


Retributive Justice as an Affective Regime

Assiye Aka 

Department of Sociology, Çanakkale Onsekiz Mart University, Çanakkale, Türkiye
Email: akaasiye@comu.edu.tr

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Abstract

This study approaches retributive justice not by reducing it solely to the internal logic of criminal law or to a normative principle, but as an affective regime in which emotions, political discourse, and cultural codes are deeply intertwined. Contrary to the conceptualization of justice in modern legal and political thought as a rational and emotion-free domain, the study demonstrates that punitive judgments are constitutively woven through affective evaluations such as anger, moral injury, fear, and experiences of impunity. The study defines the concept of “affective politics” through the operation of emotions not as individual internal states but as socially produced, circulated, directed, and politically meaningful practices; it emphasizes that emotions draw boundaries between particular subjects and establish moral hierarchies. Within this framework, retributive justice produces an affective economy that determines which emotions are deemed “legitimate” and which reactions receive public recognition. Although the legitimacy of retributive justice is articulated through claims of “desert” and equality, the article argues that these claims are rendered fragile in practice by social position, cultural belonging, and affective proximity. Media and social media intensify public anger through melodramatic representations of crime, thereby strengthening punitive populism; justice acquires meaning within a public affective regime prior to legal procedures. Nationalism, in turn, may reinforce legitimacy production by transforming punishment into a political instrument through which national moral boundaries are reproduced rather than principles of equal citizenship. Along the axis of gender, experiences of femicide and impunity render visible the selective and asymmetrical operation of retributive justice; the failure of justice is experienced by women as a denial of equal citizenship. In conclusion, the study argues that the democratization of justice is made possible not through the suppression of emotions, but through a critical interrogation of which emotions are recognized, which are deemed legitimate, and on whose behalf they are articulated.

Keywords

Retributive Justice, Affective Regime, Affective Politics, Desert, Femicide

1. Introduction

Justice is often conceptualized in modern legal and political thought as a domain grounded in rational principles, normative standards, and procedural guarantees, and as an area purified of emotions. Within this approach, impartiality, proportionality, and equality sustain the assumption that justice operates as a form of “cool” reasoning and a set of institutional procedures. However, debates emphasizing that law is an institution that engages not only reason but also emotion—and that emotions can play a constitutive role in legal discourse, judicial discretion, and public imaginaries of justice—render this assumption problematic. Shaw’s comprehensive analysis demonstrates that the relationship between “law and passion” is not a secondary dimension but one that lies at the center of legal practices; emotions are not merely an individual realm of experience but are also effective in the processes through which norms are established, legitimacy is produced, and “us/them” distinctions are stabilized (Shaw, 2020). For this reason, making the affective dimension of justice visible requires conceptualizing the operation of law beyond the assumption of “rationality/emotional neutrality”.

This study approaches retributive justice not merely as a principle of penal philosophy or as the internal logic of criminal law, but as an affective regime in which emotions, political discourse, and cultural codes are intertwined. This approach makes it possible to conceptualize punishment not only as the response to crime, but as a form of regulation concerning the conditions under which the “right” emotion and the “legitimate” reaction are recognized. In this study, affective politics refers to the operation of emotions not as individual internal states, but as practices that are socially produced, circulated, directed, and imbued with political meaning. Within this framework, emotions are neither spontaneous nor natural reactions; they are relational formations that bind particular subjects to one another, draw boundaries, and establish moral hierarchies.

As Sara Ahmed argues in *The Cultural Politics of Emotion*, emotions are not inherent in objects or events; rather, emotions “stick”, circulate, and affect some bodies more intensely than others (Ahmed, 2004/2014). Anger, fear, or disgust attach themselves to particular figures—such as the “criminal”, the “offender”, the “threat”, or the “other”—thereby rendering these figures morally punishable. In this sense, emotions are not merely reactive; they are instruments through which political boundaries are established and legitimized.

In this context, Weisman’s analysis of remorse marks a critical threshold: criminal justice takes into account not only the offender’s act but also whether the offender “shows remorse”, thereby transforming emotion from a private domain outside legal criteria into a component of judicial discretion (Weisman, 2016). How remorse appears, which expressions are considered “sincere”, and which affective performances are deemed “appropriate” point to a terrain in which emotions are classified by law and become part of social control (Weisman, 2016). In this respect, retributive justice operates not merely as a mechanism that distrib-

utes sanctions, but also as a field of power that regulates the public recognition of emotions.

