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From Murderers to Executioners in Andersonville: Orestean Justice in the Civil War's Deadliest Prison Camp

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From Murderers to Executioners in Andersonville: Orestean Justice in the Civil War’s Deadliest Prison Camp

I. INTRODUCTION

On July 11, 1864, six Union prisoners in Andersonville—the largest Confederate prisoner-of-war camp of the Civil War—were hanged. Yet the nooses that tightened across their necks were placed there not by Confederate guards; rather, these men were sentenced to death by their fellow Union prisoners.\footnote{Scott E. Sallee, “Big Pete” McCullough: The Hanging Judge of Andersonville, BLUE & GRAY MAG., Summer 2003, at 22.} In a “portal to hell” where nearly 13,000 prisoners perished, the deaths of these six were not uncommon—on some days more than one-hundred prisoners died from the camp’s miserable conditions\footnote{See e.g., Donald F. Danker, Imprisoned at Andersonville: The Diary of Albert Henry Shatzel, May 5, 1864-September 12, 1864, 38 NEB. HIST. 81, 112-13 (1957). Prisoner Albert Shatzel’s diary entry for July 13, 1864, for example, noted that “there has a 130 men died in hear today and yesterday there was a 150 died god help the Prisoners for they cant last long if they continue to die at that rate.” I have left all diary entries unedited and in their original spelling throughout this paper unless such alteration was absolutely necessary for intelligibility.}—but extraordinary because they were deliberately executed by their fellow prisoners. Convicted of pillaging and murdering other prisoners for food and provisions, these “Raiders” signified the end of unfettered bloodshed and the emergence of juridical justice as they dangled from the gallows. What follows then is the story of prisoners killing one another to survive the squalor and overcrowding of Andersonville, a camp built to hold 10,000 prisoners but swelled to confine over 33,000. It is the story of Union soldiers forced to reenact the full jurisprudential significance of Aeschylus’ Oresteia in order to survive the horrors of the Civil War’s deadliest prison camp.

II. HISTORICAL BACKGROUND

After the first battles of the Civil War indelibly wove the cleaving of the olive branch by the sword into the American tapestry, the indefinite detention of Union and Confederate
prisoners was not a presumed corollary. Cartels of warfare governed that prisoners be expeditiously exchanged; mores paroled them home with the promise not to return to arms. 3 America, but a mere 84 years old at the time of the Civil War, was nevertheless well accustomed to these cartels and mores, having already fought two wars to shake off the British yoke and another against Mexico to expand the American realm. As grinning Ares continued to slather the nation’s soil with the gore of its sons in civil war, the North and South moved to exchange prisoners.

Negotiations produced the Dix-Hill Cartel, a clumsy palimpsest of prisoner exchange agreements from the War of 1812. Under the Cartel, human flesh was not weighed equally—Shylock’s pound would be added to or trimmed whether it came from a colonel or a corporal:

A general commanding in chief or an admiral shall be exchanged for officers of equal rank, or for sixty privates or common seamen. A flag officer or major general shall be exchanged for officers of equal rank, or for forty privates or common seamen. A commodore …or a brigadier-general shall be exchanged for officers of equal rank, or twenty privates or common seamen. 4

Down the ranks this taxonomy of martial equivalents extended, optatively concluding “that all prisoners, of whatever arm of service, are to be exchanged or paroled in ten days from the time of their capture….” 5 Signed by the Union and Confederacy in 1862, the Dix-Hill Cartel was abandoned after just one year.

Politics, not logistics, doomed the prisoner exchange. Cessation was provoked not by the exasperated groans of exchange agents floundering in the billows of bookkeeping to ensure that


4 WAR OF THE REBELLION: A COMPILATION OF OFFICIAL RECORDS OF THE UNION AND CONFEDERATE ARMIES, Ser. No. 2, 266 (D.C., Gov’t Printing Office, 1880-1901) [hereinafter OFFICIAL RECORDS] (all citations to the OFFICIAL RECORDS in this paper are to the Second Series of this massive 128 volume compilation unless otherwise noted).

5 Id. at 267.
twenty privates were traded for every brigadier-general. Instead, the South’s insistence that black Union troops “were not entitled to and should not receive the protection of the laws of war” interrupted the commerce of prisoners. That the Confederacy could not acknowledge slaves as equals while Lincoln could not forsake them mired the exchange—Von Clausewitz’s words had crossed the Atlantic: “war is not a mere act of policy but a true political instrument, a continuation of political activity by other means.”

With abeyance of the exchange, the Confederacy subsequently built prison compounds to hold large numbers of captured Union soldiers. The South’s successes in battle were rewarded with unwelcome white elephants, now custodian to thousands of Union prisoners needing to be indefinitely fed. And so, near a small village in southwestern Georgia—away from the roving sabers of Union cavalry—Andersonville was built.

A. ANDERSONVILLE

“I am afraid God will suffer some terrible retribution to fall upon us for letting such things happen. If the Yankees ever should come to South-West Georgia, and go to Anderson[ville] and see the graves there, God have mercy on the land!”

It is perhaps unfathomable that nearly 13,000 Union prisoners should die within fourteen months of Confederate captivity but for Southern malice. Indeed, viewing steriley the number of dead against the prison’s brief existence from February 1864 until the War’s end in April 1865, a

6 id. at 595.
7 General Ulysses S. Grant was more pragmatic: “Every man we hold, when released on parole or otherwise, becomes an active soldier against us at once either directly or indirectly. If we commence a system of exchange which liberates all prisoners taken, we will have to fight on until the whole South is exterminated.” 7 id. at 607.
reasonable inference is that Andersonville was predicated on the destruction of the Yankee. Yet this was not so, the piles of emaciated bodies shocking and horrifying Confederate leaders alike: “The dead are hauled out daily by the wagonload and buried without coffins, their hands in many instances being first mutilated with an ax in the removal of any finger rings they may have. The sanitary condition of the prisoners is as wretched as can be…”10 And another: “The condition of the prison at Andersonville is a reproach to us as a nation.”11 It was not then Southern enmity responsible for suffering at Andersonville, but rather a lack of resources and economy.12 If Andersonville’s guards were themselves eating cornmeal and rice mixed with dirt13, what was left for enemy bellies? Confederate dearth led to Union death.

