

Total Control: Nussbaum's Normative Account of Anger

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In her magisterial book on *Affect*, Ruth Leys devotes one sentence to Martha Nussbaum. Referring to her as a cognitivist, Leys clubs her with “all of whom in the post-World War II period have stressed the intentionality of emotions” (Leys, 2017, p. 5). Leys footnotes Nussbaum's book *Upheavals of Thought*. Nussbaum's normative position on anger which she advocates in *Anger and Forgiveness* (2016) shows a shift from her earlier work. ‘Justified anger’ had featured in her list of central human capabilities along with other emotions like love, grief, experience of longing and gratitude (Nussbaum, 2001, p. 79; Nussbaum, 2006, p. 77). A complete allegiance to justice she had argued in her earlier work, *Frontiers of Justice*, required anger at the offenders who inflict wrongful suffering (Nussbaum, 2006, p. 337).¹ After the *Naroda Patiya* decision,² in the absence of wrongdoers' apology and repudiation, she had written that “resentment is what the victims and those who share their outrage should continue to feel and express” (Nussbaum, 2012). However, in *Anger and Forgiveness* (2016, p. xi), there is an acute transformation of her previously held views as she now completely rejects ‘payback anger’.

Nussbaum believes that talking about anger normatively helps because: if an emotion's cognitive elements have been diagnosed as problematic, we can choose not to base public policy on it. Second, since this is social and cultural, we can educate children to emulate a good and rational model. Third, through long self-examination, we can change these tendencies in ourselves. In this paper, I will critique

¹ Though she may plea consistency in her approach by arguing that “justified anger” is what she now has termed “Transitional Anger.”

² “2002 Gujarat Riots: 32 convicted, 29 acquitted in Naroda Patiya case.” Accessed at <https://www.indiatoday.in/india/story/naroda-patiya-verdict-light-at-the-end-of-the-tunnel-114699-2012-08-29> Accessed on February 2, 2018.

Nussbaum's account of anger, particularly payback anger, as limited not just by her cognitivist normativism but also by her inability to engage with the idea of the psychoanalytic ideas of drive and affect.

Elements of Anger

Like other emotions, anger has its own cognitive content. It involves 'eudaimonistic' appraisals and beliefs *i.e.* they are based on what really matters to the agent. One would get angry about issues which are a part of one's 'circle of concern' and not otherwise. Sexual violence against women would outrage only a person for whom women's bodily integrity and autonomy are important concerns. To explore the distinctive content of anger, Nussbaum starts with Aristotle's definition's of anger: it is "a desire accompanied by pain for an imagined retribution on account of an imagined slighting inflicted by people who have no legitimate reason to slight oneself or one's own" (Nussbaum 2016, p. 17).

According to this definition, anger is based on how the agent (angry person) views a situation and not how it may be in reality. Anger, she argues, "involves both pain and pleasure" (pain at the injury to the self and the prospect of pleasure in the desire for retribution; in this sense, it is both backward-looking and forward-looking);³ anger targets people but its focus is the wrongful act (2016, p. 22). The idea of payback is an essential and constitutive part of anger.⁴ With a view to payback, anger focuses either on the victim's injury or on the impact of the wrongful act on victim's relative status (Nussbaum calls it "status injury"). In both these cases, because payback is normatively problematic, Nussbaum argues, anger itself becomes normatively problematic.⁵ The idea of payback—payback in terms of inflicting pain on the offender –according to her, 'makes no sense' since it does not remove the

³ Many other emotions can also have this double movement; for instance, compassion. But "the connection between compassion and helping is typically understood as contingent and causal, rather than conceptual." This forward looking and backward looking forms are reminiscent of Jeremy Bentham's theory of criminal punishment. As a classical liberal, he too advocates for a forward-looking justification of punishment as against Immanuel Kant. For the limits of the forward looking approach in the context of criminal punishment, see Igor Primoratz, *Justifying Legal Punishment* (Prometheus Books, 1990).

⁴ Transitional anger is a species of anger free from the notion of payback and directed towards constructive future oriented thinking.

