

WHOSE HONOR? WHOSE REVENGE? COMMENTS ON  
FIGUEREDO'S "BLAME, RETRIBUTION AND  
DETERRENCE"

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With the metaphor "getting even," Aurelio Figueredo and Mary Koss<sup>1</sup> evoke a rough and ready image of revenge, one that may seem dissimilar to, even at odds with, the forms of retribution codified by our criminal justice system. Getting even is something that individual people are inclined to do with or to each other. When we get even, we take matters into our own hands. The authors reinforce this image of revenge as personal retaliation by describing the measures for getting even as the moves in a game. Despite the creeping popularity of game rhetoric, we ordinarily do not imagine that state institutions or official actors are or should be playing games, at least not with peoples' lives and liberty. No, games are for individual people acting in their so-called private capacity. Then, too, the vengeance moves the authors mention—"tit-for-tat" and, particularly, the high-stakes version, "eye-for-eye"—are so simple that everyone can imagine making them independently.

In the mind's eye, whose perspective our authors surely believe counts for a great deal, getting even is easy as pie. Whatever you dish out to me—gifts, losses, you name it—I am going to dish

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<sup>1</sup> At the time of the conference, the paper on which I commented was entitled *Getting Even: Blame and Retribution in Survivors of Male Violence*, and Mary Koss appeared as a co-author. Subsequently, Koss withdrew her authorship, and Figueredo replaced the conference draft with the paper that appears in this volume. Because the published paper is substantially similar to the conference version, I also offer here the substance of my original comments, including, of course, the sorts of modifications required to transform an oral presentation into a sensible written one.

back to you; whatever you grab from me—eye, tooth, life—I am going to grab from you. The authors trace these popular games to primitive, male-dominated cultures referred to as “honor cultures.” It is notable that these familiar honor cultures seem to be stateless societies, if only in the pertinent sense that vengeance-taking was not the province of a state institution, but of individual men and their families.

Most of all, perhaps, the game metaphor invites us to think critically about the function and politics of tit-for-tat revenge. The authors assert that vengeance helps restore crime victims to full psychological and social health. Therefore, they react with alarm to the reluctance and, sometimes, outright failure, of our criminal justice system to avenge the women whose husbands beat or rape them. (In our legal and popular culture, these women are known as “battered women.” Did honor cultures have this special kind of pejorative, even stigmatic, name for them too? Or, were they known only as women?) By describing retaliation as a “getting even,” the authors also imply that revenge is a recuperative gesture that repairs a balance of power that the crime disrupted. Revenge restores a relationship of equality or, as the authors put it, “equity,” between the woman and her batterer. It is from this plank of the argument, from the claim that women’s equality is promoted by tit-for-tat exchanges between men hell-bent on repairing insults to their honor, that I propose to jump ship.

Figueredo and Koss derive their conception of retribution from an “ideology of honor” that evolved in some cultures, but they give only a thumb-nail sketch of these cultures. We are told only that an honor culture is one that encourages or even requires its members to take vengeance for insults to their honor. Figueredo and Koss say almost nothing about how these cultures defined honor, about who was eligible to possess or, for that matter, insult honor, or about the kinds of conduct that amounted to insults. They do remark that herding (as opposed to farming) societies were likely to develop codes of honor, whose primary function was the strategic deterrence of livestock thieves. Presumably, theft of an animal injured its owner’s honor, an injury the owner might repair by retaliating against or, as the metaphor instructs, getting even with the thief. As for the precise method of retaliation, Figueredo and Koss are silent, but their tit-for-tat and eye-for-eye

references imply an animal-for-animal regime: you took my goat, so I take yours. So far, so good. (Or, perhaps, for the goats, so bad.) But I wonder how the owner got even with a thief who had no goat or no goat as good as the stolen goat. Could the owner grab something other than the thief's goat? Something from somebody else? On these and other questions, which come fast and very thick when the insult is an injury to a person, Figueredo and Koss also offer few observations.

Indeed, Figueredo and Koss never even assert directly that honor codes prescribed revenge for interpersonal violence. It must go without saying, I suppose, that these honor norms, if their function were to manage male aggression, would place physical attacks on top of the heap of vengeance-worthy conduct. Surely, no less than a goat-thief, one who beat up or killed another person would be an appropriate candidate for retaliation in such regimes. But this straightforward, even obvious, assumption is compromised when the injured party (and also the violent perpetrator?) is a woman. Figueredo and Koss do not acknowledge that women were not full-fledged participants in the economy of honor, but at least at the level of social practice, it appears that women ordinarily were not full players. As the authors remark, in these cultures, (many? most? all?) women lacked sufficient physical strength and social resources—in a word, power—to launch retaliatory strikes on their own. Therefore, if they were to get even with men who injured them, women needed help, and it seems that the kind of help they needed could be provided only by men. Which men would come to women's rescue, and why those men? The injured woman's husband would seem to be the obvious candidate to settle her score, assuming that she had a husband and that he was capable of evening the score.