Spawn of haste and mismanagement, Andersonville’s construction was rushed—its walls were not even fully erected when the first captives staggered through its gates, requiring two Confederate cannon to act as Cerberus to prevent escape.14 Envisioned to comprehend sixteen and a half acres to confine but ten thousand prisoners, the open-air compound was bisected by Stockade Creek, a five-foot wide steam. Soon, Andersonville’s prisoners watched as the last uplifted pine log provided complete containment; of life’s basic necessities to be provided—shelter, clothing, water, and food—they had to yearn.

Shelter was not provided. Prisoners could but bellow the yawp of Tantalus as they gazed at the vast pine forest surrounding the camp against the barrenness of Andersonville’s interior.

10 7 OFFICIAL RECORDS, supra note 4, at 559.

11 Id. at 562.


Inside, not a tree stood. The prisoners first in the camp were fortunate to find within the enclosure lumber, logs, and branches remaining from the building of the stockade—*bricolage* now used to construct huts.\(^\text{15}\) Later arrivals—bereft of wooden detritus but not Yankee ingenuity—constructed ersatz tents from blankets to escape the murderous sun or burrowed in the ground to flee from the cold that mummified men.\(^\text{16}\)

Clothing was not provided. A prisoner’s uniform was that which he wore upon entering. Arriving to the camp but three months after its opening, prisoner Albert Shatzel on his second day at Andersonville gasped into his diary of the large “quantity of men here that hasn’t even a rag to cover their nakedness with.”\(^\text{17}\) Another prisoner intimated a reason why: “After the prison became so crowded, we had no opportunity to bathe or even wash our clothing.”\(^\text{18}\) Should their filthy raiment later rot, prisoners bore the season’s hue upon their bodies—scorched red flesh in summer, icy blue limbs in winter.

Andersonville’s builders presumed that Stockade Creek’s cool waters would quench federal thirst. Within a month after the camp’s opening, however, prisoners chanted the lamentation of Coleridge’s Ancient Mariner “with throats unslaked, with black lips baked”: “water, water everywhere, nor any drop to drink.”\(^\text{19}\) One prisoner noted with disgust the “thick green scum on the water. All who drink freely are made sick, and their faces swell up so they


\(^{17}\) Danker, *supra* note 2, at 92.


cannot see.”

Another: “the stench that arises from the water is enough to suffocate any common man god help us.”

Riparian water rights were not afforded to Andersonville’s captives. Troops of two Confederate camps a quarter of a mile upstream regularly used Stockade Creek to bathe the grime from their bodies and rinse the sweat and dirt from their clothes; this same polluted water then flowed downstream for the prisoners to drink. Heavy rains often flooded the Confederate latrines upstream, spilling the troops’ muck into Stockade Creek; this same polluted water then flowed downstream for the prisoners to drink. Confederate cooks in the cookhouse located just upstream discarded grease and offal into Stockade Creek; again, this same polluted water then flowed downstream for the prisoners to drink.

To survive, prisoners clawed at the ground for water wells.

Hunger went unsatiated. Awaking from sleep, each sunken captive eye watched Famine gallop his black horse across the camp. “Hunger gnaws our vitals,” scribbled a prisoner, “we have not drawn any rations for two days.” Hunger destroyed their bodies: “can those be men…? They lay there, most of them, quite still, but with a horrible look in their eyes and skinny lips (often with not enough flesh on the lips to cover their teeth.) Probably no more appalling sight was ever seen on this earth.”

Hunger destroyed their elan vital: “One morning, after I had got

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20 RANSOM, supra note 14, at 54.
21 Danker supra note 2, at 108.
22 FUTCH, supra note 16, at 37-38.
23 See e.g., 8 OFFICIAL RECORDS, supra note 4, at 733 (statement of Captain Richard B. Winder, Andersonville’s architect, acknowledging that because of Stockade Creek’s pollution, “the only remedy then left was to allow the prisoners as many wells on the inside of the prison as were needed”).
24 FUTCH, supra note 16, at 35 (quoting prisoner David Kennedy’s July 4, 1864 diary entry).
up, I saw a man who had hung himself about fifteen or twenty from my tent to a stake that was in
the ground, used partly to hang our blankets on and other purposes...He had a wild staring
appearance for a few days before, and said that he would sooner be dead than live there.”

With rations, however, it was logistics—not politics—that doomed the prisoners. A
Confederate statute passed after secession mandated that “the rations furnished [to] prisoners of
war shall be the same in quantity and quality as those furnished to enlisted men in the army of
the Confederacy.” Accordingly, captured federals should have received daily “one pound of
beef, or in lieu thereof one-third pound bacon and one-quarter pound [corn]meal, with an
occasional issue of beans or peas, rice, molasses, and vinegar”—quantities Andersonville’s
authorities reasonably provided for their first prisoners. Yet Confederate rails brought more
cars filled with captives than rations. Within three months of its opening, Andersonville held
thousands more than the 10,000 prisoners it was designed to hold. By early June 1864, nearly
22,300 prisoners pressed together within Andersonville’s sixteen acres.

The camp was soon expanded. In late June of 1864, ten additional acres were enclosed,
and 26,000 Union captives now had twenty-six acres to roam. But even small comforts were
quicksilver at Andersonville—in a month, 31,678 prisoners filled the camp, with each new


27 Act of May 21, 1861, ch. 59, § 1, 1861, in The Statutes at Large of the Provisional Government of the Confederate States of America 154 (James M. Matthews ed., 1864).

28 7 Official Records, supra note 4, at 138.