⁵ Non-anger, however, does not necessarily mean non-violence. Dismissing Gandhi's categorical views on non-violence, Nussbaum agrees with Mandela and King for whom nonviolence could be useful in self-defense and even instrumentally. Only till the time it is "wielded in a spirit of non-anger, and with transition thoughts of future cooperation" (Nussbaum, 2016, p. 39).

victim's injury. A harsh punishment to the offender will not 'remove' or 'constructively address' or recover victim's loss. Further, even if it appears that payback can effectuate a reversal of relative positions between the victim and the wrongdoer, this idea is problematic because "relative status should not be so important" (2016, p. 15).⁶

Status injury, she notes, has a narcissistic aspect wherein the angry person obsessively focuses on herself and her own standing. The obsession with status has roots in personal insecurity and vulnerability, which leads to a desire for control. In a very insightful observation, Nussbaum writes that "[a]nger aims at restoring lost control and often achieves at least an illusion of it. To the extent that a culture encourages people to feel vulnerable to affront and down-ranking in a wide variety of situations, it encourages the roots of status-focused anger" (2016, p. 21, internal notes omitted). The desire of the vulnerable self for control and domination are narcissistic errors of the subject (which is also at the heart of infantile narcissism) which reveals how defective and narrow values constitute her subjectivity.

Status-focused rage is not necessarily backward-looking; it can be at the heart of some ostensibly forward-looking projects. For instance, the sex offender registries⁷ (which are seen as preventive lists) can serve as instruments of 'narcissistic rage' when they become all about lowering the status of the offender and inflicting humiliation on them. Nussbaum would be critical of such formulations of anger despite the fact that they seem to be forward-looking.

Transition and Transition Anger

When anger is focused on status, it is normatively problematic, though it might make sense. When it is focused on injury, it is not normatively problematic, but it doesn't

⁶ Relative status is distinct from equal human dignity. Unlike status, equal dignity is zero-sum game. Harming the offender's dignity will not bring back the victim's lost dignity.

⁷ Maneka: Sex Offenders' Registry Need of the Hour", Accessed at <https://timesofindia.indiatimes.com/city/delhi/maneka-sex-offenders-registry-need-of-the-hour/articleshow/56606968.cms> Accessed on February 3, 2018. For a critique, Shruthi Ramakrishnan, "Sex Offender Registries Don't Work", Accessed at <http://www.thehindu.com/opinion/op-ed/sex-offender-registries-dont-work/article17292629.ece> Accessed on February 3, 2018.

make good sense and therefore, in that sense it is normatively problematic.⁸ However, she does not completely reject anger. She concedes that anger can be a useful signal of a problem, it can give motivational strength to action and it can also act as a deterrent to another person's bad behaviour. But despite these positive aspects, she argues that "anger should always be promptly transcended in the direction of the Transition" (2016, p. 96).

A rational person will soon realise normative problems with anger, and move from anger to 'compassionate hope.' This she has termed as "transition." Transition is an important point for it can turn retributive rage into forward-looking, compassionate hope. Transition can happen, as Adam Smith suggests, through the idea of the "judicious spectator",⁹ through Aristotelian "positional thinking" *i.e.* seeing things from the point of view of the other, by Winnicottian play and laughing at oneself,¹⁰ and largely by making one move from the narcissistic self to everyone's welfare. All these are immensely difficult propositions to practice. Unfortunately, Nussbaum's faith in the possibility of an easy transition only reflects her presumption of a rational subject who can wilfully distance herself from desire and thereby, reasonably assess and transform the self.

Nussbaum underplays the power of magical fantasies by thinking that "in most *sane people* they prove short-lived" (2016, p. 27, emphasis mine). A sane person, according to her, will adopt future-directed attitudes which might be helping the rape survivor, setting up help groups, urging authorities to be pro-active, turning to law and seeking punishment, not for payback or retribution but for "the future good that could actually be achieved by punishment." The future good could be through *ex ante* approaches to crime (creating "better educational institutions and less poverty") or through punishment as specific deterrence of the individual, incapacitation, general deterrence of people and the reform of the offender, but not retaliation or retribution.

