

# The promise of justice

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Breaking the promise of justice is an act peculiarly repugnant to reason. It implies a double betrayal: not only of the promised justice but also of the justice of the promise. Nevertheless, how is it possible to do justice to the promise of justice? Especially when this very promise brings with it all the suffocating memories of the disappointments, and worse, that attend its history. Perhaps it is a promise better forgotten? Better not to repeat Josef K's error in *The Trial* of believing and pursuing the 'promise of justice'? Yet the prospect of a world without the hope of justice is too horrible to contemplate. The prefigurations of such a world, appearing in acts of rendition, indefinite detention and unaccountable corporate-political governmentality, revive the force of the promise, in spite of everything.<sup>1</sup>

One obvious way to do justice to the promise of justice is to realize its promise, yet this realization might be to betray both promise and justice. For a promise of justice can also be threat and its realization the wreaking of vengeance. The separation of justice from its immediate realization in vengeance is one of the legacies of ancient tragedy and prophesy, yet it is one that has recently been put into question. An emblem of this questioning is the current 'reactivation' of the French revolutionary Maximilian Robespierre by Alain Badiou and, most recently, by Slavoj Žižek, in his collection *Robespierre: Virtue and Terror*. Curiously, the 'reactivation' of Robespierre follows on the heels of that of Saint Paul. The saint who transformed the classical account of justice into the agapic feast and the theological virtues has been 'reactivated' alongside the architect and panegyrist of revolutionary terror and republican virtue.

The reactivations of Saints Paul and Maximilian direct attention to the religious and political charges that invest the 'promise of justice'. Indeed, one of the emerging loci of debate is the meaning of the concept of 'divine violence' introduced by Walter Benjamin in 'The Critique of Violence' in his discussion of the limits of revolutionary action. Žižek provocatively defines divine violence as 'justice, the point of non-distinction between justice and venge-

ance, in which "the people" (the anonymous part of no part) imposes its terror and makes other parts pay the price – the Judgement Day for the long history of oppression, exploitation, suffering'.<sup>2</sup> The enthusiasm for a realized eschatology of justice, the promise finally kept in the wreaking of vengeance – the advent of the Kingdom or rather Republic of God – may be contrasted with the deferred eschatology of Derrida's reading of 'divine violence'. Feeling his courage fail before the implications of this concept, at the end of 'Force of Law', Derrida confirms his consistently held view that justice can only be promised; to realize it is to betray its promise to calculation or vengeance. For Derrida (as for Benjamin), the hesitation before the realization of justice forms part of a wider inquiry into messianicity.

The tension between regarding the 'promise of justice' in terms of either divine vengeance, on the one hand, or divine grace, mercy or forgiveness, on the other, is not only an urgent legal and political issue but also an intrinsic articulation of the promise of justice itself. It reveals the character of the promise to be inseparable from the form of its realization in time, the bringing into being of a promised justice. One way to loosen this articulation of *justice, being and time* is to analyse it historically, to trace the forms it has adopted (and not adopted) and to gain a sense of its current mutations and future possibilities. The tensions involved in the realization of justice, and thus the proximity of the questions of being and justice, point towards one of Heidegger's most traumatized texts, the immediately postwar *Der Spruche des Anaximander (The Saying or Judgement of Anaximander)*,<sup>3</sup> which works through some of the articulations of the promise of justice and the question of being and time through a reading of Anaximander's first fragment.

## Heidegger's justice

The proximity of the questions of being and justice is clearly marked in the translation/interpretation of Anaximander's fragment preferred by Nietzsche: 'Whence things have their origin, there they must also pass away according to necessity; for they must pay

penalty and be judged for their injustice, according to the ordinance of time' (*adikias kata tin tou khronou taxin*). The question of the genesis and passing away of beings is framed according to justice and injustice, the latter judged according to the ordering or time. Heidegger lingers over this judgement, subjecting it to a persistent questioning. Is it accomplished in the name of justice? If so, does it suppose a pre-understanding of justice in the recognition of injustice, making it a double judgement in which the absence of justice is first discerned and then condemned? Or is the judgement itself prior to justice, serving to bring it into appearance? Is the ordinance of time itself justice? Or is it the theatre of justice in which is played out the necessity of atoning for past injustice in the name of a future, promised justice?