30 Heseltine, supra note 15, at 146.

31 Id.
prisoner causing more crowding and less food. “We are now getting scant rations of beef, some of the wormiest types I ever did see, and one-quarter ration of corn bread, one spoonful of salt a day and not one fifth wood enough to cook with.”

Low-flying swallows, gazing at the wretchedness below, were batted down from the air by starving men and bit into raw with ravenous teeth.

Crowding, lack of shelter, clothing, water, and food brought disease and death. Great was the harvest of Andersonville’s scythe in the summer of 1864 alone—8,678 dead prisoners.

Languid suspirations came from most prisoners still alive—most, but not from all. At Andersonville, as in life, suffering was not egalitarian. From the camp’s inception, the wild and predatory eyes of crouching packs of men hungrily scoured the stockade, awaiting the fall of darkness.

B. THE RAIDERS

“We are in greater immediate peril from these villains than from the atrocities of our keepers.”

At first, the attacks came at night. “The cry of ‘raiders’ awoke us last night. We were told by old prisoners yesterday, about gangs of thieves composed of brutal men who steal everything

32 Id.

33 FUTCH, supra note 16, at 37.

34 RANSOM, supra note 14, at 83.

35 The number of deaths at Andersonville per month of operation was as follows: March 1864, 283 died; April, 576 died; May, 708 died; June, 1,201 died; July, 1,817 died; August, 2,993 died; September, 2,677 died; October, 1,595 died; November, 499 died; December, 165 died; January 1865, 197 died; February, 147 died; March, 108 died; April, 28 died. HESSELTINE, supra note 15, at 152.

36 JOHN WORRELL NORTHROP, CHRONICLES FROM THE DIARY OF A WAR PRISONER IN ANDERSONVILLE AND OTHER MILITARY PRISONS OF THE SOUTH IN 1864, at 80 (1904).
that they can use or sell to the Rebels; and in some cases they brutally beat and kill.”\textsuperscript{37} Thanatos accompanied Hypnos: “It is dangerous to sleep; not a night passes but the camp is disturbed; cries of murder are heard; somebody is hurt and robbed.”\textsuperscript{38} Companions were turned into heaps of flesh while the sun hid its face—“[m]an killed by the raiders near where we slept. Head all pounded to pieces with a club.”\textsuperscript{39}

If the tradition of heroes in Homeric quests having a god disguised among them is to be believed, then Andersonville certainly had its devils. “Almost from the first lot of prisoners who came to Andersonville,” decried one survivor, “were some of a gang of the meanest villains that ever escaped the gallows. They were bounty jumpers, would-be deserters, and thieves and criminals from the slums of the big cities, and they banded together to rob their weaker prisoners of what money or valuables, blankets, clothing, or anything else they might have had that would be worth stealing.”\textsuperscript{40} Tucking their wolf tails into sheepskin, the Raiders often greeted new arrivals as they entered the camp, furtively inventoring the new prisoners’ fresh clothing, food, and valuables. Later, under the shroud of darkness, these valuables were then extracted by the Raiders with blows from clubs and slashes from Bowie knives.\textsuperscript{41} Or, as one prisoner recalled, “[t]hey would decoy men into their tents with the promise of a blanket or an extra ration, or something desirable, and then rob and plunder them.”\textsuperscript{42}

\begin{footnotesize}
\begin{enumerate}
\item Id. at 60.
\item Id. at 79.
\item RANSOM, supra note 14, at 83.
\item RIPPLE, supra note 18, at 27.
\item ROBERTS, supra note 3, at 40-41.
\end{enumerate}
\end{footnotesize}
Strikingly, in a camp of over 33,000 men, the Raiders never numbered more than 500. Yet, as a historian of Andersonville notes, “the predators enjoyed certain advantages which discouraged resistance.”  

Plundering rations led to invigoration of the Raiders’ bodies while atrophying their victims. The maladies that decimated so many malnourished prisoners—scurvy and dysentery—passed over the Raider camps, each conquering belly full and warm with fresh meat, green beans, onions, potatoes, and flour. Stolen money wrought purchases from the sutler; stolen goods wrought barter from the guards.  

Even should a prospective Jason boldly attempt to drive away Andersonville’s virile food-snatching harpies, other nearby Raiders wielding axes and knives ensured the success of the pillage. “How imminent the danger if our slaves had begun to count us”—that apprehension of the ancients—chilled not Raider blood.  

By June 1864, even the aegis of the sun ceased to shield against Raider depredations. “Raiders now do just as they please, kill, plunder and steal in broad daylight, with no one to molest them.”  

Bewailed another prisoner: “the devil is to pay here this morning some of the old Prisoners made a Raid on the new prisoners & stole their Blankets & Rashions & the new fellowes pitched in & there was a Big fight & maney a poor cuss got his Head mashed with clubs.

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43 FUTCH, supra note 16, at 67.

44 Id.


46 RANSOM, supra note 92.
or stones.”

It was even said that the Raiders “swore that by the 4th of July they would have every cent in the camp or kill the resisters.”

Prisoners appealed to Henry Wirz, Andersonville’s commandant, to intervene. He declined. Imposition of law within the stockade was to come from the prisoners themselves. It came.

C. The Regulators and the Trial of the Raiders

“…the deed of terrible Justice was completed.”

The Prometheus who rose against the Raiders was Sergeant Leroy Key. Countering the gangs of Raiders with defense forces of his own, Key soon organized companies of “Regulators.” Avowing to rid the camp of Raiders, the Regulators could arm themselves with fortitude but not weapons. Key pleaded with Wirz to supply him with arms or clubs to combat the Raiders, but again, Wirz refused to intervene. The brazen Raiders, however, would quickly change his mind.

