be considered revenge and it would cross the legal boundaries.

Nevertheless, the distinction between *vindicta* and *vim vi repellere licet* is not as strict as the Law claims it to be: legal

doctrine showed that it is often the case that the legal language was successfully used in translating violence motivated by revenge in the terminology of self-defense. If the legal *logos* is distorted to incorporate acts which would fit the mechanism of *vindicta*, it is only because there are common ingredients in both revenge and self-defense, and the ties of the former to Justice were severed by Law*.

The legal doctrine would point out the specific inability of the Law, a sort of flaw by design, in grasping the real social phenomena legally prohibited and in understanding the internal drives of the subjects in their own terms, the language of *vindicta*. *Vim vi repellere licet* is concerned with physical security and future harm, *vindicta* is concerned with the harm suffered and is oriented towards the restoration of self worth for which legal means seem inadequate. This inability of the Law is recurrent in all legal branches, either private, whenever patrimonial remedies are offered for offenses that cannot be compensated by patrimonial means, or criminal, whenever the subject has to translate his claim for vengeance in terms of self-defense, or in international laws of war, whenever states justify their offensive acts as self-defensive*. All these cases,

* It is the cases of sexually charged homicides, where the wife killed her husband due to years of abuse from him which made her fear her safety, even if, at the moment of her act, she was not imminently threatened by her sleeping husband; or where the husband kills his wife for cheating on him, or where a man kills in response to a homosexual advance, or the cases regarding the violent response of those belonging in various underground social groups in James Q. Whitman, 'Between Self-Defense and Vengeance/Between Social Contract and Monopoly of Violence' in *Yale Law School Legal Scholarship Series. Paper 650*, 2004, pp.905-907.

* This was the case in august 1939, when Hitler's SS troops disguised themselves in Polish uniforms and staged an attack on a German radio

which stretch the juridical *logos* of both the exclusion of revenge and the inclusion of self-defense, only show that, while Law submits to the logic of self-defense, although it refuses to recognize *vindicta* as a legitimate desire of the subjects, it constantly transgresses its own stated limits, distorting self-defense to cover particular cases of revenge which are intuitively perceived as just.

Within the rational framing of the juridical *logos*, *vindicta* is simultaneously forbidden as an explicit practice and preserved implicitly in a particular form through self-defense. The permeable legal capsule which separates legitimate defense from any other act that transgresses the legal boundaries contains the irreducible core, the very essence of *vindicta*, which is implicitly recognized by Law as an act of Justice enacted by the subject himself, but only as an instantaneous, flashing event: in that moment, as a fusion of *vis*, *dicere* and *aesthesis* and its latent, but organic connection to the subject, *vindicta* becomes iridescent...

In a conversation during his seminar on Heraclitus, Heidegger raised the issue of lightning in Greek thought, to which Eugen Fink answered: "*Lightning, regarded as a phenomenon of nature, means the outbreak of the shining lightning-flash in the dark of night. Just as lightning in the night momentarily flashes up and, in the brightness of the gleam, shows things in their articulated outline, so lightning in a deeper sense brings to light the multiple things in their articulated gathering*". In return, Martin Heidegger replied: "*I remember an afternoon during my journey in Aegina. Suddenly I saw a single bolt of lightning, after which no more followed. My thought was: Zeus.*" (Heidegger & Fink 1993, 5).

post just so that Hitler would have a pretext to attack Poland as an act of self-defense.

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