⁸ It may be pointed out that she is mindful of the good aspects of the emotion of anger. The focus of anger on wrongfulness is what makes it socially useful. It serves as a signal, wake-up call for the injured to see the wrongfulness of the injury inflicted upon her and motivate her to seek justice. It also is a deterrent against wrongdoing (though may not promise a long-term solution). She recognises that anger can bind human beings in bonds of solidarity, especially in the face of injustice and wrongs.

⁹ A judicious spectator is one who from a distance and non-temperament can assess how the offender is situated.

¹⁰ According to Winnicott, play is a set of ways through which ego grows strong enough to live in a world with others.

The only time when anger is not a problem is when it takes the form of, what Nussbaum calls “Transition Anger.”¹¹ Transition anger neither focuses on status nor does it get involved in the type of ‘magical thinking’ where the suffering of the offender is a payback for victim’s injury. It is forward-looking and focuses on social welfare from the very beginning.¹² Nussbaum acknowledges that since the retaliatory instinct/desire for payback is deeply rooted in the evolutionary tendency¹³ and cultural reinforcement, to inculcate this purely forward-looking emotion requires “long self-discipline.” “Angry people rarely think in this way from the start [...] It is much more common” she accepts, “to get angry first and then head to the Transition, than to be there already, focused on social welfare” (2016, p. 36). Transition anger then is a “rational emotion” and has “instrumental roles.” Such transition-anger, Nussbaum argues, is seen in parents’ relationships with their young children. Parents don’t want payback, but their anger is directed towards making things better.¹⁴

Anger and the Unconscious

The most significant flaw of Nussbaum’s account is that it is devoid of the workings of the unconscious. The intentionality or underlying reason of anger is too transparent in such a conceptualisation. The ‘circle of concern’ limits itself only to

¹¹ Transitional anger is not in conflict with unconditional love, unlike anger that harbors a desire for payback.

¹² Unlike the movement from Anger to Transition. Nussbaum also doesn’t answer the question if transition anger is a species of anger.

¹³ Elsewhere in her work, Nussbaum emphasises the link between primitive shame (connected to the demand for invulnerability/ infantile narcissism) and narcissistic rage: “there is inherently a string link between primitive shame and rage at the source of lack in the self. The self, aware of its inadequacy, seeks to blame someone for this condition. In the case of infants, a culprit is usually ready at hand: the caretaker, who is not doing his or her “job” of making the self feel powerful and utterly complete. Such attitudes can very easily lead to rage in later life since these narcissistic demands are difficult to give up [...] [The] individuals whose developmental process has not led them out of narcissism and into a willingness to accept the equal rights of others are highly susceptible to such rages, whether individually or in groups. Such rages are a danger for any society based on the idea of equal rights.” Martha C. Nussbaum, *Hiding from Humanity: Disgust, Shame, and the Law* 209-211 (Princeton University Press, 2004).

¹⁴ This is a romantic view of transition anger based on the platonic view of an ideal parent and ideal family. Like a good liberal, Nussbaum retains committed faith in all liberal traditions *viz.* family, nation, law, and the state. However, this is problematised by looking closely into the unconscious hostilities and conscious violence of the family. For illustrations of anger at the new-born baby and old parents’ anger, see Stephen Grosz, *The Examined Life: How We Lose and Find Ourselves* (Vintage, 2014). Also see Jacqueline Rose, *Women in Dark Times* ix (Bloomsbury, London, 2014), particularly the second section of the book, “The Lower Depths”, devoted to three young women killed in Britain and Sweden in ‘honour killings.’ Pratiksha Baxi, Shirin M. Rai and Shaheen Sardar Ali, “Legacies of Common Law: ‘Crimes of Honour’ in India and Pakistan” 27(7) *Third World Quarterly* 1239-1253 (2006).

values in the conscious mind of an individual which trigger the angry response. This is not to say that she does not acknowledge anger which is not conscious. She writes: “Subjective feelings [...] may be entirely absent if anger is not conscious. Just as the fear of death can lurk beneath the threshold of consciousness and yet influence conduct, so too with anger, in at least some cases. It is a familiar experience to become aware that one has been angry at someone for some time, and that this hidden anger has influenced one’s behaviour” (Nussbaum, 2016, p. 16).