It began with a brutal robbery. A new prisoner, undoubtedly aware of the despoiling Raiders, sought to protect his two hundred dollars by stitching the money into the waistband of his trousers. Yet sleep does not befall the watch of hundred-eyed Argus, and plundering Raider eyes gazed on all. The prisoner was accosted by a group of Raiders one afternoon demanding his money. When he refused, he was beaten—savagely. Pinned down, the prisoner’s face soon

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47 Danker, supra note 2, at 94.


49 Id. at 3.

50 ROBERTS, supra note 3, at 40-41.

51 MARVEL, supra note 29, at 97.
melted into bloody pulp. The Raiders then trampled his legs, cut out his two hundred dollars, and stole his watch. As one Andersonville historian notes, “[s]o battered was [his] face, and so still did he lie, that news spread around the stockade of a murder committed in daylight….” But the prisoner was not dead—and he slowly dragged himself to see Wirz.

That same day, as Confederate wagons wheeled prisoners’ rations into the camp, the Raiders attacked, stealing food directly from the wagon. The meridian of Raider pillaging, Wirz—hearing of this with the image of the battered prisoner robbed of his two hundred dollars fresh in his mind—armed Key and his Regulators with clubs and announced all rations would be withheld until the Raiders were subdued. The Regulators’ hunt began.

Yet the clubs of the Regulators were not purposed for that bloody jawbone wielded by Samson. Instead, they were used to enforce another prisoner request granted by the Confederates:

A gang of evil-disposed persons among the prisoners of war at this post having banded themselves together for the purpose of assaulting, murdering, and robbing their fellow-prisoners and having already committed all these deeds, it becomes necessary to adopt measures to protect the lives and property of the prisoners against the acts of these men, and, in order that this may be accomplished, the well-disposed prisoners may and are authorized to establish a court among themselves for the trial and punishment of all such offenders.

52 __Id.__

53 “Raiding” in the Andersonville Prison, supra note 42, at 3.

54 MARVEL, supra note 29, at 97-98.

55 7 OFFICIAL RECORDS, supra note 4, at 426 (emphasis added). Confederate General John H. Winder, commissary general of prisoners, approved the Union prisoners’ request to conduct the trial of the Raiders. Dipping his hands in Pontius Pilate’s washing basin, Winder’s General Order Number 57 held that the Confederates would not interfere with the trial so long as the proceedings were found to be “in order and proper.”
The violence of the Raiders would be judged not by private blood vendetta, but by their fellow prisoners.

Armed and organized, the Regulators chased the Raiders “to every corner of the prison, and savage brawls erupted as the more stubborn rascals resisted lopsided odds. Once cornered, most of the miscreants went down before a tight crescent of flailing clubs, though a few of the more determined endured a dreadful pounding before they would yield.” In a day, the Raider jackboot was removed.

With twenty-four of principal Raiders in custody, the Regulators prepared for trial. Twelve Union sergeants—newly admitted prisoners selected “to avoid any appearance of partiality or prejudice”—were summoned to give verdict. One by one these Raiders faced their accusers. Counsel for the Regulators produced witnesses recounting the ghastly deeds of the Raiders; counsel for Raiders—“a brilliant talker, and well versed in law”—tried to discredit the testimony for the jury. The verdict was soon read: six must hang.

III. JURISPRUDENTIAL ANALYSIS

Rare is the chronicle of Andersonville that omits the trial and execution of the Raiders. Diaries scrawled with anemic hands while in captivity or memoirs penned with plump fingers

56 Marvel, supra note 29, at 98.

57 Wirz Trial, supra note 26, at 697.

58 J.J. Osborne, Letter to the Editor, Andersonville Raiders, Nat’l Trib., Sept. 23, 1897, at 2 (noting the Raiders’ counsel was prisoner Henry C. Higginson, “who defended the men at their request”).

59 As one Andersonville historian notes, “[m]ost of their names probably surprised no one: big Willie Collins, the notorious ‘Mosby’ whom prisoners recognized as the foremost [Raider] of them all; Charles Curtis; John Sullivan (Collins’s principal cohort); Patrick Delany; John Sarsfield…and Andrew Muir.” Marvel, supra note 29, at 100.

60 As one Civil War historian rightly notes, a “single adequate account of this episode is lacking. The story, however, embellished with many details, is given in practically every account of the prison.” Heseltine, supra note 15, at 145 n. 53 (emphasis added).
after the War all attest to the tribunal and hanging. The day six of Andersonville’s worst adjudged Raiders clad the lethal coil became a referent in the camp’s collective memory. As the prisoners gazed at the dangling bodies and the majesty of the Regulators, that wail of old Andronicus so long shared—“terras Astreae reliquit,” the goddess of Justice has left the earth—ceased from their lips. “[I]t was no doubt, justice, but it was an impressive sight to me that I never care to witness again.” Another: “The court has been severe, but just.” One prisoner, reflecting on the hanging, drew from the Bible: “It was a sad spectacle to see their bodies swinging in the air, but we felt it to be just, and another illustration of the truth, that ‘The way of transgressors is hard.’” Other prisoners perhaps drew from Paradise Lost or Pilgrim’s Progress, books that likewise accompanied the prisoners to Andersonville. Would that they had the Oresteia.

A. THE ORESTEIA

61 See e.g., Wirz Trial, supra note 26, at 785 (former prisoner recalling that a man escaped from the hospital “just before the raiders were hung, which was about the 11th of July”); Id. at 789 (former prisoner’s recollection that a man died in a tent next to him “a few days before the raiders were hung”); Id. at 791 (former prisoner testifying that a man was starved to death in the stocks “about the time the raiders were hung”).

62 William Shakespeare, Titus Andronicus act. 4, sc. 3.


64 Ransom, supra note 14, at 108.


“But Justice turns the balance scales, sees that we suffer and we suffer and learn.”

In Aeschylus’ Oresteia, the classicists tell, “is our rite of passage from savagery to civilization.” It is through the House of Atreus, that ancient Greek family of cannibals, that Aeschylus links law’s emergence to the foundation of our civilization.