The move from the question of being to that of justice and the exploration of the latter's aporias gave this text a significance for postwar philosophy that can hardly be exaggerated. It initiated a series of arguments for the primacy of the question of justice ranging from Levinas's ethical critique of ontology to Arendt's, Lyotard's and Ricoeur's attempts to found justice in judging, on the model of Kant's reflective judgement. It also occasioned Derrida's deconstructions of being and justice in 'Differance', 'Ousia and Gramme' and, most importantly, *Specters of Marx*. In the latter, Derrida scrutinizes Heidegger's exegesis of *adikias* (injustice) and its implications for *dike* (justice). Explicitly refusing to assume pre-existing 'juridical moral notions', Heidegger reads injustice in terms of disjointure. Departing from a notion of injustice in which 'something is out of joint' (*aus der Fuge*) he arrives at an understanding of justice as an internally articulated or jointed movement poised between coming into and passing out of being: 'To presencing as such jointure must belong, thus creating the possibility of its being out of joint.'<sup>4</sup> One of the main ways in which the just articulation or jointure of coming to be and passing away can be put out of joint is through the attempt to fix or arrest its movement.

Heidegger describes such an arrest or fixing of the articulation as an 'insurrection on behalf of sheer endurance' or the 'rebellious' insistence 'upon sheer continuance' – what Levinas will later call defending 'my place in the sun'. To this attempt to secure presence at all costs, Heidegger contrasts 'giving', described in terms of the traditional definition of justice as giving the other their due: 'Giving is not only giving away; originally, giving has the sense of acceding or giving-to. Such giving lets something belong to another which properly belongs to him.'<sup>5</sup>

Derrida protests that Heidegger's deduction of justice from giving as yielding to the other is classical, and in spite of its explicit precautions risks 'inscribing the whole movement under the sign of presence'. Rendering justice thus comes down to yielding restitution. He is concerned that Heidegger's jointure or *Fug* can itself become fixed or present as an order. Against such fixity, he seeks to derive the 'relation of deconstruction to the possibility of justice' from the 'irreducible possibility of the *Un-Fug* and the anachronistic disjointure'.<sup>6</sup> Drawing on Levinas's explorations of anachrony or the disordnance of time, Derrida finds it necessary for time to be out of joint in order for there to be a promise of justice. Justice can only be promised, is always to come, a messianism of justice in close proximity to Levinas's messianic concept of justice, in which no time is possible in which to give or for the Other to receive their due.



The messianic promise of justice may itself be situated in terms of other readings of the jointure of justice. One such approach is that of Rainer Schumann's reading of Heidegger in terms of epochs of the thinking of being. Schumann developed a productive reading of the epochality of being in *Heidegger on Being and Acting: From Principles to Anarchy*, but it is in his posthumous *Broken Hegemonies* that he develops a reading of epochality and politics. However, I do not wish to follow Schumann in a historically augmented exegesis of Heidegger. Instead I shall try to divert the ideas of jointure and epochality in other directions. The promise of justice has itself a history; there are epochs in the thinking of justice made up of different historical jointures that can be identified and whose development may be traced. In what follows,

I trace the epochs of the promise of justice within a matrix established by Plato and Aristotle. I show how their statement of the basic jointure of justice underwent a number of variations whose possibilities are still not exhausted. Derrida's and Levinas's intimations of the messianic promise of justice are located within a specific moment of the history of this promise.

### Temperance, courage, wisdom

From the standpoint of the early twenty-first century, the millennial doctrine of justice proposed by Plato and Aristotle seems an enormous ruin from which small fragments have been salvaged and polished up for display. However, the general pattern that it established persisted in a number of unexpected ways. Plato's discussion of justice in *Republic* Book IV articulates it in what, in Heidegger's terms, can be described as the 'jointure' of temperance (*sophrosyne*), courage or fortitude (*andreia*), wisdom (*phronesis*) and justice (*dike*). In this jointure, justice has a double role – it appears as one of the joints, but also the condition for the other three. A further aspect of the jointure evident in Plato consists in the analogy between the individual and the state, an analogy governed by the common term or proportion of justice. Plato elaborates an extremely complex scenario in which temperance is joined to the appetitive faculty, courage to the spirited, and wisdom to the rational, while justice consists in the proper jointure of the three. Similarly, by analogy, the three classes of the state – the banausic, the military and governing – are themselves bound in the *Republic* by justice.