The role of emotions within justice does not remain confined to the boundaries of the courtroom; it becomes even more visible within the large-scale communication networks of the public sphere—particularly in the context of digitalization and social media. Shaw emphasizes that in the contemporary period, social media, the circulation of “fake news”/misinformation, and political polarization generate contexts that increase the mobility of emotions in the domains of justice, security, and rights (Shaw, 2020). Within this framework, public anger, fear, and hatred are not merely forms of individual feeling; they function as modes of circulation that shape political mobilization and legal demands (Shaw, 2020). Claims for retributive justice are likewise not independent of the affective processes that accelerate and intensify within such channels of circulation. Therefore, punishment should be read not only as a legal outcome, but as a practice of “legitimacy” that acquires meaning within a public affective regime.

Situating this context within a broader political-economic framework is essential for understanding the contemporary effects of retributive justice. Bell’s analysis of the relationship between criminal justice and neoliberalism demonstrates that transformations in the penal field cannot be explained solely by crime rates or technical reforms; rather, within neoliberal governmentality, logics of security, risk, surveillance, and managerial performance are capable of reshaping the field of criminal justice (Bell, 2011). This perspective makes it possible to conceptualize punishment’s public and political functions within a wider governing rationality: criminal justice becomes not merely a “response to crime”, but also a strategic site for the production of order, control, and legitimacy (Bell, 2011). Within such a framework, demands for retributive justice to be “swift”, “certain”, and “harsh” can be read not only as moral reactions, but also as components of a particular logic of governance and security politics (Bell, 2011).

The second main axis on which this study focuses concerns how justice operates in the context of femicide and the kinds of political–affective consequences produced by experiences of impunity. Costantino’s analysis in the Guatemalan context conceptualizes femicide not as the sum of isolated cases, but as a regime of violence intertwined with impunity, ineffective investigative practices, and institutional inadequacy (Costantino, 2006). This perspective makes visible the insufficiency of approaches that reduce the question of “justice” in cases of femicide solely to outcomes of conviction or punishment. Costantino discusses how femicide and impunity generate an atmosphere of insecurity and threat in everyday life, while also examining how women and communities reconstruct their demands for justice in the public sphere in response to this regime (Costantino, 2006). At this point, justice appears not merely as a judicial decision, but as a field of struggle conducted at the levels of recognition, security, rights, and citizenship (Costantino, 2006). This framework makes it possible to think together the selectivity of retributive justice and the affective consequences of impunity along the

axis of femicide.

In this study, the concept of an “affective regime” refers to an understanding of emotions not as accidental or personal reactions, but as processes that are legitimized, measured, classified, and directed within specific institutions, discourses, and communication networks. As Weisman’s analysis of remorse demonstrates, law can define not only the elements of crime but also the “appropriate emotion”; thus, the operation of justice is regulated through modes of emotional recognition as well (Weisman, 2016). Shaw’s framework, in turn, points to how emotions acquire meaning within law and around law (in the public sphere), whose emotions are recognized, and which affective forms can be coded as “threats” or as “acceptable responses” (Shaw, 2020). Bell’s analysis of neoliberalism makes visible how these affective processes can become institutionalized within an economic–political rationality of governance, while Costantino’s analysis of femicide and impunity reveals how this regime can deepen along the axis of gender (Bell, 2011; Costantino, 2006).

Accordingly, this study aims to examine the affective processes that produce and reinforce the legitimacy of retributive justice across four dimensions. First, it considers how emotions—particularly “evaluated” emotions such as remorse—are incorporated into legal classification and discretionary processes within criminal justice (Weisman, 2016). Second, it addresses the framework that examines the relationship between law and emotions in the broader public sphere and within the contemporary communication ecosystem, including social media (Shaw, 2020). Third, it focuses on the restructuring of criminal justice under neoliberal governmentality and the political functions of punishment (Bell, 2011). Fourth, it examines the dimensions of justice related to citizenship, security, and recognition in the context of femicide and impunity (Costantino, 2006). Together, these four axes make it possible to conceptualize retributive justice not as a “legal technique”, but as a mode of political regulation operating through the circulation and governance of emotions.