A précis tracks the transformation:

It began with Tantalus, inceptor of the cursed Atreidae. Feasting the gods the flesh of his son Pelops sentenced him to his immortal punishment, those wily lips never again to touch food or drink. The Olympians revived Pelops, who with his restored life brought death to a disapproving king so as to marry the princess. From that bloody dowry came Pelops’ two sons, Atreus and Thyestes. In time, Thyestes would seduce his brother’s wife and challenge Atreus’ right to the throne, fraternal effrontery provoking Thyestes’ banishment. But imposing exile alone did not taper the cuckold’s wrath. Feigning reconciliation, Atreus murdered Thyestes’ sons, seasoned their flesh, and invited Thyestes to sup, “whereof their [father] daintily hath fed, eating the flesh that [he himself] hath bred.” With breath foul—reeking of his own issue—Thyestes cursed Atreus and fled with Aegisthus, his only son to avoid Atreus’ cleaver. The sons of Atreus, Agamemnon and Menelaus, soon took wives—Clytemnestra for Agamemnon and

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70 Fagles, supra note 68, at 14-15.

71 Id. at 15.

72 SHAKESPEARE, supra note 61, at act 5, sc. 3. I have borrowed these gruesome yet poetic words from Shakespeare’s play, TITUS ANDRONICUS. Because the Bard has Titus feeding Queen Tamora the flesh of her own sons, I have accordingly altered the gender to harmonize the quotation with the myth of the Atreidae.
Helen for Menelaus. Seduced by Paris, a Trojan prince, it was Helen’s “face that launch’d a thousand ships,” but without wind these ships could not sail to reclaim Menelaus’ bride. To abate the idle, Agamemnon ordered his daughter cut open in sacrifice, her blood a bond to the gods to shed that of the sons of Troy. The bloody compact made, the sky puffed, and Agamemnon’s fleet sailed against the Trojans.

The *Oresteia* opens ten years later, the fabled wooden horse having foaled its guileful colts within Troy’s walls, the great city sacked and burned. In the first part of the trilogy, *Agamemnon*, blazing beacons herald victorious Agamemnon’s return home to Argos. Among the plunder seized from vanquished Priam, king of the Trojans, is his daughter Cassandra—priestess of Apollo, now mistress of Agamemnon. The Argive king arrives at the palace, greets his wife Clytemnestra, and enters, soon followed by Cassandra. In minutes, the blood of Agamemnon and Cassandra perfume the royal house, their bodies torn open by Clytemnestra’s blade. Rejoices the murderous queen: “So [Agamemnon] goes down, and the life is bursting out of him—great sprays of blood, and the murderous shower wounds me, dyes me black and I, I revel like the Earth when the spring rains come down, the blessed gifts of god, and the new green spear splits the sheath and rips to birth in glory!” To the horrified elders of Argos, Clytemnestra explains “Here is Agamemnon, my husband made a corpse by this right hand—a masterpiece of Justice.” Justice because Agamemnon “sacrificed his own child, our daughter, the agony I

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73 [*Christopher Marlowe, The Tragical History of the Life and Death of Doctor Faustus* sc. 18.]

74 Fagles, *supra* note 68, at 15.

75 [*Aeschylus, supra* note 67, at 161.]

76 *Id.* at 162.
labored into love, to charm away the savage winds of Thrace.” Justice because Cassandra, that “seer of Apollo shared my husband’s bed, his faithful mate who knelt at the rowing-benches, worked by every hand. They have their rewards.”

From the palace emerges Aegisthus, the sole son of Thyestes to avoid that bloody stew cooked by Agamemnon’s father. Joining Clytemnestra, Aegisthus reveals to the Argive elders that, as Clytemnestra’s lover, he conspired in Agamemnon’s death to avenge his father Thyestes. As Agamemnon ends, the elders bellow to the heavens for Orestes, Agamemnon’s exiled son: “If he still sees the light of day, bring him home, good Fates, home to kill this pair at last. Our champion in slaughter!”

In the second part of the trilogy, The Libation Bearers, the Fates oblige. Several years after Agamemnon’s murder, Orestes arrives at his father’s tomb to mourn. His sorrow is interrupted by a procession of women carrying liquid for the dead. Orestes recognizes his sister, Electra, among them and soon learns that it was Clytemnestra who has offered these libations at Agamemnon’s tomb. Puzzled, Orestes is told that Clytemnestra dreamt a snake in her womb grew, and birthing it, “gave it her breast to suck…[and] blood curdled the milk with each sharp tug.” From this nightmare Clytemnestra dispatched libations to mollify the dead—a terror her son wishes true: “I pray to the Earth and father’s grave to bring that dream to life in me. I’ll play the seer…[a]s she bred this sign, this violent prodigy so she dies by violence. I turn serpent, I kill

77 Id.
78 Id. at 163.
79 Id. at 171.
So the vision says. So agrees the chorus of women: “It is the law: when the blood of slaughter wets the ground it wants more blood. Slaughter cries for the Fury of those long dead to bring destruction on destruction churning in its wake.”

Orestes’ plunging sword soon executes the law of slaughter, his mother, and Aegisthus—but under the lex talionis vengeance demands vengeance. His hands gloved in his mother’s blood, Orestes’ eyes bulge in terror as he watches the Furies come to punish him: “Women—look—like Gorgons, shrouded in black, their heads wreathed swarming serpents!...Here they come, thick and fast, their eyes dripping hate…they drive me on!”

Pursued by the Furies, Orestes flees to Apollo’s temple at Delphi, beginning The Eumenides, the last of the trilogy. Pythia, priestess of Apollo, enters the temple and recoils in horror at the sight before her: “I see a man—an abomination to god—he holds the seat where suppliants sit for purging; his hands dripping blood, his sword just drawn….But there in a ring around the man, an amazing company—women, sleeping…but black they are, and so repulsive. Their heavy raspy breathing makes me cringe. And their eyes ooze a discharge, sickening.”

