

The Morality of Anger

Walter Berns

Until recently, my business did not require me to think about the punishment of criminals in general or the legitimacy and efficacy of capital punishment in particular. In a vague way, I was aware of the disagreement among professionals concerning the purpose of punishment—whether it was intended to deter others, to rehabilitate the criminal, or to pay him back—but like most laymen I had no particular reason to decide which purpose was right or to what extent they may all have been right. I did know that retribution was held in ill repute among criminologists and jurists—to them, retribution was a fancy name for revenge, and revenge was barbaric—and, of course, I knew that capital punishment had the support only of policemen, prison guards, and some local politicians, the sort of people Arthur Koestler calls “hanghards” (Philadelphia’s Mayor Rizzo comes to mind). The intellectual community denounced it as both unnecessary and immoral. It was the phenomenon of Simon Wiesenthal that allowed me to understand why the intellectuals were wrong and why the police, the politicians, and the majority of the voters were right: We punish criminals principally in order to pay them back, and we execute the worst of them out of moral necessity. Anyone who respects Wiesenthal’s mission will be driven to the same conclusion.

Of course, not everyone will respect that mission. It will strike the busy man—I mean the sort of man who sees things only in the light cast by a concern for his own interests—as somewhat bizarre. Why should anyone devote his life—more than thirty years of it!—exclusively to the task of

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hunting down the Nazi war criminals who survived World War II and escaped punishment? Wiesenthal says his conscience forces him "to bring the guilty ones to trial." But why punish them? What do we hope to accomplish now by punishing SS Obersturmbannführer Adolf Eichmann or SS Obersturmbannführer Franz Stangl or someday—who knows?—Reichsleiter Martin Bormann? We surely don't expect to rehabilitate them, and it would be foolish to think that by punishing them we might thereby deter others. The answer, I think, is clear: We want to punish them in order *to pay them back*. We think they must be made to pay for their crimes with their lives, and we think that we, the survivors of the world they violated, may legitimately exact that payment because we, too, are their victims. By punishing them, we demonstrate that there are laws that bind men across generations as well as across (and within) nations, that we are not simply isolated individuals, each pursuing his selfish interests and connected with others by a mere contract to live and let live. To state it simply, Wiesenthal allows us to see that it is right, morally right, to be angry with criminals and to express that anger publicly, officially, and in an appropriate manner, which may require the worst of them to be executed.

Modern civil-libertarian opponents of capital punishment do not understand this. They say that to execute a criminal is to deny his human dignity; they also say that the death penalty is not useful, that nothing useful is accomplished by executing anyone. Being utilitarians, they are essentially selfish men, distrustful of passion, who do not understand the connection between anger and justice, and between anger and human dignity.

Anger is expressed or manifested on those occasions when someone has acted in a manner that is thought to be unjust, and one of its origins is the opinion that men are responsible, and should be held responsible, for what they do. Thus, as Aristotle teaches us, anger is accompanied not only by the pain caused by the one who is the object of anger, but by the pleasure arising from the expectation of inflicting revenge on someone who is thought to deserve it. We can become angry with an inanimate object (the door we run into and then kick in return) only by foolishly attributing responsibility to it, and we cannot do that for long, which is why we do not think of returning later to revenge ourselves on the door. For the same reason, we cannot be more than momentarily angry with any one creature other than man; only a fool and worse would dream of taking revenge on a dog. And, finally, we tend to pity rather than to be angry with men who—because they are insane, for example—are not responsible for their acts. Anger, then, is a very human passion not only because only a human being can be angry, but also because anger acknowledges the humanity of its objects: it holds them accountable for what they do. And in holding particular men responsible, it pays them the respect that is due them as men. Anger recognizes that only men have the capacity

to be moral beings and, in so doing, acknowledges the dignity of human beings. Anger is somehow connected with justice, and it is this that modern penology has not understood; it tends, on the whole, to regard anger as a selfish indulgence.

