

JUSTICE: THE DIALECTIC UNITY OF COMEDY AND TRAGEDY¹

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Abstract

Modern culture is organized by the idea of rationalization which extinguishes the feeling of the tragic life that represent not only tragedy as a literary genre or an aesthetical category, but also the insolubility of conflict between the good ones, the contradiction and conflict in regard to the essence of life, the unexplainable arbitrariness of factual circumstances, devastating potential of passions. This very fact shows that tragedy cannot be seen solely as a means of entertainment or a literary genre. If tragedy as an aesthetical category is the artistic expression of tragic experience, it can only be understood in a cultural context that underlies experience. Tragedies are the ethos of human existence. Indeed, ancient tragic dramas are based on the metaphysical supposition that conflict, contradiction, arbitrariness and uncertainty is implicit to both the structure of human beings and to the whole universe. In this context, this article aims to offer a reflection on the foundations of law by considering the oxymoronic character of thinking law together with tragedy. From the perspective of this paper, such a reflection not only challenges our definition of tragedy as an artistic imitation of a certain aspect of human life and law as the specific social technique of forced order that excludes tragic situations; it may also show that tragedy has the potential to expose a tragic aporia that underlies modern law but is hidden behind cold legal texts and complex institutional arrangements.

Keywords: *Tragedy, comedy, Aeschylus, modern law, legislation, Moira*

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ADALET: KOMEDİ İLE TRAGEDYANIN DİYALEKTİK BİRLİĞİ

Öz

Modern kültürün, yalnızca edebi bir tür olarak tragedyayı değil, aynı zamanda tutkuların yıkıcı potansiyelini ifade eden trajik yaşam duygusunu ortadan kaldıran rasyonelleşme fikrince örgütlendiği tezini temele alan bu yazı, hukuku tragedyaya ile birlikte düşünmenin oksimonik karakterini tartışmaya açarak hukukun kendi temelleri üstüne bir refleksiyona kapı aralamayı amaçlıyor. Bu yazının perspektifinden bu tür bir refleksiyon, cebri düzenin trajik durumları dışlayan özgül sosyal tekniği olarak hukuk ile insani yaşamın belli bir açıdan sanatsal taklidi olarak tragedyaya tanımımıza meydan okumakla kalmaz; aynı zamanda tragedyanın modern hukukun temelinde yatan ama soğuk hukuk metinleri ve karmaşık kurumsal düzenlemeler ardına gizlenen trajik bir aporia'yi işşa etme potansiyeli taşıdığını gösterebilir.

Anahtar Kelimeler: *Tragedya, Komedi, Aeschylus, modern hukuk, yasama, Moira.*

Introduction

This article is an attempt to think about Tragedy and Law together and it should be mentioned that the title chosen for this article is intended to be provocative one as it confronts the reader with an array of questions and brings him/her to think on stereotyped distinctions, assumptions and controversies. An idea can only be provocative when it makes itself the subject of query. In this sense, the attempt of thinking Tragedy and Law together is not important just because it makes the themes presented in tragedies as a literary genre –such as justice, crime, punishment, arbitrary regime versus rule of law, hard law norms against freedom of individual, conflict of law and justice, natural law versus positive law– into the topic of judicial consideration. In my opinion, it can be provocative to the extent that it enables a reflection on its own foundations by opening up the oxymoronic character or even the impossibility of thinking law and tragedy together for discussion.

Such a reflection, firstly challenges our definition of law as specific social technique of compulsory order that excludes tragic events and of tragedy as a artistic imitation of human life that is an area of activity from a definite angle. Secondly, it discloses a tragic *aporia* which underlies the modern law but hides behind the cold law texts and complex institutional regulations whose knowledge can only be possessed by a technician. As Terry Eagleton pointed out that “...tragic art highlights what is perishable, constricted, fragile and slow-moving

about us” and “...how we are acted upon rather than robustly enterprising, as well as what meagre space for manoeuvre we often have available”. The awareness which tragic art bring us about what is perishable, constricted and fragile and only can be obtained by grasping our constraints can animate “the kind of sober realism which is the only sure foundation of an effective ethics or politics and “we can act constructively”. (Eagleton 2003: xvi; Eagleton 2012; 16) But what does technique, *tekhne* has to do with a literary genre, poesis and what is this *aporia*? Let us elaborate on that.