Justice possesses the quality of being one of the parts of justice, the condition of their individual qualities, and their composition as a whole. At 433b Plato describes justice as

the remaining virtue in the state after our consideration of temperance, courage and wisdom, a quality which made it possible for them all to grow up in the body politic and which when they have sprung up preserves them as long as it is present. And I barely need remind you that we said justice would be the residue after we had found the other three.

Here Plato sees justice serving as the matrix and what Aristotle would describe as the *energeia* of actualization of temperance, courage and wisdom. The excessive character of justice – as a set that contains itself as an element – is important to note for a number of reasons. It governs the expression of the other elements of justice. For example, if the courage of the military class is actualized without justice then it tends towards the tyrannical. It also has important historical conse-

quences. For example, the character of justice as one of the four parts can differ from the justice that informs the whole – a step taken by Aristotle in the distinction within justice of strict law and equity, later modulated into the Christian distinction between the cardinal and theological virtues. Furthermore, the identification of a hegemonic moment among the four parts of justice, in Plato's justice itself, opened the possibility of replacing justice in this role with one of the other members. The medieval theologian Aquinas replaced justice with wisdom, while the modern successors of Machiavelli promoted courage. More recently, it is possible to identify a tendency towards the promotion of temperance.

The excess of justice over itself makes an opening for the promise of justice, in the doubling of justice as source of and supplement to temperance, courage and wisdom (1137b). This excessive quality of justice is thematized in Book V of Aristotle's *Nicomachean Ethics* as equity or the justice beyond the legal justice of giving each their due. The *Nicomachean Ethics* declares itself as an inquiry into political science, or the highest good attainable by action, which is to 'live well'. The end of 'living well' licenses the distinction between legal and primordial justice, the latter being beyond law and named as 'the equitable':

the equitable is just, not the legally just but a correction of legal justice. The reason is that all law is universal but about some things it is not possible to make a universal statement that shall be correct.

As an example Aristotle cites the lesbian moulding – to reappear as the centre of Lyotard's account of judgement in *Au Juste* – in which 'the rule adapts itself to the shape of the stone and is not rigid'. This articulation of justice and equity – in which equity provides the promise of a justice beyond legal justice – formalizes the character of Platonic justice as both the source of the articulation of justice and one of its members, as well as anticipating the Christian alignment of equity and grace. In each case, justice actualizes a jointure of justice without being fully contained within it. The jointures of justice in terms of temperance, fortitude, wisdom and justice, of legal and equitable (grace), and of individual or institutional justice, are both familiar and strange to us. But we are at the end of a history in which these articulations have been pulled 'out of joint', a history of occlusions, displacements and substitutions. Much of which, as Anaximander and Heidegger warned us, follows from the 'ordinance of time', the tension between the past, present and future, or the promise of justice. Time as the site for the realization

of justice informs the Christian rearticulation of the Greek account of justice. The excessive character of equity becomes focused upon Christian love (*agape*), which is combined with the futural orientations of faith and hope by Saint Paul. These then become contrasted as the ‘theological virtues’ to the ‘cardinal virtues’ of temperance, courage, wisdom and justice. The theological virtues, notably love, were considered by Augustine to be the condition of the realization of the cardinal virtues in the Kingdom of God, a role subsequently adopted by fraternity in the Republic of Robespierre. The association of love with the futural orientations of faith and hope puts the realization of justice in a future that was present in the sacramental community of the Church. Aquinas confirmed this in Question 61 of Part One of the Second Part of the *Summa Theologica* when he replaced justice with wisdom as the hegemonic virtue. In his revision of the Platonic jointure, justice, temperance and courage are subordinated to wisdom or contemplative ‘rectitude of discernment’. Wisdom identifies for justice what should be done, while temperance keeps the soul within bounds and courage strengthens it in its fight against the passions.