In the cases that engage the authors, however, the husband was the last man on earth to be his wife's chivalrous knight since he was the villain from whom she needed to be rescued. Who, if anyone, got even for her then? As Figueredo and Koss explain, evolutionary theory suggests that the woman's natal male kin might be her avengers. If so, and if husbands got cold feet at the thought of playing tit-for-tat with their male in-laws, honor codes should have dampened or deterred the incidence of domestic violence. To be sure, we might worry, as Figueredo and Koss do, about the women

who fell through the cracks in the honor code. Apparently, there are some lengths to which even selfish genes just won't go. For example, consider the women whose male kin lived beyond striking range of their marital domiciles or whose brothers and fathers were too poor to protect them. Nonetheless, the authors conclude, vengeance-taking was generally helpful to women because it encouraged violent husbands to pull their punches and, maybe, cease punching altogether. Moreover, the ideology of honor "legitimized" the notion that women deserve protection against male violence and assisted the evolution in women (as well as in men) of an "independent psychological mechanism for Revenge."

Having settled the existence (though not the precise source) of a "universal" human need for revenge, Figueredo and Koss settle down to their theme, the psychological consequences for victims when vengeance fails. The consequences are dire: an unavenged victim experiences "severe affective and cognitive distortions" and "patterns of psychosocial maladjustment." The prognosis is grim: without revenge, the victim cannot "restore equity" between herself and her wrongdoer, and, therefore, she is left to endure "the reduced psychological circumstances of permanent social subordination and accept chronic oppression." Less abstractly, it takes a lot of time and energy to nurse a grudge, especially a righteous grudge, one from which the victim deserves but is denied relief. Unavenged victims feel angry and ashamed; they come to believe that the world is an unpredictable, unintelligible, and unjust place; and some attempt to restore equity through dysfunctional revenge mind-games in which they belittle themselves and thereby "trivializ[e] the magnitude" of the unavenged wrong. Many contemporary crime victims *could* experience these psychological harms. In our world, honor codes have given way to penal codes under which the state monopolizes retribution—victims who turn vigilante are outlaws. The upshot is that individual victims often may feel and, even, be helpless to secure revenge at all. Let's face it, the criminal justice system has victims coming out of its ears, and so it turns a deaf ear to some, maybe many, petitions for revenge. *Every* victim confronts the possibility that he or she will be "victimized twice," first, by the crime itself, and, second, by a law enforcement system that lacks the resources and, maybe, the interest to avenge that crime.

However, some groups of victims are more vulnerable, on both fronts, than others, and it is with one such group that the authors are most concerned. Violent criminals tend to pick on a certain type of victim more than others, and it may be the case that these victims also are losers in the vengeance market. Perhaps deterrence theorists are right: the thugs do reckon that some victims are likely to be freebies because vengeance is not feasible, and, if so, wouldn't we expect the victims to see themselves in that same way? Why in the world would a victim call the cops when, prior to the crime, she already was "subordinated and oppressed," to wit, put down and kept down, by norms that contributed to, if not directly encouraged, the very crime that she now asks the state to avenge? Why would she ever dream that the state might listen to her claim that a *crime* had occurred, let alone one for which *she* is entitled to revenge? And, if the state is receptive to her plea, to what position of "equity" may she expect its retribution to restore her? Battered women's advocates have been asking these poignant questions for decades, but, as Figueredo and Koss notice, the state still seems inclined to rebuff battered women's complaints. Indeed, to Figueredo and Koss, the criminal process rubs salt in the battered woman's wounds. Our so-called fair trial procedures almost always exacerbate her psychological distress, and, not infrequently, they sabotage her accusation altogether. Hence, the authors draw our attention to a bleak irony: women seem to be no better off—indeed, they might be worse off—in a world where they must rely on the state, rather than their brothers and fathers, to dole out their portion of vengeance. Women need revenge to be psychologically, as well as physically, whole, and it seems that some men once were eager to avenge insults committed against their female kin. Better still, these men apparently did not try their women's claims by procedures that, in the critics' idiom, raped or assaulted the women for a second time. These honorable men did not wring their hands, let alone pause to call witnesses, hear testimony, or sift through evidence. No, these men, after all, were men: when it was time to get even, they just marched straight out and got it.