Praxis, Ethos and Tragedy

Ideas organize life. From daily practices to institutional regulations, our social and individual lives are organized by founding ideas. Modern culture is organized by the idea of rationalization which extinguishes the feeling of the tragic life that represent not only tragedy as a literary genre or an aesthetical category, but also the insolubility of conflict between the good ones, the contradiction and conflict in regard to the essence of life, the unexplainable arbitrariness of factual circumstances, devastating potential of passions. This very fact shows that tragedy cannot be seen solely as a means of entertainment or a literary genre. If tragedy as an aesthetical category is the artistic expression of tragic experience, it can only be understood in a cultural context that underlies experience. But still, it is not a *random* part or the public poetic representation of the culture that it was born into. Each artistic form and tragedy in particular gains existence within the framework of metaphysical/ontological suppositions of the culture. In that case tragedy as a literary form should be understood as an ontological-ethical category based upon the existence of tragic life experience; not as the imitation of action but as praxis itself. Tragedy is the public poetic bearer of a culture’s deepest metaphysical presuppositions.

In this regard, tragedies are the *ethos* of human existence. Ethos by its most archaic meaning means dwelling, residence, habitancy. The true *ethos* of human existence –let us say it by referring to Heidegger– opens up a space for the “unfamiliar” which means “existence of God/Gods” (McNeill, 2000: 163). Indeed, ancient tragic dramas are based on the metaphysical supposition that conflict, contradiction, arbitrariness and uncertainty is implicit to both the structure of human beings and to the whole universe. In Iliad, Achiellus prays to annihilate *eris* (strife/conflict/struggle) of the earth and invokes: “...strife could die from the lives of gods and men and anger that drives the sanest man to flare in outrage”. (Homer 1990: 18:125) But can the conflict between Gods and men be resolved? Of course, not. Because conflict is a cosmic principle and everything that exists

is based on the principle of conflict. Accordingly, the world is divided into primitive element and each one occupies an idiocratical space. “Being” becomes possible by elements violating each other’s borders in their eternal struggle.

Since the order of physical things is on the same time a moral order, being means crossing its own limits, injustice or crossing moral borders. If birth is a crime, annihilation is the redemption of injustice (Cornford 1957: 10-11). Every single thing which comes into being within the order, moves towards death as the redemption of an injustice, a crime. Fate, namely *Moirai*, as the ruling of necessity, is “the power which dominates both what has to exist and what needs to exist” (Cornford 1957: 12). Let us read Aeschylus’ trilogy *Oresteia*’s last tragedy *Eumenids*.

Who of mortals hearing
Doth not quake for awe,
Hearing all that Fate thro' hand of God hath given us
For ordinance and law?
Yea, this right to us, in dark abysm and backward
Of ages it befell:
None shall wrong mine office, tho' in nether regions
And sunless dark I dwell. (Aeschylus 1938: 284; 2010; 390).

Again in Aeschylus’ tragedy *Prometheus Bound*, it reads that fate is above Gods, limits even them. The Chorus leader asks that “But who swings the helm? who brings Necessity about?”. Prometheus’ answer is clear: “The three bodies of Fate, and the unforgetting Furies”. Neither men nor Gods can go “beyond fate” which bears no aim, no rational plan. Not even Zeus can get away from what is going to happen or “He can’t escape His fate”. (Aeschylus 2009: 339; 2000: 63)

However, there is a much more important aspect that I would like to call the readers’ attention to. both in *Prometheus* and *Eumenids* tragedy of Aeschylus, it reads that the old moral order, which gives their own share to both immortals and mortals, which Gods swear on by giving up on their own will and keep their oath, is destroyed. The oath, namely *herkos* and the fence, *horkos* are actually the one and same Word (Cornford 1957: 24).