The remaining sections of the article systematically elaborate the framework outlined in this introduction. The following section conceptualizes the relationship between retributive justice and emotions through the lens of the “governance of emotion” and discusses how emotional forms such as remorse are measured and classified by law (Weisman, 2016). The subsequent section examines the role of media and social media in the circulation of public emotions and the effects of this context on imaginaries of justice (Shaw, 2020). This is followed by an analysis of transformations in criminal justice in the context of neoliberalism and their relationship to the production of legitimacy (Bell, 2011). Finally, the gendered face of justice and the dimension of citizenship are addressed in relation to femicide and impunity (Costantino, 2006). This structure aims to assess the affective politics of retributive justice not only at the level of normative debate, but also by bringing together legal discretion, the public circulation of emotion, the political-economic context, and the axis of gender.

2. Retributive Justice as an Affective Regime: The Recognition and Governance of Legitimate Emotions

Although the legal legitimacy of retributive justice is often grounded in rational principles, universal norms, and impartial procedures, the literature in penal philosophy and theories of justice demonstrates that this legitimacy is produced to a significant extent through moral and affective evaluations. Retributivist approaches in particular ground the justification of punishment not in future benefits, but in the principle that past wrongdoing must receive the punishment it “deserves”, assuming that this notion of desert is linked to a powerful moral–emotional intuition (Bedau, 1978; Scheffler, 2000; Zaibert, 2006). This intuition indicates that retributive justice operates not merely as a normative doctrine, but as an affective regime in which certain emotions are legitimized and institutionalized. Retributive justice produces an affective economy that determines which forms of anger are considered “justified”, which forms of suffering are deemed “intelligible”, and which fears are recognized as “legitimate”. Within this economy, some emotions gain public recognition, while others are marginalized or labeled as excessive (Ahmed, 2004/2014).

This framework is further deepened through Arlie Russell Hochschild’s concepts of “feeling rules” and “emotional labor”. According to Hochschild, in modern societies emotions are not only experiences that are felt, but also experiences that are normatively defined in terms of how one ought to feel (Hochschild, 1979). Feeling rules determine which emotions are appropriate and which are inappropriate in specific contexts. In the context of retributive justice, this points to a normative regime that regulates the forms through which victims may express anger, and the emotions that perpetrators must display (such as remorse) in order to be considered less punishable.

The concept of an affective regime refers to a historical and political configuration in which certain emotions are recognized as “justified”, “intelligible”, or “legitimate” in public and legal contexts, while others are marginalized or suppressed. In this sense, retributive justice operates not as a mechanism that excludes emotions, but rather as a mode of governance that determines the conditions under which emotions are recognized. Feinberg’s analysis of the “expressive function” of punishment demonstrates that punishment publicly expresses not only behavior, but also moral anger and condemnation directed at the violation itself (Feinberg, 2014). In this respect, punishment functions as a symbolic practice through which a community declares which emotions it shares and which violations it considers morally intolerable.

This symbolic dimension also explains why the boundary between retributive justice and revenge is so heavily charged with emotion. As Zaibert demonstrates, the distinction between retributive punishment and revenge is often constructed not at the level of content, but at the level of legitimacy and discourse; both practices regard the suffering of the offender as morally meaningful (Zaibert, 2006). Retributive justice, however, separates this suffering from individual anger by de-

manding it in the name of the collective moral order. This transformation does not entail the elimination of individual feelings of revenge, but rather their institutionalization and rearticulation within a legal framework (Walker, 1999).

The concept of desert occupies a central position within this process of institutionalization. According to Scheffler, holding individuals responsible for their actions and requiring them to bear the consequences of that responsibility constitutes a fundamental condition of equal respect; the failure to punish a crime undermines not only the moral standing of the victim, but that of all citizens (Scheffler, 2000). Within this approach, punishment is presented as an expression of recognizing the offender as a rational and autonomous subject. However, this normative justification leaves open the question of how desert is socially determined.

At this point, emotions play a decisive role in the distribution of desert. Emmons's analyses of the relationship between equality and punishment demonstrate that evaluating similar violations within different affective frames erodes the principle of equality in practice (Emmons, 1970). While the actions of some offenders are framed as "understandable" or "provoked", others are coded as absolute moral deviations. This distinction is established less through legal criteria than through emotions such as public anger, fear, and moral injury.

Kelly's approach to "moral emotions" explains this process through the experience of impunity. According to Kelly, impunity is not merely a legal deficiency; it is experienced by victims and communities as a denial of equal respect, and this experience generates powerful moral anger (Kelly, 2009). This anger legitimizes demands for punishment independently of utilitarian justifications. However, the question of which instances of impunity generate public anger and which forms of victimization are recognized reveals the selective character of the affective regime.