Aquinas’s promotion of wisdom over justice was in turn succeeded by the promotion of courage to the hegemonic position within the cardinal virtues. The demotion of justice from the prime place given it by Plato thus had severe consequences, making it subordinate to wisdom or, more dangerously, to the mutations of courage. The movement towards the promotion of courage accompanied a change in the understanding of historical time from that of the eschatological theological virtues to one of the revolutions of fortune. This change has been described in J.G.A. Pocock’s *The Machiavellian Moment* (1975) in which the revolutionary *fortuna* serves as the agent of Heidegger’s *adikias*: it is the ‘ordinance of time’, as agent of derangement, throwing everything out of joint, especially the jointures established by Plato and Aristotle. The moulding of universal to particular through equity in the latter, or the realization of the cardinal through the theological virtues, is deranged by *fortuna* into a process of ineluctable ruination:

The problem of the particular was its finitude, its mortality, its instability in time, and once a virtue (itself universal) was embodied in a particular form of government it partook of this general instability. The mortality in time of a system of human justice, moreover, was not simply a matter of *physis*, the natural life and death of living things; it was a moral failure, a repetition of the Fall, and at the

same moment another triumph of the power of fortune. When men sought to erect moral systems in finite and historical shapes, they were placing their virtue at fortune’s mercy. The wheel that raised and threw down kings was an emblem of the vanity of human ambitions; a wheel that raised and threw down republics was an emblem of the vanity of the human pursuit of justice.<sup>7</sup>

The world of *adikias* in which ‘justice rode the wheel of fortune’ was a frightening prospect, and it summoned various responses, all of which in some way venture an ‘insurrection of sheer endurance’ or ‘rebellion’ of ‘sheer continuance’, each attempting to stabilize the ordinance of time or to halt the wheel of fortune. The one preferred by Pocock is the eternal return, or the cyclical philosophy of history informing the work of Polybius, through which ‘Fortune’s wheel becomes the image of repetition as well as of unpredictability’. Pocock’s conversion of chance into necessity is close to Heidegger’s reading of Nietzsche’s eternal return as metaphysics in his lectures on Nietzsche.

Another approach to stabilizing the disorienting effects of fortune consists in the appeal to grace, or the Christian ‘virtuous city, which imposed form and stability upon fortune [and] was identical with the kingdom of grace’. The eschatological solution to the *adikias* of fortune ‘would manifest itself when grace was bringing the *eschaton* to pass, that it embodied and actualized the millennium in the Third Age’.<sup>8</sup> The problem with this solution, recognized by Pocock, is that when grace encounters fortune the product is a monstrous hybrid: ‘the politicization of grace came remarkably close to the replacement of grace by politics’. Political grace promised the realized end of history, the advent of a kingdom of grace and justice, but only through the attempt to arrest the revolutions of fortune. This attempt entailed the elevation of the virtue of courage.

### **Sovereignty and the ruin of time**

One of the main forms adopted by the politicization of grace was the theory of sovereignty, which stood in a tense relationship with the promise of justice from the outset. The latter was increasingly cast as the excess of sovereignty, whether as the conscience of the sovereign, the sovereign’s alibi, or even, in extreme formulations, the gift of the sovereign. In Bodin, the claims of justice sit uneasily beside those of the sovereign, in Althusius the two are in symbiosis, while in Hobbes it is only the sovereign that can honour the promise of justice. In each case there is an attempt to stabilize justice, to make it endure. In the bio-politics of the Calvinist

Althusius, the promise of justice, embodied in the commandments of the Decalogue,

infuse a vital spirit into the association and symbiotic life that we teach ... if anyone would take [piety and justice] out of social life, he would destroy it; indeed he would destroy all symbiosis and social life among men.

Yet sovereignty is also essential, for without it 'the body, which is composed of various symbiotic associations, is dissolved and ceases to be what it was'.<sup>9</sup> It is sovereignty that ensures the endurance of the body politic, its immunity to the effects of time. In Hobbes's body politic, described in *Leviathan* (1651), sovereignty not only protects the life of the body, but is that life. Without it there is death. It is also the source of justice, for 'where there is no commonwealth, there nothing is unjust'. The promise of justice, it is hinted, is not only honoured by the sovereign; it is the sovereign – the sovereign itself is the *eschaton* or realized kingdom of grace.