Breaking the oath is the violation of the borders that separates the shares from each other. With the violation, the distribution of shares, which was considered to be a natural fact until now, is subjugated by a superior personal God.

Zeus' emergence as a lawmaker which distributes divine shares shows that the distribution is a legislative act from now on. Hence Aeschylus uses the Word *nemein* for this act of distribution, which is the word that *nomos* is derived from. For Greeks, making law is the re-distribution of shares, Powers, wealth, privileges, land or political statues. The one who can make his distribution cannot be a council but a person such as Solon who has an extraordinary wisdom. However at any case, this re-distribution which defies the old order and laws is a usurp at first. Let us read from the *Eumenids*.

Ah, son of Zeus! You are a thief!

Young as you are, you have ridden us down, aged divinities-
respecting the suppliant, a godless man,
hateful to parents.

You have stolen away the matricide, god that you are!

What is there in this that any shall say is just? (150)

Such are the actions of the younger gods,
whose might goes altogether beyond justice.

The throne drips blood,
about its foot, about its head!

It is ours to see earth's neval-stone stained

with a grim pollution it has got from deeds of blood. (165) (Aeschylus 2014: 183)

Shame! Ye younger gods, ye have ridden down

the ancient laws and have wrested them from my grasp. (780) (Aeschylus 1926: 347-348)

The substitution of the old moral order by Zeus' personal will shows us two things; firstly, that the act of violence in the sense of a violation underlies the new order, secondly, that there is a will which makes the law behind the purely positive aspect of law. In this context, *Nomos* as the "most powerful authority" brings norm and decision, *Bia* and *Dike*, namely violence and justice together in a scandalous way.

To put it in Agamben's magnificent expression, "nomos is power to manage the paradoxical togetherness of two opposite things." (Agamben 2001: 46). On the one hand it justifies violence "as a principle ... which prioritises the legal and even which is beyond legal" and on the other hand makes the exertion of power/force legitimate so that justice goes beyond being a concept and actualizes. Hence law which is the rational way of protecting and maintaining the socio-political order derives from an extralegal area which is not legitimate.

In this case, should we come to the conclusion that history is the product of the actions of innovative and creative despots? Just this conclusion alone looks tragic enough. Because, not only the establishment of social order but also its maintenance is based on a chronic contradiction. For example, according to Maistre, what will refrain people from committing crime and so ensure social order is not Enlightenment's ideal of rational state; only the executioner and only the violence it will exert.

...all greatness, all power, all subordination rests on the executioner, he is both the horror and the bond of human association. Remove this incomprehensible agent from the world, and in a moment order gives way to chaos, thrones fall, and society disappears. God who is the author of sovereignty, is therefore also the author of punishment. He has suspended our earth on these two poles; *For the pillars of the earth are the Lord's, and he has set the world upon them.* (de Maistre 1993: 20)

Here the executioner is law in flesh and bones and symbolizes the violence which stands at the origin of law and the arbitrariness and compulsiveness of legislation. Its existence reveals that there is violence, which is considered irrational, in the origin of all rational political institutions. The contradiction between order and violation can be re-formulated as the contradiction between peace and struggle, inertia and motion, form and life and finally comedy and tragedy. Life, paradoxically, is both the source of all energies/forces that are

aggressive, destructive and dissatisfied and possesses a constructive power which enables the restraining of this energy in forms such as law, art, religion, philosophy.