Nussbaum acknowledges unconscious anger but in an all-too-oblique fashion as she does not acknowledge the unconscious reasons or unknown motivations that propel or trigger anger. In discussing the anger displayed at inanimate objects (e.g.: vending machine rage), Nussbaum portrays this as an irrational, momentary reaction based on a view that “we have a right to expect “respect” and cooperation from the inanimate objects that serve our ends, and in the moment we react as if they were bad people, since they clearly are not doing “their job” for us” (Nussbaum, 2016, p. 19). One may raise the question as to why this should not be understood as some form of displaced anger: anger not at the machine, but at something/s or someone else exhibited on the inanimate object. After all, the angry people or mob on rampage are not angry with the unknown people they kill. The focus on the outward and conscious elements again passes over the unknown, unseen, and unconscious realms and impetus of the emotion of anger. Unless the unconscious is taken seriously and concepts like the unconscious guilt foregrounded in criminal theory (not to exonerate from guilt but to understand the mind and the life-history), law would fail, leave alone engage with that what appear to be unfathomable forms of criminal act.

Law and Anger in Intimate Realm

Nussbaum understands that law cannot completely deal with grief and loss when serious wrongdoing takes place in the intimate realm. However, it does secure accountability for the wrongful acts. Nussbaum believes that “the involvement of law should surely diminish the temptation to prolonged anger and should assist agents in arriving at the Transition” (2016, p. 135). Acknowledging that laws against family remain under-enforced, she observes that when law is not doing its job properly, wronged individuals in the private sphere “should protest and try to get the law to do

its job better.” However, law should not be a vehicle for victims’ anger or deal with the offenders in a retributive way.

This suggestion regarding the reliance on law in the intimate sphere requires a closer look. This is exactly how feminists in India find the invocation of law –law is both under-enforced and over-utilised –around the issues of intimacy. While familial (sexual) violence goes largely unaccounted and unreported,¹⁵ failed intimate relationships (e.g. breach of promise to marry) often seek legal assistance and support for reparation.¹⁶ The question however remains what affects circulate in the intimate realm which is, as Nussbaum points out, a realm of trust? Why do instances of incestuous rape remain unreported but love affairs gone bad abound? Put differently, why do only *certain* acts within the intimate sphere evoke angry complaints to the law? How does rape law come to be the vehicle for the payback fantasy of the woman who was promised marriage in return for sex? More generally, what are the socio-cultural scripts that underwrite the emotion scripts?¹⁷ Can we theorise the emotions in/of the intimate realm without understanding the psychic investment of the individual actors in socio-cultural scripts; without their complicity in, and uncritical acceptance of, the logic of honour-bound institutions of marriage and family?

“Life is too short. That is in essence what I shall say” (2016, p. 92). This ego psychology understanding shapes Nussbaum’s philosophical arguments about the intimate sphere,¹⁸ i.e. the home. Nussbaum desires a smooth, less angry, and a more

¹⁵ Harsh Mander, “The Danger That Lurks Close to Home”, Accessed at http://www.thehindu.com/opinion/columns/Harsh_Mander/harsh-mander-on-sexual-abuse-at-home/article7615539.ece Accessed on March 5, 2018; Ashwaq Masoodi, “Acquaintance Rape: When Trust Turns to Torment”, Accessed at <http://www.livemint.com/Politics/D6RcYtPEqPcNBA8nnHck5J/Acquaintance-rape--When-trust-turns-to-torment.html> Accessed on February 1, 2018.; Kavita Krishnan, “‘Castration’ Order: Patriarchy is the Problem but Madras HC Proposes it as Panacea for Rape”, Accessed at <http://indianexpress.com/article/blogs/castration-order-patriarchy-is-the-problem-but-madras-hc-proposes-it-as-panacea-for-rape/> Accessed on February 1, 2018.

¹⁶ It has been pointed out that one-fourth of the total rape cases registered in Delhi in 2016 belonged to sex under the category of false promise of marriage. “One-Fourth of Delhi Rape Cases in 2016 had ‘Sex Under False Promise of Marriage’ as the Cause”, Accessed at <http://indiatoday.intoday.in/story/delhi-rapists-use-false-marriage-as-trap-25-per-cent/1/842845.html> Accessed on February 1, 2018.