Orestes has but a brief respite from the frantic driving of the Furies as they repose. Apollo enters: “No, I will never fail you,” the god promises Orestes, “through to the end your guardian standing by your side or worlds away!” Orestes is instructed to journey to Athens; there the goddess Athena will adjudge whether his matricide was just. Orestes departs,

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81 Id. at 202.
82 Id. at 195 (emphasis added).
83 Id. at 225.
85 Id. at 233.
Clytemnestra’s ghost shakes the Furies awake, and the dread avengers resume their horrible chant: “Get him, get him, get him, get him—there he goes.”

They find him in Athens, clinging to Athena’s idol in the Acropolis: “No, you’ll give me blood for blood, you must! Out of your living marrow I will drain my red libation, out of your veins I suck my food, my raw brutal cups wither you alive, drag you down and there you pay, agony for mother-killing agony!” Athena then enters, interrupting the Furies’ vituperative hisses. The goddess states that she will “appoint the judges of manslaughter, swear them in, and found a tribunal here for all time to come.” She adds that Orestes and the Furies must “summon your trusted witnesses and proofs, your defenders under oaths to help your cause. And I will pick the finest men of Athens, return and decide the issue fairly, truly—bound to our oaths, our spirits bent on justice.” The trial begins.

Orestes first asks the Furies why they did not punish Clytemnestra for her murder of her husband, but punish Orestes for killing his mother. Because, they reply, “the blood of the man she killed was not her own.” The retribution of the Furies is one of limited jurisdiction, for the slayers of blood relatives only. When Orestes attempts to quibble whether he and his mother share common blood, the Furies tighten their snare: “How could she breed you in her body, murderer? Disclaim your mother’s blood? She gave you life.” Orestes, trapped, calls on his advocate Apollo.

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86 Id. at 236.
87 Id. at 243.
88 Id. at 253.
89 Id.
90 Id. at 258.
“The woman you call the mother of the child is not the parent,” thunders the god, “just a nurse to the seed, the new-sown seed that grows and swells inside her. The man is the source of life—the one who mounts.” As proof, Apollo points to Athena herself, a “child sprung full-blown from Olympian Zeus, never bred in the darkness of the womb but such a stock no goddess could conceive!” With the jury split, Athena casts the deciding vote in Orestes’ favor: “I will cast my lot for you. No mother gave me birth.”

Outraged at the destruction of the primitive vendetta-law, the Furies loose their “poison over the soil.” Athena, however, persuades the Furies to abandon wrath and become the Eumenides—the kindly ones—honored goddess insuring Athens’ prosperity. As the play ends, the Eumenides issue their proclamation: “Rejoice! Rejoice—the joy resounds—all those who dwell in Athens, spirits and mortals, come, govern Athena’s city well….”

B. ANDERSONVILLE’S ORESTEIA

“It is plain to the most casual reader that *dike* (‘justice’) is a central notion in the trilogy,” notes one classicist. It is not surprising, then, that Aeschylus’ *Oresteia* inspires so much “law and literature” ink. For as Judge Richard Posner suggests, “we can learn a great deal of jurisprudence from some works of literature; indeed, a well-chosen set of such works would be a close

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91 Id. at 260.
92 Id. at 264.
93 Id. at 275.
94 KELLOGG, supra note 65, at 172 (emphasis in original).
substitute for discursive works of jurisprudence.”\textsuperscript{95} The learned judge himself observes that the “trial of Orestes in \textit{Eumenides} dramatizes the transition from a system of absolute liability, enforced by revenge, to one of legal liability based on blameworthiness in something approaching the modern sense.”\textsuperscript{96}

Other classicists and legal scholars share the sentiment: “The devastation brought about the individual characters’ search for justice shows the imperative need for some workable, stable form of justice—a state-run legal system that achieves good enough justice through procedural regularity.”\textsuperscript{97} Another: “Athena’s court is public and political; by contrast, the regime it seeks to replace is private and familial, with aggrieved family members taking direct action themselves. Moreover, Athena’s system involves a process—an orderly and controlled process for hearing claims, rather than uncontrolled violence.”\textsuperscript{98} If indeed Aeschylus’ play represents progress from primitive revenge to political law for securing justice, let us watch the performance of the \textit{Oresteia} by Andersonville’s captives.

We first must borrow a premise from the sociologists: “A prison camp, with its absence of law enforcement, property rights, and formal markets, and its subsistence income level, \textit{is closer to a primitive society than to a civil society}.”\textsuperscript{99} Recall the squalor of Andersonville—the hungry babble of naked federals, the forest of mismatched sticks caped by rotting blankets canopying shivering men, the thick nauseous stench of voided bowels and life. Consider the

\textsuperscript{95} \textsc{Richard A. Posner, Law and Literature} 5 (2d ed. 1998) (emphasis in original).

\textsuperscript{96} \textit{Id.} at 63-64.

\textsuperscript{97} \textsc{Kevin Crotty, Law’s Interior: Legal and Literary Constructions of the Self} 39 (2001)

\textsuperscript{98} \textsc{Gewirtz, supra} note 69, at 1045.

vacuity of legal remedy—in an oral contract between two prisoners bargaining money in exchange for onions, should the money be tendered and the onions withheld, imprimatur of enforceability depended solely on the force of the hungry prisoner’s clenched fist. “The administration of justice was reduced to its simplest terms,” remembered one prisoner. “If a fellow did wrong he was pounded—if there was anybody capable of doing it. If not he went free.”

Yet even the victor in this breach of contract cudgelging would likely himself become a victim of the Raiders. Indeed, this hierarchy of pillaging and depredation, noted one prisoner, “reminded one of the habits of the fishing eagle, which hovers around until some other bird catches a fish and then takes it away.” For another captive, life at Andersonville was much more eschatological: “Things are carried on very curious in this place; it must be cursed of God and man.”