But, I wonder, what was it that a man did to get even for a sister who had been raped or beaten by her husband? What form, exactly, did revenge take in those circumstances? Behind this practical question stands another, whose answer also might help us

begin to map the politics of honor economies and, thus, evaluate the critical force of the authors' ironic observation. How did the man describe the insult for which he was taking revenge? To put it bluntly, as I am sure he would have done, for *whom* was he getting even? The woman? Himself? Both? From the slender information the authors provide and from what we know about gender politics under our common law regimes, it might be safe to infer that the man took revenge to repair not the woman's honor, but his own. By getting even, he restored a relationship of equality between himself and another man. Why else would he go looking for the guy who had raped his sister? True, he might be motivated to play tit-for-tat solely for his sister's sake—he might be willing to strike, say, the second blow for her equality—but this game was risky, so risky that he probably would be reluctant to jump in unless his own honor was on the line as much as or even more than hers. Was she, then, one who lacked honor in her own right? Was she merely an object, an instrument, through which *his* honor was lost or won? Maybe. You have probably heard that our own law long treated women more like property than people, and it would be helpful to know whether the ideology of honor also treated women as objects, as property to be owned and traded by men. If our analogy between woman and property did hold sway over honor-hungry herding societies, what exactly *was* a battered or raped wife when her tit-for-tat time rolled around? She did not occupy the position of wrongdoer, of the goat-thief in the exchange I sketched above, did she? I suppose she might, but it seems that her husband already was wearing the thief's shoes. If so, that left two spots open that the wife potentially might fill—owner or goat—and, by the logic of these honor games, she was slated to be the goat, right? Right. A husband who beat his wife thereby filched her brother's honor, and for this theft the brother was entitled to get even. Now, recall what transpired when the goat-herder ran into the guy who took his goat: you took my goat, so I take yours. Next, picture the encounter between the brother and the man who took his sister: you took my sister, so I take yours. Or consider an uglier, more brutal prospect, one to which Figueredo and Koss never allude, but from which these honorable men might not have flinched: you raped and beat my sister, so I rape and beat yours. If women were objects in these cultures—and, maybe, even if they were not—the structure of tit-for-tat and, especially, eye-for-eye

does not exclude the possibility that vengeance for sexual and domestic violence would proceed sister-for-sister, daughter-for-daughter, wife-for-wife, woman-for-woman. As I said before, so far, so good, unless, of course, you happen to be one of the goats.

The analogy between woman and property raises a still more fundamental objection to the authors' primary claim. In a regime that enforced this analogy, the kind of abuse the authors imagine that honor codes helped to deter—that is, *domestic* abuse—might have been routine, ordinary, entirely unremarkable. When a husband beat or forced sex on his wife, there would be nothing for which to take revenge unless his action was cognizable as *abuse*. If woman was property—if husband owned wife—what, if any, handling of a wife by her husband would count as abuse at all? Most of the time, we imagine, people are left alone to do with their property (almost) anything they want. But we don't have to push the analogy between woman and property *that* far before wondering when, if ever, a husband might have reason to fear that his wife's brothers were going to come calling on him (or his sister). I need not, for example, invite you to imagine that a herder-husband had the authority to treat his wife exactly as he did his livestock. (But wouldn't it be interesting to know, when, if ever, members of honor cultures, or, for that matter, our culture, would rescue a goat from its man? Are we as protective of animals as we are of people? Less protective? More protective?) Rather, I need only remind you that, up until the latter part of the twentieth century, there was no such thing as marital rape. In every jurisdiction in this country, forcible marital sex used to be lawful sex. (Indeed, marital sex, forcible or otherwise, traditionally was the only species of lawful sex, and all sex outside of marriage, consensual or otherwise, was outlawed.) Sure, it is possible that primitive honor codes may have anticipated by a mile some late developments in our domestic relations law. Honor cultures may have punished husbands who forced sex on their wives, though our culture did not, and they may have denied husbands the right to chastise (or, less euphemistically, beat up) their wives, though our husbands are said to have enjoyed this authority for centuries. Still, from the bits and pieces the authors give us, it seems likely that honor norms (egged on, perhaps, by those selfish genes?) obliged men to have sex with their wives and required them to control the behavior of members of their households, including that of their wives. Indeed,

I had thought that the whole point of tit-for-tat in honor days was to encourage the (always? usually?) male head-of-the-household to rein in his unruly underlings. The honorable course for a man was to satisfy these obligations, and it is hard to imagine that other men would be quick to construe his manner of discharging them, whether it was forcible or non-forcible, as the first move in a round of tit-for-tat.