¹⁷ Flavia Agnes, “What Makes up the Majority of Cases of Rape Under Promise of Marriage? Here’s a Reality Check” *The Times of India* (February 11, 2016); Flavia Agnes “In the Name of Marriage”, Accessed at <http://www.deccanchronicle.com/150220/commentary-op-ed/article/name-marriage> Accessed on October 15, 2017.

¹⁸ For a critique of ego psychology, see Elizabeth Grosz. (1990). *Jacques Lacan: A Feminist Introduction*. London: Routledge.

forgiving world and this desire translates into prescriptive commands of how *good people ought to feel*. Spousal anger and forgiveness, she writes, is often a product of “false social values” that affect people’s behaviour (she means the male anger against the women in the family is a result of gendered emotional scripts). But even well-grounded anger that does not involve false cultural values (for instance, the anger of women culturally taught not to display anger but get angry because of life circumstances) can result from personal insecurities and status anxiety. Anger in spousal relationships is common on account of the (futile) desire to control when things start to appear threatening to one’s goals and expectations or due to personal insecurities.

Even the situations of well-grounded anger then are “a deflection of attention from the underlying problem” which is the need for a ‘constructive resolution.’ Nussbaum builds this argument drawing on a case in Harriet Lerner’s book (1985). A couple—Sandra and Larry— was facing serious problems in their marriage. Both were angry and blamed each other. The circular habit patterns of their relationship could be broken by “a declaration that a person wants to do something for herself rather than blaming the other person because she doesn’t have what she wants” (2016, p. 118). Citing this example, Nussbaum believes that their “anger resulted from seeking superior position through blame, rather than *simply* cultivating an independent life, Transitionally” (118, emphasis mine). Disputing that anger is connected to one’s self respect, as feminists would argue, Nussbaum asks: “Who is more self-respecting? The Sandra who keeps dredging up every wrong, trying to pin blame on Larry (however justifiably, in a way), or the Sandra who simply gets on with her life and invites him calmly to go along?” (119) Sandra’s anger (about Larry’s neglect of her emotional needs, amongst other things) is, for Nussbaum, “a childish and weak response, not an expression of self-respect” (119). So, for Nussbaum the point is clear: don’t wallow in the wrongfulness of the past but focus on constructing the future.

It was important for this couple to stop punishing the other for their problems and constructively turn towards the future by “*simply realizing* that you can *take charge of your own life*” (118, emphasis mine). What is required is that people focus on the future and well-being of others and therefore, “[t]he way anger goes away in the Transition seems much more promising: *one stops thinking about*

one's own inner states and starts thinking about how to do something useful, and perhaps even generous, for others" (136, emphasis mine). What for Nussbaum is a "simple" realisation is a lifetime struggle for human beings. Vulnerability, neediness, and dependence are inherent to human subjectivity making the objective of "taking charge" of one's life a distant and an almost impossible dream. Further, if it could be done so "simply", feminists would have long succeeded in eradicating violence of/within the intimate sphere. Psychoanalytic feminists have argued that we ignore our 'inner states' to our own peril because what is ignored and repressed often comes back in brutal ways. The rational, self-assured, independent subject has no unconscious or unconscious resistance to overcome. She can get over her past and take the plunge into future. The neoliberal self-confidence of this subject cannot be missed. "Getting on with life" is a simple choice that Sandra makes one day, as if there are no real constraints, material, economic (besides emotional and historical) to hold her back.

Rethinking Payback

What is concealed and encrypted in the destructiveness of anger is an important question to ask. Martha Nussbaum's response to this question is, however, too simplistic and premised on a linear account of the psyche. According to her, the idea of payback is conceptually at the heart of anger.¹⁹ She notes that the connection between payback and anger is not just causal or external but conceptual and internal. This means that anger's *internal goal* is the suffering of the wrongdoer because that is what she deserves for the wrong inflicted by her. It is important to note that Nussbaum has an insight into the psychic roots of the idea of payback. Payback "often has a psychic function", she acknowledges (2016, p. 77). People seek payback because of their "unwillingness to grieve and accept helplessness" (29). Therefore, the possibility of striking back yields immense satisfaction (and is often termed as 'closure' in populist discourse) and produces fantasies of power and control quite contrary to reality. This understanding of payback leads her to raise some fundamental questions:

¹⁹ Though she makes this argument drawing on Western philosophical tradition, her normative argument has universalist aspirations.