How remarkable then, that the Raiders were afforded due process before blazoning the hemp scarf knotted by the hangman. How remarkable that in Andersonville, a camp where “[t]here were no fat salaries to tempt anyone to take upon himself the duty of ruling the masses, and all were left to their own devices to do good or evil according to their several bents and as fear of consequences swayed them,” a trial was held. Yet for the prisoners at Andersonville, much like the Athenians who judged Orestes and the bloody slaughter of that cursed House of Atreus,

100 JOHN McELROY, ANDERSONVILLE: A STORY OF REBEL MILITARY PRISONS 107 (Fawcett Publ’ns abr. ed. 1962).

101 Id. at 106.

102 MARVEL, supra note 29, at 110 (quoting prisoner William T. Peabody).

103 McELROY, supra note 99, at 107.
such a trial was necessary to end private revenge and establish public law.\textsuperscript{104} The force wielded by the Regulators in subjugating the Raiders was not predicated on private murderous revenge\textsuperscript{105}; instead, like Shakespeare’s Brutus, their “purpose necessary and not envious: Which so appearing to the common eyes, We shall be call’d purgers, not murderers.”\textsuperscript{106}

And so, with the snapping of Raider necks came the snapping of Andersonville’s unfettered violence. As legal scholar Paul Gewirtz observes, “[b]efore law—without courts—there is revenge after revenge, a cycle of violence without end...With law, there is the possibility of an ending, both in individual cases and in systemic struggles.”\textsuperscript{107} This was the lesson of Aeschylus’ \textit{Oresteia}, the incessant cycle of revenge preceding law performed by the Furies punishing Orestes for killing Clytemnestra, herself punished for killing Agamemnon, himself punished for sacrificing his daughter. It is only the advent of the legal process at the Areopagus “that propels the action toward the transfiguring harmonies of the play’s close.”\textsuperscript{108} Likewise, at Andersonville, the incessant depredations of the Raiders could be resisted and avenged but with private acts of violence. Only after the establishment of legal process in the camp was there the possibility of ending systemic raiding. By executing the Raiders rather than murdering them, the

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\textsuperscript{104} See \textit{e.g.}, MICHAEL GAGARIN, AESCHYLEAN DRAMA 58 (1976) (positing that at the end of the \textit{Oresteia}, “mythical Argos gives way to the contemporary city of Athens, so that the resolution that finally ‘cures’ the troubles of the house of Atreus and the city of Argos becomes the resolution of conflicts within contemporary Athens also.” The same may be said of Andersonville.)
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\textsuperscript{105} Historian Robert Scott Davis, in his essay on “Limber Jim,” Andersonville’s hangman, states that the “only indisputable fact about [Limber Jim] has been that late in the afternoon of 11 July 1864, he personally hanged William ‘Mosby the Raider’ Collins, the man who robbed him.” DAVIS, \textit{supra} note 63, at 104. A reasonable reading of Davis’ language suggests that Limber Jim exacted private revenge against Collins as Orestes did against Clytemnestra. But let us not forget that Limber Jim only hanged Collins after Collins was adjudged guilty by the legal process. That is, Limber Jim only hanged Collins and five other Raiders after the law—not Limber Jim—sanctioned their execution.
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\textsuperscript{106} WILLIAM SHAKESPEARE, THE TRAGEDY OF JULIUS CAESAR, act 2, sc. 1 (emphasis added).
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\textsuperscript{107} Gewirtz, \textit{supra} note 69, at 1046.
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\textsuperscript{108} \textit{Id.}
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Regulators transformed the camp “from a world of passion and subjectivity toward a regime that, in form at least, empower[ed] a more detached authority influenced by reason.”

And by so doing, these prisoners of Andersonville heeded the aphorism of Nietzsche that—had they not—would have devoured them all: “He who fights with monsters should be careful lest he thereby become a monster.”

C. EMERGENCE OF THE RULE OF LAW AT ANDERSONVILLE

“[I]t was necessary that an example should be made of them in such a way as to make a lasting impression upon all those who should be similarly inclined. The knowledge of such a fact would, at least, inspire the newly-arrived with something of wholesome fear, and the general tendency would be to keep in check a like outburst”

Significantly, while justice was administered from seemingly ad hoc tribunals both in the Oresteia and at the prison camp, dike—justice—continued to reign over Athens and Andersonville long after the jurors’ dismissal. For Aeschylus, the “Areopagus will remain to watch over the laws and preserve fear [of punishment as a deterrent], and it will continue to provide a forum for peaceful legal disputes (under the watch of dike), which will replace the bloody strife of the past.”

At Andersonville, the Police Judge remained to provide dike’s forum.

After the Raiders’ hanging, Pete McCullough—the same prisoner who presided over the trial of the Raiders as judge—was elected Police Judge. A police force was established, with

\[109\] **Id.**

\[110\] FRIEDRICH NIETZSCHE, BEYOND GOOD AND EVIL 42 (Helen Zimmern trans., Digireads Publ’g 2005) (1885).

\[111\] KELLOGG, supra note 65, at 172-73 (emphasis in original).

\[112\] GAGARIN, supra note 104, at 83.

\[113\] Sallee, supra note 1, at 23.
sergeants charged to “take care of the sick, keep the camp clean, improve the marsh area, clear the streets, and end thievery.” As McCullough later reported, when a crime did occur, “a regular police trial followed. If the prisoner was convicted, he received punishment accordi[n]g to the degree of the crime. Flogging and gagging were the chief modes of punishment.”

Andersonville had its Areopagus.