Anger can, of course, be that; and if someone does not become angry with an insult or an injury suffered unjustly, we tend to think he does not think much of himself. But it need not be selfish, not in the sense of being provoked only by an injury suffered by oneself. There were many angry men in America when President Kennedy was killed; one of them—Jack Ruby—took it upon himself to exact the punishment that, if indeed deserved, ought to have been exacted by the law. There were perhaps even angrier men when Martin Luther King, Jr., was killed, for King, more than anyone else at the time, embodied a people's quest for justice; the anger—more, the "black rage"—expressed on that occasion was simply a manifestation of the great change that had occurred among black men in America, a change wrought in large part by King and his associates in the civil-rights movement: the servility and fear of the past had been replaced by pride and anger, and the treatment that had formerly been accepted as a matter of course or as if it were deserved was now seen for what it was, unjust and unacceptable. King preached love, but the movement he led depended on anger as well as love, and that anger was not despicable, being neither selfish nor unjustified. On the contrary, it was a reflection of what was called solidarity and may more accurately be called a profound caring for others, black for other blacks, white for blacks, and, in the world King was trying to build, American for other Americans. If men are not saddened when someone else suffers, or angry when someone else suffers unjustly, the implication is that they do not care for anyone other than themselves or that they lack some quality that befits a man. When we criticize them for this, we acknowledge that they ought to care for others. If men are not angry when a neighbor suffers at the hands of a criminal, the implication is that their moral faculties have been corrupted, that they are not good citizens.

Criminals are properly the objects of anger, and the perpetrators of terrible crimes—for example, Lee Harvey Oswald and James Earl Ray—are properly the objects of great anger. They have done more than inflict an injury on an isolated individual; they have violated the foundations of trust and friendship, the necessary elements of a moral community, the only community worth living in. A moral community, unlike a hive of bees or a hill of ants, is one whose members are expected freely to obey the laws and, unlike those in a tyranny, are trusted to obey the laws. The criminal has violated that trust, and in so doing has injured not merely his immediate victim but the community as such. He has called into question the very possibility of that community by suggesting that men cannot be trusted

to respect freely the property, the person, and the dignity of those with whom they are associated. If, then, men are not angry when someone else is robbed, raped, or murdered, the implication is that no moral community exists, because those men do not care for anyone other than themselves. Anger is an expression of that caring, and society needs men who care for one another, who share their pleasures and their pains, and do so for the sake of the others. It is the passion that can cause us to act for reasons having nothing to do with selfish or mean calculation; indeed, when educated, it can become a generous passion, the passion that protects the community or country by demanding punishment for its enemies. It is the stuff from which heroes are made.

A moral community is not possible without anger and the moral indignation that accompanies it. Thus the most powerful attack on capital punishment was written by a man, Albert Camus, who denied the legitimacy of anger and moral indignation by denying the very possibility of a moral community in our time. The anger expressed in our world, he said, is nothing but hypocrisy. His novel *L'Étranger* (variously translated as *The Stranger* or *The Outsider*) is a brilliant portrayal of what Camus insisted is our world, a world deprived of God, as he put it. It is a world we would not choose to live in and one that Camus, the hero of the French Resistance, disdained. Nevertheless, the novel is a modern masterpiece, and Meursault, its antihero (for a world without anger can have no heroes), is a murderer.

He is a murderer whose crime is excused, even as his lack of hypocrisy is praised, because the universe, we are told, is "benignly indifferent" to how we live or what we do. Of course, the law is not indifferent; the law punished Meursault and it threatens to punish us if we do as he did. But Camus the novelist teaches us that the law is simply a collection of arbitrary conceits. The people around Meursault apparently were not indifferent; they expressed dismay at his lack of attachment to his mother and disapprobation of his crime. But Camus the novelist teaches us that other people are hypocrites. They pretend not to know what Camus the opponent of capital punishment tells: namely, that "our civilization has lost the only values that, in a certain way, can justify that penalty . . . [the existence of] a truth or a principle that is superior to man." There is no basis for friendship and no moral law; therefore, no one, not even a murderer, can violate the terms of friendship or break that law; and there is no basis for the anger that we express when someone breaks that law. The only thing we share as men, the only thing that connects us one to another, is a "solidarity against death," and a judgment of capital punishment "upsets" that solidarity. The purpose of human life is to stay alive.

