



About Vengeance and Justice

1 Ethics CPD

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This was written on an angry day. Loadshedding was inexplicably back, just when I'd invested the funds that I had set aside for solar... in a pool. I'd been writing my report on a recently concluded HPCSA inquiry where I was a member of the Professional Conduct Committee. It was an unpleasant business, not because of the details of the case, nor was it the process but because of the bellicose approach of the parties' legal practitioners. Even if their apparently obstructive manner sometimes had a reasonable basis in law, they were not a credit to their profession. I can't even make my once-a-day cappuccino. Feeling so angry, wronged, powerless (in every way) and worried about a dark and uncertain future (again) reminded of the play [Eumenides](#) by Aeschylus. Don't worry if you're not a fan of ancient Greek tragedies, I've got the [cheat sheet](#).

It's the final part of a trilogy. [Orestes](#), has acted on instruction from Apollo and killed his mother, Clytemnestra, for killing his father, Agamemnon. And Clytemnestra killed Agamemnon for sacrificing their daughter to appease the gods, and ensure victory in the war. Racked with guilt, Orestes has come to the temple of Apollo to be cleansed, but he is being hotly pursued by a relentless band of goddesses. No, it's not what you think. These goddesses are called the [Furies](#) (spoiler alert) and their mission is to punish human wrongdoers in the interest of justice. They're primitive anger personified, the frothing embodiment of rage, demons ruled by the night... In short: They're not nice girls. Even Apollo says:

“*They disgust me.*

These grey, ancient children never touched

By god, man, or beast—the eternal virgins.

Born for destruction only, the dark pit,

They range the bowels of Earth, the world of death,

Loathed by men and the gods who hold Olympus.”

And the girl-gang (who generally speak as one, so they refer to themselves in the singular) is not planning on going easy on Orestes either:

“*You’ll give me blood for blood, you must!
Out of your living marrow I will drain
My red libation, out of your veins I suck my
food,
My raw, brutal cups—
Wither you alive,
Drag you down and there you pay, agony
For mother-killing agony!
And there you will see them all.
Every mortal who outraged god or guest
or loving parent:
Each receives the pain his pains exact.*”



Apollo refers the whole lot to Athena, deftly passing the buck to the goddess of wisdom. Athena wants justice served, but also fears the wrath of the Furies. Their mandate is based in ‘ancient laws,’ and they feel that their birthright (to ‘bring suffering, great with wrath’) is being ‘wrenched from [their] grasp’ if they don’t get to punish Orestes.

Their plan is outlined:

“*I loose my poison over the soil...
Poison to match my grief comes pouring out my heart,
Cursing the land to burn it sterile and now
Rising up from its roots a cancer blasting leaf and child,
Now for Justice, Justice!—cross the face of the earth
The bloody tide comes hurling, all mankind destroyed.*”

Fortunately Athena, in her wisdom, understands that blood revenge, whether by kinsmen or deities, is no way to run a civilisation. To fairly decide on Orestes’ guilt (or not), she creates the first trial recorded in Western literature. She introduces several legal principles that we still

adhere to today. First order of business is recruiting ten honourable **citizens** to form the first jury. The HPCSA uses impartial committees in the process of dealing with a complaint. The committees of Preliminary Enquiry and Professional Conduct include legal and clinical professionals and without both of those, the committees can't meet the prescribed quorum. This helps to ensure procedural fairness.

The next principle that Athena introduces is often described in the Latin: *Audi alteram partem* – to hear the other side. She says: '*There are two sides to this and I've heard from one, but not both.*'

She allows the Furies and Apollo ample opportunity to present and argue the case, and then Orestes to speak in his own defense. This is fundamental to procedural fairness and is enshrined in the South African Constitution (s 33.) Any administrative action must be lawful, reasonable and procedurally fair. Whenever our rights have been adversely affected by administrative action, we have the right to know the reasons. So, if the HPCSA receives a complaint about a practitioner X, then practitioner X is informed of the complaint and given the opportunity to give their version of events. The response, with any further information gathered, is then sent to the Preliminary Committee of Enquiry.

The case is proven through reasoned debate and legal argumentation, as is done at both the Prelim Committee level as well as the Professional Conduct Inquiries (PCI). Cases are referred to PCI when they are either more complicated, or more expansive than the Prelim Committee has powers to deal with.

The Furies argue that Clytemnestra's life was worth as much as Agamemnon's. Apollo's response is that Agamemnon was a successful warrior, making his life more valuable. Athena encourages a robust

debate so both parties can discharge the burden of proof i.e. deliver on their duty to prove disputed facts. The 10 jurors vote and there's a tie.

Because of her respectful manner and the process she follows, Athena has earned the Furies' trust and they've agreed to accept the verdict. She remains completely impartial, not questioning their ways, for example. With self-regulation, where the regulated agree to be regulated by their peers (e.g. HPCSA), it's particularly important for the regulated to respect and trust the adjudicator and the structure they operate in.