The framework developed by Cropanzano and colleagues on the experience of justice demonstrates that justice is evaluated not only through outcomes, but also through emotional experiences. Individuals and groups assess whether they have been treated justly not solely by reference to rules, but according to levels of respect, recognition, and emotional consideration (Cropanzano et al., 2010). From this perspective, retributive justice is concerned not only with whether the correct punishment has been imposed, but with whose pain and anger are recognized.

This process of recognition produces pronounced asymmetries along the axis of gender. The femicide literature shows that, in the context of women's murders, impunity and mitigating justifications reinforce the social message that women's lives are less valuable (Costantino, 2006). While responses to violence against women are often represented with emotional intensity, these emotions rarely translate into equivalent recognition at the legal and political levels. As a result, the affective regime of retributive justice legitimizes certain forms of anger while rendering others ineffective.

This selectivity directly affects the democratic claims of retributive justice. Smilansky's negative retributivist approach maintains that undeserved punishment is unequivocally unjust, while also acknowledging the public anger generated by

punishment that is deserved but not imposed (Smilansky, 2006). Yet even this approach does not resolve the problem of how desert is affectively determined. On the contrary, the question of which violations are included within the category of “deserved punishment” renders visible the political and cultural boundaries of retributive justice.

The literature examined in this section demonstrates that retributive justice is not a regime in which emotions are suppressed, but one in which emotions are defined, directed, and hierarchically distributed. Concepts such as desert, equality, and impunity operate not merely as normative principles, but through the recognition of specific emotions. The following section will examine how this affective regime is circulated in the public sphere through media and social media, and how punitive demands are popularized.

3. Media and Social Media: The Circulation of Public Emotions and Punitive Populism

The affective regime of retributive justice is shaped not only through legal institutions and judicial practices, but also through public emotions produced and circulated by media and social media. The representation of crime, the ways in which victimization becomes visible, and the moral framing of offender figures constitute core processes that determine the social legitimacy of punitive demands. In this context, the media functions not as a neutral space in which justice is merely “reflected”, but as an active affective intermediary that determines which emotions are deemed justified, which reactions legitimate, and which forms of punishment are considered necessary (Roberts, 2004; Garland, 2001).

Roberts’s comprehensive analysis of the relationship between public opinion and punishment demonstrates that attitudes toward punishment are often produced not from abstract legal principles, but from media-mediated narratives of crime (Roberts, 2004). Mediatized narratives simplify the context of crime, personalize the offender’s actions, and emotionally intensify victimization. In this process, punishment is perceived not as the outcome of rational evaluation, but as a moral urgency. Public opinion operates not according to proportionality or legal reasoning, but according to an affective measure of whether “justice has been served” (Roberts, 2004).

Garland’s analysis of the “culture of control” developed in the context of late modernity reveals the political dimension of this affective process. According to Garland, crime in late modern societies is represented not merely as an individual deviation, but as a risk threatening collective security (Garland, 2001). This mode of representation continuously sustains feelings of fear and insecurity and strengthens demands for retributive justice. The media constitutes one of the primary instruments through which this economy of fear circulates. Crime reporting generalizes exceptional events, shapes public perception, and renders the intensification of punishment a legitimate response (Garland, 2001).

Within this framework, punitive populism can be conceptualized as a phenom-

enon emerging from the reciprocal interaction between media and political discourse. Garland and Sparks define punitive populism as the reduction of complex social problems to individual offenders and the articulation of solutions through calls for “swift, harsh, and certain” punishment (Garland & Sparks, 2000). The media plays a central role in circulating these calls; emotions such as anger, fear, and disgust are continuously reproduced, reinforcing the idea that punishment is inevitable.

Calanchi’s analysis in the Italian context illustrates in detail how crime is presented within a melodramatic framework in the media. According to Calanchi, the media transforms crime from an object of rational debate into a narrative in which the audience becomes emotionally aligned (Calanchi, 2014). While the offender is often morally alienated, an affective proximity is established between the victim and the audience. This narrative form intensifies public anger and presents the demand for punishment as a moral necessity (Calanchi, 2014). In this way, the media does not merely reflect the affective regime of retributive justice; it actively reproduces it.