The significance of the renegotiation of the jointure of justice before the destructive ordinance of time as *fortuna* accomplished in terms of sovereignty is perhaps most clearly exposed in a little known 'entertainment' delivered by Francis Bacon in 1592: 'Of Tribute; or, Giving that which is due'. The subtitle clearly indicates that this is a treatise on justice, but one which marks a radical realignment of the terms of the jointure. The 'entertainment' is delivered by four speakers each of whom praises the worthiest virtue, affection, power and person: courage, love, knowledge and Queen Elizabeth I – the monarch praised, not casually, for her constancy. But it is the first, the praise of the worthiest virtue, which is most important for understanding what was happening to the promise of justice. It performs the relegation of justice from its prime place among the cardinal virtues and its surrender of that place to courage or fortitude. While for Plato it is justice that brings into being and sustains courage, temperance, wisdom and justice, for Bacon this is the work of courage (fortitude). Prudence, justice and temperance are praised for being 'good, innocent things' but are ineffective without courage (fortitude), which is 'the virtue of merit, the virtue of resolution, the virtue of effect'. Without it the other virtues are unable to sustain 'the challenges of fortune' and yield to the effects of time – courage allows them to endure in the face of fortune.

Courage, associated with fortitude and magnanimity, possesses parallels with Heidegger's 'resoluteness' in *Being and Time*, and for Bacon it operates in a

similar way. It 'giveth a grace, a majesty, a beauty to all actions' because it confronts fortune and the finitude that it brings: 'Fortitude is able to steel men's minds in such sort that every strict habit or fashion is stronger than the fear of death or the sense of his approaches.'<sup>10</sup> The fixity of fortitude, its ability to 'steel' the mind in being-for-death, is quickly aligned by Bacon with liberty – 'for that is only the work of fortitude' – which actualizes temperance, prudence and justice. While the latter 'deliver us from the servitude of vices, fortitude alone delivereth from the servitude of fortune'. The 'insurrection on behalf of sheer endurance' here takes the first step on the way to the transformation of fortitude into sovereignty. Sovereign liberty emerging from fortitude becomes that which can realize justice and stabilize it against the ruin of time and fortune.

Does such a transformation entail the eclipse of justice, does the predominance of fortitude (Plato's spirited faculty characteristic of the military class) twist the jointure of justice in favour of violently secured fixity and constancy? In Bacon, fortitude secures justice, temperance and prudence from the effects of time and fortune, but at the price of a concept of liberty that is sovereign precisely because it is supposedly immune to the effects of time. This holds also for democratic sovereignty, in which it is the people that is constantly braving the effects of time. In Rousseau's *Social Contract*, justice is to be actualized by the general will. Indeed, in Chapter 6, 'On Law', Rousseau relegates justice to the positive law enacted by the sovereign will, remarking ironically 'all justice comes from God, and he alone is its source, but if we knew how to receive it from so high a source, we should receive neither government or laws'. The same holds for the 'universal justice emanating from reason alone',<sup>11</sup> which remains an ineffectual promise if not actualized by the sovereign. However, the actualization of justice – the realization of its promise – is already problematic, for the sovereignty of the general will cannot be bound by prior promises of divine or rational justice. A law must 're-unite the universality of the will with that of the object', the people are subjects of the law in two senses: it expresses their unfettered sovereign liberty to make law, while making them the object of the same law. For 'the people who are subject to the laws should be their author'. The stability of the sovereign – its immunity to time and the effects of fortune – rests on the unity of the authors and the objects of the law, a unity secured through fictions of equality contrived through violence and dissemblance.

## 'Liberty, equality, fraternity': the reactivation of Robespierre

What I am working too quickly towards here is a sketch of an epochal change in the jointure of justice that moves from its articulation in terms of the cardinal and theological virtues to... to what? Perhaps to the oblivion of the promise of justice, along with those of temperance and wisdom, in the revolutionary device of 'liberty, equality, fraternity' that expresses the basic values of the French Republic and provides the horizon of modern politics. Liberty, equality and fraternity was, and is, conceived as the modern jointure of justice: while fortitude in the guise of liberty now dominates, it still does so in the name of the promise of justice. The occlusion of justice as a specific republican value – with the exception of the declaration of the State of Israel, which declared itself 'to be based on the principles of liberty, justice and peace as conceived by the prophets of Israel' – does not detract from its persistence as the horizon of Republican values.<sup>12</sup> While it does not appear as a residual fourth virtue as in Plato, it nevertheless persists, in an uneasy relation to sovereign liberty, as a promise informing the republican constitution.