How does pain lead to the sort of lashing out, or striking back, that we associate with anger in at least many cases? And why would someone who has been gravely wounded look forward with hope to doing something unwelcome to the offender? [...] Doing something to the offender does not bring dead people back to life, heal a broken limb, or undo a sexual violation. So why do people somehow believe that it does? Or what, exactly, do they believe that makes even a little sense of their retaliatory project? (21-22)

These are no doubt important political questions, given the increasing popularity of public policy decisions and legal ‘reforms’ driven by retributivism. But Nussbaum’s answers –due to ‘policy scholarship’ to which she subscribes –are too hasty: seeking the pain of the offender as a way of compensating for one’s own loss/injury is, in her words, “magical thinking”, and thus “normatively objectionable [...] since we all want to make sense to ourselves and to be rational.” And since the payback fantasy is rooted in irrationality, it must be eschewed from policy and legal frameworks.²⁰ Such a response, even to make a normative argument, blunts her own analysis for it undermines the psychic power of the desire for payback.²¹

Consider the following suggestion with regard to payback:

the fact that a cultural teaching constructs *patterns of sentiment that become real* should not make us embrace a deception- especially when life will soon disabuse us of our error. *Malpractice litigation* does not resurrect the dead, nor does a *punitive divorce settlement* restore love...And even if people feel overwhelming delight when they

²⁰ This position *vis-à-vis* anger is akin to her earlier argument on disgust and law as well as on death penalty. Martha C. Nussbaum, “Fatal Error”, Accessed at <http://indianexpress.com/article/opinion/columns/fatal-error/> Accessed on February 2, 2018. She writes: “For me, the telling point against the death penalty (apart from the concerns over implementation that I have raised) is that it encourages vindictive passions and in effect, enacts a type of mob justice. A system of justice should be above revenge; it should express a calm and balanced attitude towards wrongdoing. It is difficult for me to believe that the death penalty can ever express the virtues we rightly associate with the rule of law.”

²¹ It may be noted that many retributivists also endorse the evaluative conception of emotions when they argue in favour of anger: “emotions can have a moral content. Just as most people believe that an emotion such as compassion is morally good- it says something about the person- anger, when directed at a wrongdoer for his wrongdoing can also be a morally good emotion. Our anger demonstrates our awareness that the criminal has violated our rights, had acted unjustly and, therefore, deserves punishment. That anger- including the retributive urge to punish- is morally good when it demonstrates that we value ourselves and the rights of other crime victims.” J. Dressler. (2001). *Understanding Criminal Law* 22. New York: Lexis Publishing House.

have retaliated against the aggressor, that pleasure gives us no reason to endorse or make law around such sadistic and malicious preferences. People can learn to feel pleased by many bad things (racial discrimination, domestic violence, child abuse) and by many silly fantasies (the thought that their cat channels the spirit of a beloved ancestor). These pleasures should neither be here nor there when we perform a normative evaluation.

So, if Angela cares about rationality, she will soon see little point in payback, and she will shift, very likely, to the third road, focusing on creating future projects. (29)

This passage is illustrative of everything that has gone in Nussbaum's normativism. There appears to be no contradiction in stating that some sentiments do "become real", and simultaneously seeing them as 'deception' which one can distance oneself from. The fact that emotions (and the desires and fantasies hidden in them) become 'real' means that emotions acquire a power of their own. Cultural norms shape the subject whose reality of feelings gets confirmed and reinforced as emotions move and stick to certain objects within existing cultural practices and socio-historical contexts.