The rise of social media has further accelerated this affective circulation. Shaw notes that digital platforms have created a new public sphere that intensifies the circulation of emotions around justice, crime, and security (Shaw, 2020). Social media facilitates the rapid spread of anger and fear, the simplification of complex legal processes, and the shaping of punitive demands through immediate reactions. In this context, justice may become an issue that is effectively “adjudicated” within social media spaces prior to legal procedures (Shaw, 2020).

This process also reinforces the selective operation of retributive justice. Which crimes receive extensive coverage, which forms of victimization generate public empathy, and which offenders are unequivocally condemned are often determined by factors such as gender, class, and cultural proximity (Roberts, 2004; Calanchi, 2014). While some crimes are represented as national traumas, others are rendered invisible or normalized. This selectivity further erodes the equality claim of retributive justice and leads to the hierarchical distribution of moral anger.

The context of femicide constitutes one of the most visible sites of this hierarchy. The femicide literature demonstrates that women’s murders are frequently presented through emotionally intense representations, yet these representations often obscure structural inequalities and institutionalized impunity (Costantino, 2006). While femicides gain visibility through melodramatic narratives in the media, the offender’s actions may be contextualized or framed as individual deviance. This undermines the continuity of public anger and weakens demands for retributive justice.

At this point, the media determines not only which crimes are visible, but also the boundaries of legitimate anger. Which forms of anger are deemed “justified” and which forms of suffering are considered “understandable” are shaped through media narratives. While male violence is sometimes presented through narratives of “loss of control” or “emotional outburst”, women’s demands for justice may be

labeled as excessive or vengeful (Calanchi, 2014). This reveals how the affective regime of retributive justice operates asymmetrically along the axis of gender.

Bell's analysis of neoliberal criminal justice completes the political-economic context of this mediatized process. According to Bell, neoliberal governmentality foregrounds individual responsibility and punishment while marginalizing discussions of structural causes (Bell, 2011). Media and social media reinforce this individualizing frame, rendering the social context of crime invisible and presenting punishment as the primary solution. In this way, punitive populism becomes not merely a cultural tendency, but the affective expression of a specific political-economic rationality (Bell, 2011).

In conclusion, media and social media constitute fundamental affective mechanisms that enable the circulation of retributive justice within the public sphere. Public anger, fear, and moral injury are continuously reproduced within these arenas, reinforcing the idea that punishment is both inevitable and urgent. While this process weakens democratic oversight of retributive justice, it may also strengthen its selective and exclusionary tendencies. The following section will examine how these affective and mediatized processes intersect with nationalism and the role of retributive justice in the production of political legitimacy.

4. Nationalism, Retributive Justice, and Political Legitimacy

The power of retributive justice in producing political legitimacy can often be understood through its close relationship with nationalist discourses. Nationalism constructs justice not as a neutral order grounded in universal and abstract principles of citizenship, but as a mechanism that protects the "shared values" and moral boundaries of a particular community. Within this framework, punishment becomes not merely a legal sanction, but a symbolic practice through which national identity and the collective moral order are reaffirmed (Garland & Sparks, 2000; Anderson, 1996).

Within nationalist frameworks, crime is represented not as an individual violation of norms but as a threat directed at the integrity of the community. Anderson's analysis of power, justice, and the politics of death demonstrates that the state's capacity to punish is legitimized through such narratives of threat (Anderson, 1996). Presenting crime as a deviation that endangers the national order frames demands for retributive justice not as a technical legal matter, but as a moral duty aimed at protecting the community. In this context, punishment is transformed into a political performance through which the state's monopoly on legitimate violence is rendered visible (Anderson, 1996).

Haque's analyses of group-based violence and retributivism elaborate the affective dimension of this process. According to Haque, in contexts where collective identities are strong, punishment is not concerned solely with establishing individual responsibility; it also reflects the group's need to morally reconstruct itself (Haque, 2005). Within this framework, punishment ceases to be merely the response to an individual crime and becomes a tool through which the moral purity

and order of the “we” are re-established. Nationalism intensifies this collective affective process and places retributive justice at the center of political legitimacy production (Haque, 2005).

Nationalist discourses also transform the equality claim of retributive justice. While legal equality is based on the assumption that all individuals possess the same status before the law, nationalist conceptions of justice define “moral equality” through national belonging. Who is recognized as a “legitimate member” of the community and who is positioned outside the moral order determines the scope and intensity of punishment (Garland & Sparks, 2000). In this context, punishment functions less as the application of equal citizenship and more as a practice of drawing moral boundaries.