The modern jointure of justice as liberty, equality and fraternity possesses some remarkable, and internally unstable, characteristics. It embodies the results of the realignment of justice and fortitude in the modern values of sovereign liberty and equality, but with the addition of fraternity. In a characteristic footnote to *Politics of Friendship*, Derrida refers to the entry on fraternity in Furet and Ouzuf's *Critical Dictionary of the French Revolution*, using it to show how the place of fraternity within the jointure shifted, sometimes appearing at the beginning, sometimes the middle, and finally stabilizing at the end. Fraternity emerged early in the Revolution from the ambience of the National Church and was redeployed violently

during the crises of 1793. Its place alongside liberty and equality as the leading, bridging and residual value depended upon political circumstance.

We can see the significance of the new jointure of justice, and its elements of continuity with the old, by the analysis of two late speeches by Maximilian Robespierre. The reactivation of Robespierre is to be welcomed for the attention it draws to the relationship between terror and justice, but not to the exclusion of reflection on the implications of this figure for the promise of justice. Robespierre offers a forceful statement of the impasse reached by subordinating the promise of justice to courage and its correlates, modern liberty and equality. The eschatological, even messianic



dimension of Robespierre's attempt to realize justice through revolution is inseparable from revolutionary terrorism. His political theology cannot be dismissed, as Žižek tries, as the 'ridiculous attempt to impose a new civil religion celebrating a Supreme Being'. It formed an integral part of his vision of the realization of the promise of justice through revolutionary terror, and has been viewed as a fundamentally Christian project, with 'fraternity' serving as the modern, revolutionary translation of Pauline *agape* (love). In short, it is

not possible to separate Robespierre's discourse 'On the Principles of Revolutionary Government' given to the Convention on 5 Nevoso II (in Christian time, 25 December 1793) in the name of the Committee of Public Safety from the discourse 'On the Relation between Religious Ideas and Morals and the Republican Principles and on National Festivals' delivered on 18 Floreale II according to revolutionary time (7 May 1794). Together they present an extreme articulation of the promise of justice, while remaining within the terms of its jointure.

Both discourses define the aim of the revolution as the stabilization of virtue as the essence of the Repub-

lic, which is to say ‘none other than the passage from the kingdom of crime to that of justice’. The revolution is the passage from the state of injustice to justice, the realization or bringing into being of the ‘promise of justice’. This transition or stabilization (the resolute face-off of Fortune) is described in the ‘Principles of Revolutionary Government’ in terms of the gifts revolutionary violence will bring to the citizens of the Republic: ‘Revolutionary government must give to good citizens national protection, but to the enemies of the people it must give only death.’ An extraordinary feature of the announcement of, and apology for, revolutionary terror in the name of honouring the promise of justice – protection for some, death for others – is the consistent and comprehensive ‘reactivation’ of the Platonic jointure of justice. The cardinal virtues now take their place among the ‘principles of revolutionary government’.

The discourse on the ‘Principles of Revolutionary Government’ is dedicated to the realization of a ‘new reign of justice’ and to this end examines the respective roles of prudence, courage and temperance. There is need for extreme prudence, especially on behalf of the Committee of Public Safety, in order to deal with those in the revolutionary movement ‘who have exceeded the precise line traced by prudence’. One of the principles of the revolutionary government is to remember that ‘wisdom as well as power presided over the creation of the world’ and that in creating the new world of the reign of justice the government must be prudent with enemies in the guise of allies and allies who have erred from the path of wisdom. Whether dispensing mercy or justice, the revolutionary government must be above all courageous and resolute. The second principle of government that the Revolution requires from the Convention is that it exercises ‘all its courage’ to crush its enemies, that it act with ‘firm resolution’ to defend its government. And it does so in order to protect the temperate virtues of its citizens, ‘virtues that are simple, modest, poor often also ignorant’. The jointure of wisdom, courage, temperance and justice is here revived as revolutionary principles vivified by revolutionary, terroristic justice. The realization of the promised justice will not be, perhaps cannot be, accomplished justly. Robespierre accepts the responsibility of acting unjustly in the name of the promise of justice.