And what was the honorable course for a woman? The authors offer no portrait of the honorable woman; they mention none of the qualities for which these early cultures honored or (maybe only) valued their female inhabitants. Instead, they merely assert that the ideology of honor promoted in women, as well as in men, a psychological need for vengeance, and they then criticize our criminal justice system for obstructing women's access to the only legitimate tit-for-tat game left in town. But the authors never allude to the possibility that, by withholding revenge from battered women, our clunky criminal trial apparatus has been vindicating, rather than frustrating, honor's interests. Surely, our police and prosecutors must believe that they have been doing honor's bidding when they advise battered women to drop their complaints and go home. After all, the system trusts these officers—and most of them are decent, trustworthy people—to decide which criminal accusations should be honored and which should not. Thus, the real irony may be that honor conventions instilled in women a thirst for revenge that is incompatible with, even ruled out by, the social roles to which those conventions assigned them. Hence, some questions arise. Who was the honorable woman? For what qualities has our culture traditionally honored mothers, daughters, sisters, wives? Just for starters, it seems safe to speculate that, if the honorable husband was expected to supervise and manage, the honorable wife was obliged to submit and make do. What, then, would be the fate of a wife who boldly turned on her husband, who turned him in on the grounds that *he* was mismanaging *her*? Sure, she could complain to her male kin and hope that blood-is-thicker-than-water ways of thinking might move them to avenge her. But, if she did, her brothers might figure that, though she was their sister, she sure was bold, and that when it came to handling bold wives, husbands had to be given lots of rope. In short, the wife's kin might decide that she had earned whatever abuse her husband had dished out; and, by her bold complaint, might she not



earn herself a second helping? In such a system, would women complain much, if at all, about what we call domestic violence? Would anyone, including women, have noticed the phenomenon we call underreporting? Indeed, in such a culture, what was there to report? And who was there to listen?

Consider too the position of the woman raped or abused by a man to whom she was *not* married. To say the least, it cannot be easy for any person to take the stand to accuse another of perpetrating a violent crime. In her mind's eye and in testimony served up for public consumption, the victim must recreate the horror of the criminal episode itself, and, then, she must endure a hostile cross-examination that aims to discredit her account and, with it, her request for vengeance. But, as Figueredo and Koss observe, many rape victims report that the trial process is especially hard on them. Why? The authors suggest that our process for trying criminal accusations tends to subvert the substantive outcomes in rape cases—a speedy prosecution, conviction, and punishment of the rapist—that honor norms promise and should provide. Although it might be hyperbolic to propose that substance is what process does, still it is unlikely that procedure is (altogether) a rogue. To be sure, procedure does have its own peculiar way of doing business, but, usually, we suppose that procedure works for, rather than against, the same masters that substance serves. In the rape context too, therefore, I wonder, of what stuff was woman's honor made? The authors do not say, but my dictionary does. Honor is “[t]he chastity or purity of a woman; a woman's reputation for this.”<sup>2</sup> This definition may be another late development, an innovation in, or, even, a distortion of original honor norms, an excrescence produced by, say, Victorian sexual conventions and their infamous double standard. Still, *if* you believed that a woman is honorable only when she is chaste, wouldn't you be just a little bit tempted to use the rape prosecution as an opportunity to test the honor of the *alleged* victim as well as that of the man she accused? After all, the accusation proves that the woman had sex, which means that she is unchaste, hence dishonorable, *unless* she also can show that the sex was rape. Indeed, in our culture, if the woman did not establish that she was raped, her accusation proved not only that she was dishonorable, but that she was a criminal, to

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<sup>2</sup> New Shorter Oxford English Dictionary 1256 (1993).

wit, a fornicator or an adulteress, one who, along with her male accomplice, fully deserved to be punished for their joint crime. No wonder that rape victims have been under the impression that they, rather than the suspects, are the ones who are on trial. They have been on trial, and, as far as honor norms seem to be concerned, they should be.

In recent years, feminists have managed to persuade state legislators to write new rape laws, ones that purport to make revenge available to more than a few chaste women. Figueredo and Koss offer their comments to support and even extend the feminist rape reform movement, and, in their turn, feminists may be inclined to understand if not share the authors' nostalgia for some of honor's lost ways. Rape victims are tired of biding their time, of waiting, always waiting, for the criminal justice system to wind its weary way towards a verdict. It is hard not to look kindly on the celerity with which men in honor cultures are said to have taken their revenge. Still, what happens if we revise radically the trial procedures that feminists have criticized? Women are not the only people that the law once designated as property, as objects to be traded and exchanged, if not bought and sold outright, by men. Our southern states once endorsed what passed, at least among its dominant class, as an honor culture. In some eras, some men were quick to take revenge for insults, whether imagined or real, to their women's chastity. Their peculiar practice for vindicating the honor of their ladies? No, it wasn't a criminal trial. Trials are slow, you remember, and these honorable men were not slow. You know what these men did: they took matters into their own hands. They may have called it getting even, but we call it lynching.