Like Meursault, Macbeth was a murderer, and like *L'Étranger*, Shakespeare's *Macbeth* is the story of a murder; but there the similarity ends. As Lincoln said, "Nothing equals *Macbeth*." He was comparing it with the

other Shakespearean plays he knew, the plays he had "gone over perhaps as frequently as any unprofessional reader . . . *Lear*, *Richard Third*, *Henry Eighth*, *Hamlet*"; but I think he meant to say more than that none of these equals *Macbeth*. I think he meant that no other literary work equals it. "It is wonderful," he said. *Macbeth* is wonderful because, to say nothing more here, it teaches us the awesomeness of the commandment "Thou shalt not kill."

What can a dramatic poet tell us about murder? More, probably, than anyone else, if he is a poet worthy of consideration, and yet nothing that does not inhere in the act itself. In *Macbeth*, Shakespeare shows us murders committed in a political world by a man so driven by ambition to rule that world that he becomes a tyrant. He shows us also the consequences, which were terrible, worse even than Macbeth feared. The cosmos rebelled, turned into chaos by his deeds. He shows a world that was not "benignly indifferent" to what we call crimes and especially to murder, a world constituted by laws divine as well as human, and Macbeth violated the most awful of those laws. Because the world was so constituted, Macbeth suffered the torments of the great and the damned, torments far beyond the "practice" of any physician. He had known glory and had deserved the respect and affection of king, countrymen, army, friends, and wife; and he lost it all. At the end he was reduced to saying that life "is a tale told by an idiot, full of sound and fury, signifying nothing"; yet, in spite of the horrors provoked in us by his acts, he excites no anger in us. We pity him; even so, we understand the anger of his countrymen and the dramatic necessity of his death. *Macbeth* is a play about ambition, murder, tyranny; about horror, anger, vengeance, and perhaps more than any other of Shakespeare's plays, justice. Because of justice, Macbeth has to die, not by his own hand—he will not "play the Roman fool, and die on [his] sword"—but at the hand of the avenging Macduff. The dramatic necessity of his death would appear to rest on its *moral* necessity. Is that right? Does this play conform to our sense of what a murder means? Lincoln thought it was "wonderful."

Surely Shakespeare's is a truer account of murder than the one provided by Camus, and by truer I mean truer to our moral sense of what a murder is and what the consequences that attend it must be. Shakespeare shows us vengeful men because there is something in the souls of men—then and now—that requires such crimes to be revenged. Can we imagine a world that does not take its revenge on the man who kills Macduff's wife and children? (Can we imagine the play in which Macbeth does not die?) Can we imagine a people that does not hate murderers? (Can we imagine a world where Meursault is an outsider only because he does not *pretend* to be outraged by murder?) Shakespeare's poetry could not have been written out of the moral sense that the death penalty's opponents insist we ought

to have. Indeed, the issue of capital punishment can be said to turn on whether Shakespeare's or Camus' is the more telling account of murder.

There is a sense in which punishment may be likened to dramatic poetry. Dramatic poetry depicts men's actions because men are revealed in, or make themselves known through, their actions; and the essence of a human action, according to Aristotle, consists in its being virtuous or vicious. Only a ruler or a contender for rule can act with the freedom and on a scale that allows the virtuousness or viciousness of human deeds to be fully displayed. Macbeth was such a man, and in his fall, brought about by his own acts, and in the consequent suffering he endured, is revealed the meaning of morality. In *Macbeth* the majesty of the moral law is demonstrated to us; as I said, it teaches us the awesomeness of the commandment Thou shalt not kill. In a similar fashion, the punishments imposed by the legal order remind us of the reign of the moral order; not only do they remind us of it, but by enforcing its prescriptions, they enhance the dignity of the legal order in the eyes of moral men, in the eyes of those decent citizens who cry out "for gods who will avenge injustice." That is especially important in a self-governing community, a community that gives laws to itself.