In the discourse of 18 Floreale II, Robespierre looks beyond the embattled pursuit of the reign of justice through the reign of terror to the future Republic of Justice. He praises it in terms of the agapic feast

of liberty, equality and fraternity. Under the eye of the Supreme Being Reason, Robespierre evokes the Kingdom of Justice as a realm of Grace, imagining the meeting of a ‘great moral and political movement’ in National Festivals. The festivals will constitute a ‘tender bond of fraternity’ that unite in remembering the heroes of the Revolution who fought against tyranny in the name of the promise of justice. Robespierre imagines such festivals – consigned, chillingly, to an increasingly remote future – as presided over by the goddesses of liberty and equality:

by you, daughter of nature, you, mother of happiness and glory, you, sole legitimate sovereign of the world, dethroned by criminals. You, to whom the French people have restored your domination and to whom in return you will give a country and good customs, you, O august liberty, and we will share our sacrifices with your immortal companion, the tender and holy equality. We will celebrate humanity, the humanity insulted and oppressed by the enemies of the French Republic. It will be a beautiful day in which we celebrate the festival of the human race, it will be a fraternal banquet and sacred, the French people will invite the immense family of which they alone defend its honour and imprescriptible rights.

But this vision of the future kingdom of justice is hardly evoked before it darkens with the mention of fortune and the call for a parallel festival of mourning for the victims of misfortune. The discourse closes with repeated evocations of fortune, pitting the ship of the Revolution against the storm of time and enmity: ‘The ship which holds the fortune of the Republic is not destined for shipwreck’; it will turn the storm against its enemies secure on ‘the immutable foundations of justice’.

The celebration of the reign of justice in the presence of divine liberty and equality by a feasting fraternal humanity is precisely a promise of justice, one that will redeem the injustice of the reign of terror with its revolutionary prudence, courage and temperance. What emerges is a new jointure of justice, with the excess of justice that brings into being the new reign described as revolutionary terror and fraternity. Yet with this complex rearticulation, justice itself begins to pass out of being, succumbing to shipwreck. Robespierre himself, in spite of his bravado, recognized that the attempt to stabilize the Revolution would be ‘the most heroic and difficult undertaking’ and that any jointure of justice brings with it injustice that must be atoned.

The realized *eschaton* of modernity – the realm of justice embodied in the trinity liberty–equality–

fraternity – was born out of the dominance of courage over justice. In the guise of liberty and equality, it brought into the jointure of justice a corrosive instability in which liberty, equality and fraternity undo each other. The unrestrained pursuit of liberty produces inequality, while the pursuit of equality compromises liberty – justice as freedom and justice as equality undermine each other. With the default of wisdom and temperance, fraternity is called upon to serve as the equity that will protect justice from its own injustice. It is called to do so either as a supplement, as in Michelet and Proudhon, who reorder the trinity as liberty–fraternity–equality, or as their shared substance, as in Blanc’s and Buchez’s fraternity–liberty–equality.

Not only is fraternity called to hold together liberty and equality but it also had to contain its own internal injustice, one that expressed the fault line of its jointure as the equity that would hold together liberty and equality. For unlike liberty and equality, fraternity is not juridical; rather, like Aristotle’s equity, it both exceeds and enables the law, keeping it within the bounds of justice.

Even if it aspires to encompass the human race, fraternity nevertheless has enemies. Indeed, in the sombre days of the reign of terror the Trinitarian motto read ‘liberty, equality, fraternity or death’. While fraternity would resolve the tensions between liberty and equality, it too became quickly fixed in particular and exclusive forms: the sexed fraternity of the males, the class fraternity of the proletariat, the religious fraternity of the confession, the racial fraternity of the race, the national fraternity of the nation. Fraternity thus adopts the qualities of sovereignty; it is capable of acting in its own name and in creating its own sexual, class, religious, racial and national justice.

With the weight of this history it is hard to see how the promise of justice can be sustained. Yet it has been reactivated through the rethinking of the time and justice of the promise. The messianic justice developed by Levinas and Derrida attempts to break the jointure bequeathed by the French Revolution. It places in question the concepts of freedom, equality and above all fraternity, rethinking heteronomy beyond autonomy, equality and the same, and fraternity in the name of hospitality and friendship towards the Other. It also attempts to free justice from courage and fortitude – thus preserving the promise from its violent realization and betrayal as promise, as always to come.