In analyzing the efficacy of the patrolling police after the Raiders’ execution, historians are—as they are for much of Andersonville’s history—presented with conflicting evidence. Consider Albert Henry Shatzel’s diary, scribbled while still in captivity: arriving at Andersonville on May 22, 1864, Shatzel recorded specific instances of Raider depredations on May 27, May 28, June 1, June 2, June 7, and June 29. After describing the Raiders’ trial on June 30 and noting the hanging of the six on July 11, no mention of Raiders or pillaging is made ever again. That is, after the Raiders’ hanging on July 11, until Shatzel’s release from Andersonville on September 12, 1864, not one instance of further depredation is recorded. When viewed against the six entries decrying Raider pillaging made in less than two months after Shatzel’s arrival, the absence of further entries noting pillaging after the execution of the Raiders yields the reasonable inference that the patrolling police were effective in preventing crime. Had they not, and instances of depredation continued, it is highly likely that Shatzel’s diary would have so noted.

114 Davis, supra note 63, at 112.

115 Sallee, supra note 1, at 24.

116 As a gauge of evidentiary validity, Shatzel’s statements in his diary would likely meet the standards of “past recollection recorded” under Federal Rules of Evidence 803(5) to be admitted in court as an exception to hearsay.

117 The specific entries of raiding noted are found respectively on pages 94, 95, 96, 97, 98, and 106 in Danker, supra note 2.
After the War, others attested to the relative safety of the prison after the execution of the Raiders. Reverend Peter Whelan, a Catholic priest who wandered the camp comforting suffering Yankee souls, reported that after the hanging “there were no more robberies in the stockade, at least none that were publicly notorious, none to that degree.” One prisoner recalled that after the execution of the Raiders, “the terrible uncontrolled dominion of the thug and murderer was at an end. We could breathe easier, and within the lines could go and come as we pleased day and night.” Another: “[f]rom that time on [after the execution], we had peace and good order within the stockade walls of the prison, if we didn’t have much of anything else.”

Some prisoners, however, remembered differently. As prisoner Robert H. Kellogg recalled, “[a]fter these six men were hanged we had peace and quiet there for a while; but we soon began to look upon the ‘regulators’ on a par with the old raiders. It was on the principle of diamond cut diamond. They were about the same class of men.” One prisoner even suggested that “in some instances, [the Regulators] became a greater evil than that which they were instituted to correct. They levied tax upon all trading stands and occupations in the prison, cudgeled men over the head for small faults, and whipped them upon the bare back, with a cat of nine tails, most of whom, however, deserved the punishments inflicted.” For prisoner Frederick W. Hille, “[a]t first, after the execution of those six men who were hung, matters were very good; but about two weeks afterward the regulators themselves stole, robbed, and murdered

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118 Wirz Trial, supra note 26, at 428.


120 Ripple, supra note 18, at 28.

121 Wirz Trial, supra note 26, at 652.

122 Warren Lee Goss, The Soldier’s Story of His Captivity at Andersonville, Belle Isle, and Other Rebel Prisons 158 (L.N. Richardson Pub’g 1873).
more than was done before—more than the raiders. Three or four of the regulators, that I know of, went into a tent and stole things.”

Crediting the testimony of Kellogg and Hille, historian Robert Scott Davis finds in Andersonville’s Regulators a grim “Orwellian ending”; I, however, find an Orestian.

Should we read Kellogg and Hille to say that the Regulators dispatched the Raiders only to themselves impose on Andersonville’s prisoners a regime of “justice” backed by force and fear, we are likewise reading the ending of the Oresteia. At the conclusion of Aeschylus’ trilogy, recall, “the justice of Zeus does prevail, but it is the arbitrary justice of the right of the stronger: persuasion and compulsion, backed by fear and force. Thus, Orestes, the self-confessed matricide, goes free.” Indeed, “[a]ncient right is overthrown to end factional slaughter and restore civil peace.” So too then, at Andersonville, the justice of the Regulators—faults irrespective—prevailed as the price for social control.

123 Wirz Trial, supra note 26, at 685.

124 In evaluating this conflicting testimony between prisoners who attested to the efficacy of the Raiders and the testimony of Kellogg and Hille, it is perhaps noteworthy that both Kellogg and Hille made their statements against the Regulators during Andersonville commandant Henry Wirz’s war crimes trial after the Civil War. Late in the trial, after the Judge Advocate spent days alleging that Wirz willfully caused suffering and death at the prison, Wirz’s attorney called prisoner George W. Fechnor as a defense witness to testify. Fechnor claimed he succeeded Pete McCullough as Police Judge and his testimony was proffered to “give a new complexion to matters inside the stockade; that instead of all the horrors we have heard of, [Fechnor] will show that it was a little more comfortable and agreeable.” Fechnor then testified as to the efficacy of the Regulators and the imposition of law and order after the Raiders were executed. When Fechnor concluded, the Judge Advocate called Kellogg and Hille to impeach Fechnor’s credibility and they each gave their respective statements against the Regulators. By so doing, the Judge Advocate bolstered his claim that Wirz allowed the prisoners to suffer. Ultimately, Wirz was convicted of war crimes and hanged.

125 Davis, supra note 63, at 112.


IV. CONCLUSION

The Civil War would soon end and, as a concomitant, so too would Andersonville prison. With the triumph of the Union, Andersonville shipped its captives back home, but not before levying a tariff of nearly 13,000 souls. Today, Andersonville is a National Historic Site; the earthly welkin of the camp’s dead, a National Cemetery. It is noted that every Memorial Day, placed on each grave in the cemetery is a small American flag. “Every grave, that is, except the six belonging to the Raiders. These graves are left bare, discretely out of view behind [an] overgrown magnolia tree.” Yet the rise and fall of the Raiders is a story not shibboleth to Andersonville—its holding need not be limited to its facts. Dike’s triumph over the Raiders was told long ago in an ancient Greek society, with names changed and principles same. Through the Orestean crucible comes law, order, and society. “For society is not something that is kept together physically; it is held by the invisible bonds of common thought. If the bonds were too far relaxed the members would drift apart. A common morality is part of the bondage. The bondage is part of the price of society; and mankind, which needs society, must pay its price.” And so, at Andersonville, the Eumenides still pursue the non-paying six.

128 ROBERTS, supra note 3, at 54.