This boundary-drawing practice becomes particularly pronounced in periods of crisis and uncertainty. As Garland emphasizes in his analysis of late modern societies, crime functions as a symbolic substitute for complex structural problems in times of economic insecurity, political instability, or social transformation (Garland, 2001). Under such conditions, nationalist politics present retributive justice as a visible guarantee of order and security. Discourses of harsh punishment become instruments that symbolize state determination and power rather than legal effectiveness (Garland, 2001).

This political function is directly connected to the affective regime of retributive justice. Nationalism reproduces fear, anger, and perceptions of threat within a collective framework. These emotions are presented not as obstacles to legal reasoning, but as legitimate justifications for punitive demands. Shaw’s framework on the relationship between law and emotions is particularly illuminating in understanding which emotions nationalist discourses recognize as “justified” and “understandable” (Shaw, 2020). Anger and fear generated in response to subjects perceived as threatening the national order are circulated as legitimate and necessary reactions.

Retributive justice articulated through nationalism also produces a selective regime of victimhood and sensitivity. While certain forms of victimization are placed at the center of national narratives, others are marginalized or rendered invisible. The femicide literature demonstrates how this selectivity deepens along the axis of gender. In some contexts, women’s murders are presented not as a problem of the national moral order, but as individual tragedies or cultural deviations, thereby preventing the consistent and equal operation of retributive justice (Costantino, 2006; Shalhoub-Kevorkian, 2002).

Studies on femicide in the Palestinian context reveal that nationalist and conditions of political conflict directly affect the functioning of criminal justice and practices of impunity (Shalhoub-Kevorkian, 2002). In this context, narratives of national struggle may position violence against women as a secondary issue and suppress demands for retributive justice. Thus, nationalism renders certain crimes visible while relegating others to the background in the name of national priorities.

This dynamic further narrows the democratic limits of retributive justice.

Within nationalist discourses, punishment becomes less a matter of legal accountability and more an indicator of political loyalty and moral belonging. As Anderson notes, when the state's capacity to define the boundary between justice and violence is coupled with narratives of national interest, it becomes less open to critical scrutiny (Anderson, 1996). This, in turn, makes critical oversight of retributive justice more difficult.

In conclusion, nationalism functions as a central axis that strengthens the political legitimacy of retributive justice. Punishment becomes not a legal necessity, but a tool through which national identity and moral boundaries are reproduced. This process is made possible through the political orchestration of emotions—particularly fear and anger. The following section will examine how these nationalist and affective processes are concretized along the axis of gender and how they render visible the limits of retributive justice in the context of femicide.

5. Gender, “Justified Anger”, and the Limits of Punishment

Affective politics is conceptualized as a form of political regulation through which emotions produce the legitimacy of demands for justice, morally mark punishable subjects, and selectively operationalize principles of equality and desert through emotions (Ahmed, 2004/2014; Hochschild, 1979). The affective regime of retributive justice operates in a markedly asymmetric manner along the axis of gender. Which emotions are recognized as legitimate, which forms of anger are considered “justified”, and which forms of victimization are acknowledged at the legal and political levels are determined not only by normative principles but also by gendered emotional codes. In this context, retributive justice functions not merely as a mechanism that reflects gender inequalities, but as one that institutionally reproduces them.

The femicide literature demonstrates how violence against women and women's murders are treated in differentiated ways within the criminal justice system. Costantino's study in the Guatemalan context reveals that femicide is frequently addressed alongside practices of impunity, inadequate investigation, and low prioritization (Costantino, 2006). In this context, violence against women's lives struggles to be recognized as a full violation at the legal level, while the failure of justice is experienced by women and communities as a denial of equal citizenship (Costantino, 2006). Impunity signifies not only the failure to punish the perpetrator, but also the lack of public recognition of women's pain and anger.

This lack of recognition is closely linked to the gendered distribution of “justified anger”. Kelly's framework of moral emotions emphasizes that experiences of impunity generate powerful moral anger among victims (Kelly, 2009). However, how this anger is received at the public and legal levels depends on gendered expectations. Women's anger is often labeled as “excessive”, “emotional”, or “vengeful”, whereas the anger of male perpetrators may be contextualized, rendered understandable, or treated as a mitigating factor (Howe, 2020). This dynamic significantly undermines the equality claim of the affective regime of retributive justice.