Perhaps what is in the course of emerging is a new jointure of justice, in which courage is relegated from its dominant role and replaced not by justice as in Plato, or wisdom as in Aquinas, but by temperance. *Sophrosyne*, or the virtue of achieving harmony, was associated with acting at the right moment, the virtue of being able to wait or delay. The virtue of patience and choice of the right moment to act – a strategics of thought and action – is discernible in the work of Blanchot, Debord, Derrida and Levinas. It adopts a different relation to messianism than the realized eschatologies of the political theology of contemporary ‘re-activated’ Jacobins. From the standpoint of temperance perhaps our inherited notions of justice, wisdom and courage can be rethought in the light of an understanding of time not as realization in the present but as a promise for the future.

## Notes

This is the text of a lecture for the Forum for European Philosophy/LSE Legal Theory Subject Group series ‘The Promise of Justice’, given in the Department of Law, London School of Economics, on 5 March 2007.

1. Judith Butler has reflected on such prefigurations in *Precarious Life: The Powers of Mourning and Violence*, Verso, London and New York, 2004, focusing on contemporary sovereignty’s tactical suspension of law and the consequent infinite suspension of justice.
2. *Robespierre: Virtue and Terror*, Verso, London and New York, 2007, p. xi.
3. ‘Committed to writing during the enforced retirement of the de-Nazification period (1946)’, as Richardson puts it. William J. Richardson, *Heidegger: Through Phenomenology to Thought*, Fordham University Press, New York, 2003, p. 514.
4. Martin Heidegger, *Early Greek Thinking*, trans. David Farrell Krell and Frank A. Capuzzi, Harper & Row, San Francisco, 1984, p. 41.
5. *Ibid.* p. 43.
6. Jacques Derrida, *Specters of Marx*, trans. Peggy Kamuf, Routledge, London and New York, 1994, p. 27.
7. J.G.A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition*, Princeton University Press, Princeton and Oxford, 1975, p. 78.
8. *Ibid.*, p. 80.
9. ‘Preface to the Third Edition (1614)’, *The Politics of Johannes Althusius*, trans. Frederick S. Carney, Eyre & Spottiswoode, London, 1964, pp. 8–9.
10. Francis Bacon, *The Major Works*, ed. Brian Vickers, Oxford University Press, Oxford 2002, p. 28.
11. Jean-Jacques Rousseau, *The Social Contract, Rousseau’s Political Writings*, ed. Alan Ritter and Julia Conaway Bondanella, W.W. Norton, New York and London, 1988, p. 105.
12. It takes its place in modern political theology alongside other Trinitarian formulas such as ‘life, liberty and the pursuit of happiness’ and ‘credere, combattere, ubedire’.

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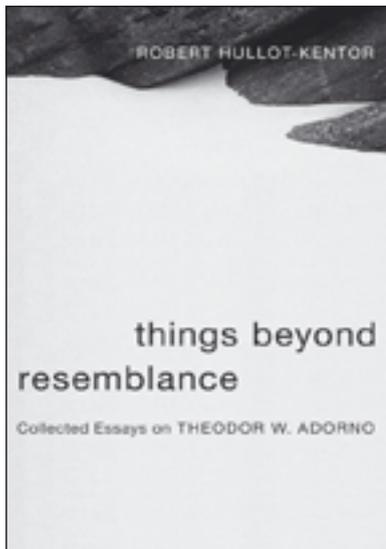
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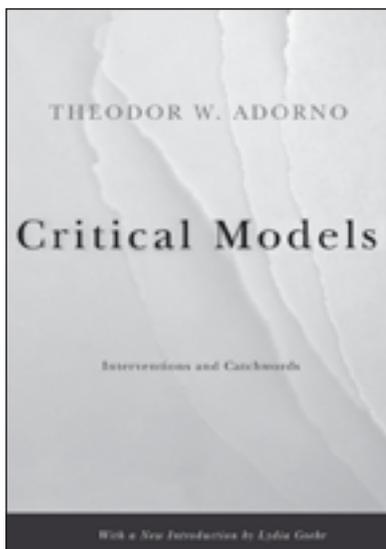
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