If the laws were understood to be divinely inspired or, in the extreme case, divinely given, they would enjoy all the dignity that the opinions of men can grant and all the dignity they require to ensure their being obeyed by most of the men living under them. Like Duncan in the opinion of Macduff, the laws would be "the Lord's anointed," and would be obeyed even as Macduff obeyed the laws of the Scottish kingdom. Only a Macbeth would challenge them, and only a Meursault would ignore them. But the laws of the United States are not of this description; in fact, among the proposed amendments that became the Bill of Rights was one declaring, not that all power comes from God, but rather "that all power is originally vested in, and consequently derives from the people"; and this proposal was dropped only because it was thought to be redundant: the Constitution's preamble said essentially the same thing, and what we know as the Tenth Amendment reiterated it. So Madison proposed to make the Constitution venerable in the minds of the people, and Lincoln, in an early speech, went so far as to say that a "political religion" should be made of it. They did not doubt that the Constitution and the laws made pursuant to it would be supported by "enlightened reason," but fearing that enlightened reason would be in short supply, they sought to augment it. The laws of the United States would be obeyed by some men because they could hear and understand "the voice of enlightened reason," and by other men because they would regard the laws with that "veneration which time bestows on everything."

Supreme Court justices have occasionally complained of our habit of making "constitutionality synonymous with wisdom." But the extent to which the Constitution is venerated and its authority accepted depends on the

compatibility of its rules with our moral sensibilities; despite its venerable character, the Constitution is not the only source of these moral sensibilities. There was even a period, before slavery was abolished by the Thirteenth Amendment, when the Constitution was regarded by some very moral men as an abomination: Garrison called it "a covenant with death and an agreement with Hell," and there were honorable men holding important political offices and judicial appointments who refused to enforce the Fugitive Slave Law even though its constitutionality had been affirmed. In time this opinion spread far beyond the ranks of the original abolitionists until those who held it composed a constitutional majority of the people, and slavery was abolished.

But Lincoln knew that more than amendments were required to make the Constitution once more worthy of the veneration of moral men. That is why, in the Gettysburg Address, he made the principle of the Constitution an inheritance from "our fathers." That it should be so esteemed is especially important in a self-governing nation that gives laws to itself, because it is only a short step from the principle that the laws are merely a product of one's own will to the opinion that the only consideration that informs the law is self-interest; and this opinion is only one remove from lawlessness. A nation of simple self-interested men will soon enough perish from the earth.

It was not an accident that Lincoln spoke as he did at Gettysburg or that he chose as the occasion for his words the dedication of a cemetery built on a portion of the most significant battlefield of the Civil War. Two and a half years earlier, in his First Inaugural Address, he had said that Americans, north and south, were not and must not be enemies, but friends. Passion had strained but must not be allowed to break the bonds of affection that tied them one to another. He closed by saying this: "The mystic chords of memory, stretching from every battlefield, and patriot grave, to every living heart and hearthstone, all over this broad land, will yet swell the chorus of the Union, when again touched, as surely they will be, by the better angels of our nature." The chords of memory that would swell the chorus of the Union could be touched, even by a man of Lincoln's stature, only on the most solemn occasions, and in the life of a nation no occasion is more solemn than the burial of the patriots who have died defending it on the field of battle. War is surely an evil, but as Hegel said, it is not an "absolute evil." It exacts the supreme sacrifice, but precisely because of that it can call forth such sublime rhetoric as Lincoln's. His words at Gettysburg serve to remind Americans in particular of what Hegel said people in general needed to know, and could be made to know by means of war and the sacrifices demanded of them in wars: namely, that their country is something more than a "civil society" the purpose of which is simply the protection of individual and selfish interests.

Capital punishment, like Shakespeare's dramatic and Lincoln's political poetry (and it is surely that, and was understood by him to be that), serves to remind us of the majesty of the moral order that is embodied in our law, and of the terrible consequences of its breach. The law must not be understood to be merely a statute that we enact or repeal at our will, and obey or disobey at our convenience—especially not the criminal law. Wherever law is regarded as merely statutory, men will soon enough disobey it, and will learn how to do so without any inconvenience to themselves. The criminal law must possess a dignity far beyond that possessed by mere statutory enactment or utilitarian and self-interested calculations. The most powerful means we have to give it that dignity is to authorize it to impose the ultimate penalty. The criminal law must be made awful, by which I mean inspiring, or commanding "profound respect or reverential fear." It must remind us of the moral order by which alone we can live as *human* beings, and in America, now that the Supreme Court has outlawed banishment, the only punishment that can do this is capital punishment.