Howe's analyses of the relationship between criminal law and gender demonstrate how male violence can be normalized within legal and media discourses. Acts of violence committed by male perpetrators are frequently framed through narratives of "loss of control", "provocation", or "emotional outburst", and such narratives function to mitigate punishment (Howe, 2020). By contrast, while women's victimization may be represented with intense emotional emphasis, these representations rarely translate into equivalent recognition at the legal level. As a result, retributive justice produces a regime of recognition that is flexible for men and limited for women.

This asymmetry also renders visible how the concept of desert operates along the axis of gender. Emmons's work on equality and punishment shows that similar violations are subjected to different moral evaluations depending on the profile of the perpetrator (Emmons, 1970). While the actions of male perpetrators can be explained through context and emotion, violence experienced by women is often framed as a series of individual tragedies. This indicates that desert ceases to function as a universal criterion and instead becomes a status distributed through affective and cultural codes (Emmons, 1970).

In the context of femicide, impunity further deepens this affective inequality. Costantino (2006) argues that impunity constitutes not only a legal failure for women but also produces a persistent sense of insecurity and worthlessness. The failure of justice reinforces the social message that women's lives are less worthy of protection and renders moral anger enduring. Yet this anger often fails to generate transformative effects at the political and legal levels.

Analyses of femicide in the Palestinian context demonstrate how gendered justice becomes intertwined with nationalist and conditions of political conflict (Shalhoub-Kevorkian, 2002). Discourses of national struggle may frame violence against women as a secondary issue and suppress demands for retributive justice. In such contexts, the violence experienced by women becomes invisible in the face of national priorities, and women's anger and demands for justice struggle to gain public legitimacy.

This selectivity constitutes one of the fundamental factors that determine the democratic limits of retributive justice. Findings by Cropanzano and colleagues on the emotional experience of justice demonstrate that justice is evaluated not only through correct decisions but also through how individuals and groups feel they have been treated (Cropanzano et al., 2010). When women experience the justice process as one in which they are unheard and devalued, the legitimacy of retributive justice is weakened; however, this weakening rarely leads to the transformation of the system itself.

The literature examined in this section shows that retributive justice recognizes "justified anger" in a gendered manner. While male anger is rendered normative and intelligible, women's suffering—even when recognized—rarely translates into a transformative demand for justice. This dynamic once again calls into question the claim that retributive justice is distinct from revenge. For justice is not a matter

of suppressing emotions, but of determining which emotions are recognized, which are deemed legitimate, and on whose behalf they are articulated.

The following section will examine how these gendered and affective processes intersect with impunity, moral anger, and citizenship, and how the democratic limits of retributive justice become visible at these intersections.

6. Impunity, Moral Anger, and Citizenship

The affective regime of retributive justice becomes most clearly and intensely visible through experiences of impunity. Although impunity is frequently treated in criminal law as an institutional deficiency or an implementation-related failure, scholarship in justice theory and gender studies demonstrates that this phenomenon is also experienced as a moral and affective violation. As emphasized in Kelly's approach to moral emotions, impunity does not merely signify the "absence of punishment" for victims; more fundamentally, it is perceived as a rejection of the claim to equal respect (Kelly, 2009). This rejection generates powerful and enduring moral anger.

Moral anger, in this context, constitutes the primary affective source of demands for retributive justice. According to Kelly, the demand for punishment expresses a moral claim for the recognition and seriousness of the violation, independent of utilitarian justifications (Kelly, 2009). Impunity produces a message that the violation is socially tolerable; this message damages the moral status of victims and communities. Moral anger thus emerges not merely as an individual reaction, but as the affective expression of a demand for recognition and equality.

The femicide literature reveals in detail how the relationship between impunity and moral anger intensifies along the axis of gender. Costantino's study in the Guatemalan context shows that the systematic impunity surrounding femicide normalizes the inaccessibility of justice for women (Costantino, 2006). In this context, impunity becomes not the sum of isolated judicial errors, but a structural condition that erodes women's citizenship status. The failure of justice continuously reproduces an affective message that women's lives are less valuable at the public level (Costantino, 2006).

In this process, the public circulation of moral anger operates selectively. While some experiences of impunity generate widespread public outrage and demands for harsh punishment, others remain invisible. Studies by Cropanzano, Stein, and Nadisic on the experience of justice demonstrate that individuals evaluate justice not only according to the content of decisions, but also according to how they are treated and whether their emotions are recognized (Cropanzano et al., 2010). When such recognition does not occur under conditions of impunity, the legitimacy of justice is severely weakened at the affective level.