Life both turns these forms upside-down and requires them. This means that this life offers comic and tragic visions in its own dynamism. In this regard, comedy and tragedy belong to the same world; they are just different perspectives of understanding it, different ways of responding to the contradictions, uncertainties and arbitrariness implicit to living. The dialectic motion of life between being and becoming, order and violation shows that the human life has two poles as well. The tragical is only one of these poles, not all. Justice, in its complete form is an absolute inertia; you can watch it but cannot touch it; you can see it but cannot feel it. Like a close monad without an entry and exit, it is injured with a narcissism holding a mirror only to itself. It means the extinguishing of life's own dynamism and energy. We cannot fight continuously, just as we cannot reconcile continuously. So life is a magnet of uncertainty where the constructive and destructive ones are intermingles; which makes the world tragic for all times.

Conclusion

I would like to say that tragic art confronts us with the problem of the origin of law. Positioning the problem of the origin of law as a metaphysical question seems, of course, incomprehensible for the modern mind. Because modern law understands itself as the institutionalized form of the equal and just world ideal of modernity. When it defines itself only as form, order and stability, it actually remains blind to the tragic dimension which brings it into existence. Therefore, the comedy of law is born from its ignorance regarding its own borders. Nevertheless, this ignorance doesn't mean that the tragic one is death. Modernity replaces mythic fate with will, power, history, market and desire. Conflict is real but now it can be born from a noble commitment to value as well as from a vulgar motive, from a negligence to the sublime one hidden behind a curtain of mystery.

Modern human never possesses the absolute justifications of its decisions. If there are no absolute values, if all values are made equaled by being brought to the same line as objects of law, is it possible to talk about tragedy anymore? Maybe the tragedy of modern times is that we do not have a tragedy anymore.

Modern law undertakes the resolution of the conflict between monadic and anomic subjects void of a past and identity which have nothing in common except for being objects of desire by reducing itself to a machine of legislation. On one side it frees men to sacrifice it, on the other side it abandones it to the dark corners

of desire. Human beings are both subject to their desires and are obliged to create an autonomous and responsible individual from their freedom. She/he is both the rational subject of law and its object with his/her unpredictable irrational desires. Modern human senses itself as an infinitely free being but knows that he/she is a miserable slave subdued by forces above her/his will.

Modern law has been aroused in the gap of both and both. Of course, the appearance of justice, make essential both tragedy and comedy. Tragedy makes it necessary; because it shows us the diversity of life forms that can not be encapsulated in a single and extraordinary. Conflict arises from the acceptance of the extraordinary nature of human life so that it sometimes can come to light in the conflict form between the virtues of the site versus virtues based on blood for instance Antigone or sometimes between heroes, demigods and gods in tragedies. Even though he or she knew that he/she could not win a victory against forces that govern their lives, either intentionally, unintentionally or as a result of a black mark based on bloodline, human being can not avoid that he/she lead to ruin tragically wrong (hamartia) himself/herself. For this reason, the ancient tragic dramas has approached human life as the scene of the collision set that is opposite and incompatible with good /virtues. For instance, in Sophocles' tragedy, about what is fair, both King Creon and Antigone open the door slightly tragedy by trapping inside "the tyranny of the mind" and by looking for mutually exclusive answers.

Nevertheless, to understand what is his/her destiny in the stage of life and to move towards to his/her death by embracing and by understanding what is expected of him/her are a virtue in itself. Precisely for this reason, tragedies do not leave us only with facing our limits and our own fallible human nature; more importantly, it shows us what establishes the greatness of human being. Because human being under all determinations, is not something that only whatever he/she is; something that whatever he/she can make.

Justice also requires comedy. Indeed, modern life rarely creates heroes; more than the average we have seen, are ordinary anti-hero. Therefore, comedy, showing the limits of human disclose what actually happened, not what might be. In the final analysis, it contrasts between comedy and tragedy, for the moment. While things may be tragic if we live action; but it turns into a comedy when it became the subject of the observation.

As a result, to be re-established to look at the origin, it can prevent the conversion of technical means reduced to a mere legislative machine law. The

origin is an endless source that the law as a lifeless form itself can refer to the outside itself, to life and can regenerate.

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