The founder of modern criminology, the eighteenth-century Italian Cesare Beccaria, opposed both banishment and capital punishment because he understood that both were inconsistent with the principle of self-interest, and self-interest was the basis of the political order he favored. If a man's first or only duty is to himself, of course he will prefer his money to his country; he will also prefer his money to his brother. In fact, he will prefer his brother's money to his brother, and a people of this description, or a country that understands itself in this Beccarian manner, can put the mark of Cain on no one. For the same reason, such a country can have no legitimate reason to execute its criminals, or, indeed, to punish them in any manner. What would be accomplished by punishment in such a place? Punishment arises out of the demand for justice, and justice is demanded by angry, morally indignant men; its purpose is to satisfy that moral indignation and thereby promote the law-abidingness that, it is assumed, accompanies it. But the principle of self-interest denies the moral basis of that indignation.

Not only will a country based solely on self-interest have no legitimate reason to punish; it may have no need to punish. It may be able to solve what we call the crime problem by substituting a law of contracts for a law of crimes. According to Beccaria's social contract, men agree to yield their natural freedom to the "sovereign" in exchange for his promise to keep the peace. As it becomes more difficult for the sovereign to fulfill his part of the contract, there is a demand that he be made to pay for his nonperformance. From this comes compensation or insurance schemes embodied in statutes whereby the sovereign (or state), being unable to keep the peace by punishing criminals, agrees to compensate its contractual partners for injuries suffered at the hands of criminals, injuries the police are unable to prevent. The insurance policy takes the place of law enforcement and

the *posse comitatus*, and John Wayne and Gary Cooper give way to Mutual of Omaha. There is no anger in this kind of law, and none (or no reason for any) in the society. The principle can be carried further still. If we ignore the victim (and nothing we do can restore his life anyway), there would appear to be no reason why—the worth of a man being his price, as Beccaria's teacher, Thomas Hobbes, put it—coverage should not be extended to the losses incurred in a murder. If we ignore the victim's sensibilities (and what are they but absurd vanities?), there would appear to be no reason why—the worth of a woman being *her* price—coverage should not be extended to the losses incurred in a rape. Other examples will no doubt suggest themselves.

This might appear to be an almost perfect solution to what we persist in calling the crime problem, achieved without risking the terrible things sometimes done by an angry people. A people that is not angry with criminals will not be able to deter crime, but a people fully covered by insurance has no need to deter crime: they will be insured against all the losses they can, in principle, suffer. What is now called crime can be expected to increase in volume, of course, and this will cause an increase in the premiums paid, directly or in the form of taxes. But it will no longer be necessary to apprehend, try, and punish criminals, which now costs Americans more than \$1.5 billion a month (and is increasing at an annual rate of about 15 percent), and one can buy a lot of insurance for \$1.5 billion. There is this difficulty, as Rousseau put it: To exclude anger from the human community is to concentrate all the passions in a "self-interest of the meanest sort," and such a place would not be fit for human habitation.

When, in 1976, the Supreme Court declared death to be a constitutional penalty, it decided that the United States was not that sort of country; most of us, I think, can appreciate that judgment. We want to live among people who do not value their possessions more than their citizenship, who do not think exclusively or even primarily of their own rights, people whom we can depend on even as they exercise their rights, and whom we can trust, which is to say, people who, even in the absence of a policeman, will not assault our bodies or steal our possessions, and might even come to our assistance when we need it, and who stand ready, when the occasion demands it, to risk their lives in defense of their country. If we are of the opinion that the United States may rightly ask of its citizens this awful sacrifice, then we are also of the opinion that it may rightly impose the most awful penalty; if it may rightly honor its heroes, it may rightly execute the worst of its criminals. By doing so, it will remind its citizens that it is a country worthy of heroes.