When she casts the deciding vote acquitting Orestes, the Furies are, well, furious.* They feel betrayed, humiliated and disgraced. Vengeance, in the name of justice, is their entire reason for existing! What will they be without their mandate? They fear, not only for themselves, but for civilisation in the anarchy that must surely follow as things head down this slippery slope. They don't see these new developments as progress at all.



patient

Imagine yourself in a situation where you were confidently doing

What's going on with this regulator?
I just want to do my job and be left alone.
Patients are becoming more and more demanding!

your job, in the way that you always had, and everything had been just fine. Now the complains, the HPCSA is

unhappy... I could become a little Fury-like myself. Then I would dwell on it for an unhealthy period of time, adding a sprinkle of anger and self-doubt, and forgetting the scores of satisfied patients I've seen.

- * If you are also a little mad at Athena for siding with Apollo, please remember that:
 - a. this was 2500 years ago, so it's actually really progressive thinking for the time
 - b. there are relevant details that we've skipped in the interests of time.

It is already apparent that Athena is a skilled orator, and very persuasive. The cooperation she gets from the Furies is the **fruit of concession**, earned through negotiation, not conquest. She has further hopes for the wild-

haired, terrifying Furies that incarnate guilt, shame and primal rage. She wants them to use their powers for good, to care for and protect the people of Athens rather than wreaking havoc and destruction. Her hope that they will see reason and can change, defies understanding. She hopes to achieve rehabilitation, rather than restitution. She succeeds.



In the artworks depicting the trial of Orestes, Athena usually radiates calm authority as she invites the Furies to join her as patrons of the city. She acknowledges their age and wisdom, their unique gifts and their value. She would prefer them to join the new, more

mature social order willingly, where mercy and justice co-exist. But she is also clear about the sanctions available to her with the powers given to her by Zeus – his thunderbolts – should they refuse. She says:

*“This is the life I offer,
It is yours to take.
Do great things, feel greatness, greatly honoured.
Share this country cherished by the gods.”*

The Furies see that they are more likely to earn respect and honour through mercy and goodness, than their single-minded commitment to their version of justice. By curbing their natural, most primal, emotional impulses and becoming more considered in their behaviour – in short, by self-regulating – they can embrace the positive aspects of their god status.

Furies: *“Your magic is working...I can feel the hate,
The fury slip away...”*

Athena entrusts the fledgeling justice system to the people of Athens.
About the new court that she has created, she says:

“So in this place will reverence for the law and kindred fear of doing injustices restrain the people of Athens, day and night.”

She says it will serve the people of Athens well, “provided they themselves do not pollute with evil influence their justice-code.

Would you quench your thirst in Justice' healing stream?
Then do not foul it; keep it flowing clean.”

Justice offers both protection and metes out punishment, as necessary. At various times, citizens may find themselves at either end. They should imagine themselves at the other side of the balance, always tempering punishment with mercy when they dispense it and accepting it stoically when they deserve it. It is in the interest of Athens' citizens to revere, respect and protect the institutions of justice, and their verdicts.

Athena declares that they will no longer be called Furies, but Eumenides, meaning 'the kindly ones.' They bestow their blessings upon Athens:

“Be blessed, be happy, with the riches that are your fate;
fare well indeed, you citizens of these groves...”

The play reflects the evolution from a system of personal, elemental blood vengeance or family retribution, to a structured legal order. The Furies' transformation was not easy, nor was it inevitable. Aeschylus has a hopeful vision of a world where civilisation exists albeit in a fragile compromise, a balance between reason and passion, instinct and law.

Early in her negotiation with the Furies, Athena says to them:

'You like to **sound** just.

Yet justly is not how you **act**.'

I've criticised a few members of the legal fraternity here, and those legal practitioners undoubtedly believed they were behaving appropriately because they were within the law. Our idea of what is justice is (or ethical practice) may be as inappropriate and outdated as the Furies' was. I believe that the HPCSA mandates these activities to remind us to reflect and compare opinions with colleagues, to ensure that we stay on track.

Questions

1. Which of these legal principles is introduced in Eumenides?
 - a. Caveat emptor
 - b. Audi alteram partem
 - c. Per stirpes
2. In the play, Orestes has killed
 - a. His mother, Clytemnestra
 - b. The goddess Athena
 - c. A slave called Oresteia
3. Athena is the goddess of
 - a. Justice
 - b. Athens
 - c. Wisdom
4. Why do the Furies disgust Apollo?
 - a. They are tempestuous, impulsive and destructive
 - b. He doesn't believe in enforcing justice through vengeance
 - c. Apollo is a chauvinist
5. *Audi alteram partem* relates to...
 - a. The principle that no man should be condemned without being heard
 - b. The HPCSA notifies the practitioner when they receive a complaint against him/ her.
 - c. Both a. and b.

6. In the play Athena introduces the concept of
 - a. Capital punishment
 - b. Presidential pardon
 - c. Trial by jury
7. How does Athena convince the Furies to accept the outcome of the court case and her offer to become patrons of the city?
 - a. By threatening to use Zeus' thunderbolts.
 - b. She demonstrates that their traditional methods lack fairness
 - c. She asks Apollo to compel them
8. What does Athena's eventual aim for the Furies symbolise?
 - a. Restitution
 - b. Rehabilitation
 - c. Remediation
9. The Preliminary Committee of Enquiry consists of
 - a. Clinicians
 - b. Legal experts
 - c. Both clinicians and legal experts are required to form a quorum.
10. When Athena says '*would you quench your thirst in Justice' healing stream?*'
 - a. Flowing communication is key to ensuring justice
 - b. Any one of us may need legal protection at some time
 - c. The water of Athens runs red with the blood of Clytemnestra.