Second, the assumption about the subject of emotions is that she owns her emotions and can take decisions about them rationally. This liberal view of the subject constructs the subject as one who possesses only reasonable emotions. Third, the wish for payback is attributed to abuse/misuse of law –malpractice litigation/punitive divorce settlement—as if law exists outside this 'cultural teaching' and gets corrupted when payback is introduced to law. The assumption about law is that, in itself, it is a rational sphere with no internal contradictions, as if law is not about any kind of payback, retaliation or *talion*. This benign view of law—law as a pure zone, untouched by morally problematic emotions—which only a liberal position will endorse. Finally, by othering the question of the psyche and contemptuously relegating the faiths of alternative traditions to barbarism and irrationality,

Nussbaum confirms her colonial framework which retains the Eurocentric assumptions about modern law as well as the subject of modernity.²²

Nussbaum concedes that these emotions may be ‘co-present’ as grief often brings along the tendency to blame someone for the loss and thus “anger may function psychically as a way of restoring the lost person or object” (47). Anger manifests from the “reluctance to grieve” and acknowledge one’s helplessness. She prescribes “a Transition from anger to mourning” (96) since “*the way to deal with grief* is just what one might expect: mourning and, eventually, constructive forward-looking action to repair and pursue one’s life” (95-96). But this prescription is based on the disavowal of the gripping power of unbearable grief. If only one could know how to deal with unbearable grief.

The Question of the (Rational) Subject of Law

In the dominant strands of legal scholarship, ‘the problem of the subject’ is completely avoided. While the ideological underpinnings of such legal individualism have been unravelled to expose middle-class interests (Norrie, 2014) as well as masculine assumptions (Lacey, 1998). According to Pierre Schlag (1991), the problem of the subject remains *repressed* in legal scholarship. Even critical accounts end up constructing the subject as one who “understands that he is socially and rhetorically constructed, but nonetheless retains his autonomy to decide just how constructed or autonomous he really is” (Schlag, 1991, p. 1730). Despite the acknowledgement of historical, social, and ideological factors in the construction of the subject, she continues to be an autonomous, choice-making entity. The subject of Enlightenment—an all-knowing, rational, and calculating individual, responsible for *his* actions—remains central to the western legal tradition (Barrett, 1991). Even as the subject knows that she is produced by and situated in power, the legal text ‘subconsciously’ constructs an autonomous, stable, coherent, and rational subject.

In Nussbaum’s oeuvre on law and emotions, the taken-for-granted nature of the legal subject becomes particularly stark as her discussion of emotions remains

²² See RatnaKapur, “Imperial Parody” 2(1) *Feminist Theory* 79-88 (April, 2001). This should not be read as implying that all Euro-centricism is a problem. Here, it will be useful to rehearse Upendra Baxi’s distinction between progressive and repressive Euro-centric thinkers as well as Gayatri Spivak’s argument of reading Enlightenment from below.

constricted to the emotions of a rational subject in control of them. In discarding the mechanistic conception of emotions and viewing emotions in evaluative terms, reason, control, and desire for certainty become paramount in her analysis- both in terms of the meaning of emotions as well as the subject of emotions. Now, to say that ‘I have emotions’ presumes a subject who always knows how she feels; a *self-present* subject in-control. In other words, she has no unconscious. But as Jacques Derrida (2017, pp. 154-156) in his monumental work on the death penalty, taking us back to the foundation of psychoanalysis asks:

[W]hat would happen...if we no longer know who the subject is to which I am referring, whether it is a conscious or unconscious “I”, whether or not it is a divided subject, a free subject, whether or not it is subject to the law of superego, vulnerable or not to a death drive, etc. When I said [...] X loves something called life [...] Psychoanalysis can ask me: “But who or what are you talking about? What right do you have to assume a self-identity for X? And what you call X’s love of life? And what if this love of life were also a hatred of life? Can it not at once love and not love what you call life? And what is life?”

The image of a self-present subject irons out the complex workings of the mind. Even when the conscious rational self might be suggesting a particular course, the unconscious might conjure up its own varied paths. For “there are possibilities in our unconscious minds”, Jacqueline Rose (2010, p. 54) reminds us “that we would prefer not even, sometimes, to dream of.” What one asserts in language may be totally incommensurate and “radical[ly] un-fit” with what the unconscious seems to be hinting at. Thus, by merely describing the content of anger as one based on ‘magical thinking’, the hope that reason can prevail over it and one can move from anger to non-anger is too far-fetched. It evades the foundational psychoanalytic truth that one does not give up on ‘magical thinking’ even if one *knows* it is illusionary magical thinking. In fact, illusions are held on to more dearly because they are illusions.

Vulnerability of the Liberal Subject

Nussbaum's thesis on anger and her normative propositions are premised on the recognition of the vulnerability of the individual. Vulnerability produces anger (as status error as well as payback fantasy) and the desire for retribution: payback anger and retributivism is "often a displacement from underlying powerlessness, giving the illusion that one can do something about one's bad situation" (2016, p. 208). Conversely, if people are "more confident about their stability and power" they are more capable of mercy. She relies on Nietzsche (1987) in this regard: "As the power and self-confidence of a community increase, the penal law always becomes more moderate; every weakening or imperiling of the former brings with it a restoration of the harsher forms of the latter." In other words, since a 'strong person or community' would not be preoccupied with retribution, the endeavour ought to be setting up institutional frameworks that strengthen people and communities. In this regard, she sets out a consequentialist or welfarist approach towards the creation of a 'minimally just society' that will protect a set of central human capabilities to some threshold level. (These positive measures to develop 'capabilities' will function like *ex ante* strategies at crime prevention.) It appears that personal and societal strength will be developed through socio-political institutions and people and communities will be encouraged to 'forgo retribution'. The journey from vulnerability to strength is set out in terms of establishing liberal institutions which in turn will enable the movement from anger to non-anger, retribution to forgiveness and compassionate hope. The solution she offers for retributive rage is social and political institutional transformation.

Her approach to vulnerability raises various questions. Is vulnerability a universal human condition? How to address vulnerability? And, most importantly, who is the subject of Nussbaum's enquiry? In her recognition of vulnerability as the human condition that forms the root of anger, has she moved away from her earlier framework of a liberal subject to a conception of a vulnerable qua psychoanalytic subject? In other words, is the subject a vulnerable subject?

In the classical liberal tradition, the subject is a universal human subject who is "a competent social actor capable of playing multiple and concurrent societal roles" (Fineman, 2008, p. 10). The liberal subject driven by self-interest is at the heart of economic, political, and legal principles as well as the ideologies of self-sufficiency, autonomy and responsibility that underlie these principles. The liberal subject has

the ability to enter into contractual relations- to freely choose and make rational decisions. He freely consents to contractual agreement and is responsible for his decisions, mandating a non-interventionist state. The ideal of the liberal subject has been variously critiqued, especially by critical legal scholars, feminist and disability scholars. Feminist and disability scholars have contested the notions of autonomy and self-sufficiency by focusing on the (inter)relationality and (inter)dependency of the subject. Recently, the liberal subject has also come under attack from vulnerability analyses (Fineman, 2008, pp. 10-11):

S/he can only be represented as an adult. As such, the liberal subject stands not only outside of the passage of time, but also outside of human experience. The construction of the adult liberal subject captures only one possible developmental stage—the least vulnerable—from among the many possible stages an actual individual might pass through if s/he lives a “normal” lifespan. We must confront this foundational flaw in the liberal model if we are to develop legal and social policies that reflect the lived realities of human subjects.

The vulnerability analysis, according to Martha Fineman, enables us to see the possibility “of each of us to become dependent based upon our persistent susceptibility to misfortune and catastrophe” (12). In as much as Nussbaum recognises the vulnerability of people, she does not take this diagnosis seriously. The vulnerable subject who gets angry and seeks retribution is a problem for Nussbaum as to her she has not matured to understand the futility of her desire and needs to be immediately helped to overcome vulnerability. In fact, Nussbaum’s own desire to overcome and win over vulnerability is rooted in the universal (male) need to feel powerful and self-sufficient (Tanay, 1968-69).

Conclusion

In deliberating upon Nussbaum’s understanding of anger, particularly payback anger, I have tried to show how the liberal cognitivist position is in many ways not just intentionalist but is actually as limited as the non-cognitivist position (Leys,

2017). It is only a psychoanalytic understanding of affect that will allow us to thicken our understanding of anger, particularly payback anger, within and outside the law.

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