Studies on femicide in the Palestinian context reveal how impunity is intertwined with political conflict, nationalism, and security discourses (Shalhoub-Kevorkian, 2002). National struggle and security priorities may position violence against women as a secondary issue, thereby producing systematic gaps in the

gendered operation of retributive justice. In such contexts, impunity becomes legitimized not only legally, but also politically.

In these contexts, moral anger does not always evolve into a transformative demand for justice. On the contrary, the anger of women and marginalized groups is often framed as “inappropriate”, “excessive”, or “threatening to stability”. This framing clearly reveals the limits of inclusivity within the affective regime of retributive justice. When the anger produced in response to women’s experiences of injustice is not recognized, the promise of retributive justice becomes a perpetually deferred expectation for certain citizens.

This section demonstrates that impunity may constitute not an exceptional failure of retributive justice, but a structural component of its affective and political operation. While moral anger holds significant potential for the democratization of justice, the realization of this potential depends on the equal and inclusive recognition of emotions. Otherwise, retributive justice deepens affective inequalities rather than reinforcing the principle of equal citizenship.

7. Conclusion: The Democratic Limits of Affective Justice

This study has approached retributive justice not as a legal technique or an abstract normative principle, but as a regime constructed through affective, political, and cultural processes. The literature examined demonstrates that the legitimacy of retributive justice is produced to a large extent through emotions such as anger, moral injury, fear, and experiences of impunity (Kelly, 2009; Garland, 2001; Shaw, 2020). These emotions are not the opposite of justice nor external to it; rather, they constitute the foundational components of punitive demands.

One of the central arguments developed throughout the article is that the distinction between retributive justice and revenge functions not as an absolute analytical opposition, but as a political and moral boundary-drawing strategy. Although punishment is legitimized by claiming to be separated from individual anger and resentment, the literature shows that both practices share the common moral intuition that a wrongful act ought to be met with suffering (Feinberg, 2014; Zaibert, 2006). This intuition forms the affective foundation of the state’s monopoly on legitimate violence.

Discussions centered on desert and equality have revealed how fragile the universalist claims of retributive justice are in practice. While desert is presented at the theoretical level as a universal criterion, it may in practice become a status distributed through social position, cultural belonging, and affective proximity (Scheffler, 2000; Emmons, 1970). This dynamic erodes the promise of equality embedded in retributive justice and creates conditions under which justice operates selectively.

Analyses of media and social media have shown that the circulation of retributive justice in the public sphere unfolds within an economy of emotions. While melodramatic representations of crime intensify public anger, they render the complexity of legal processes and structural causes invisible (Roberts, 2004; Calanchi,

2014). In this context, punitive populism becomes not merely a political discourse, but a widely shared affective regime.

The discussion conducted along the axis of nationalism has further clarified the role of retributive justice in the production of political legitimacy. National identity discourses construct justice not through universal principles of citizenship, but through a morally defined “we”, with punishment becoming a symbolic instrument for protecting this collective identity (Garland & Sparks, 2000; Anderson, 1996). This process may distance retributive justice from democratic oversight and strengthen exclusionary tendencies.

Analyses conducted in the context of gender and femicide have demonstrated the extent to which the affective regime of retributive justice operates asymmetrically. While male anger is often rendered intelligible and contextually explainable, the violence experienced by women—even when made emotionally visible—fails to receive equivalent recognition at the legal and political levels (Costantino, 2006; Howe, 2020). This asymmetry undermines the claims of equality and desert at the heart of retributive justice along the axis of gender.

In light of these findings, the study argues that democratic justice can be achieved not by denying the affective nature of retributive justice, but by critically rendering it visible. The suppression of emotions is neither possible nor desirable. The central issue lies in which emotions are recognized, which are deemed legitimate, and on whose behalf they are articulated. The democratic limits of retributive justice are determined by the answers given to these questions.

Within this framework, future research should examine the affective regime of retributive justice not only at the level of normative penal theories, but comparatively through concrete practices of impunity, institutional justice mechanisms, and experiences of citizenship. As Costantino (2006) demonstrates in the Guatemalan context, the ways in which impunity in cases of femicide produces fractures in women’s citizenship, and—as Shalhoub-Kevorkian (2002) shows in the Palestinian context—the ways in which tensions between state-building, nationalism, and criminal justice shape gendered experiences of justice, can be further deepened through broader regional and comparative analyses. Accordingly, future studies should adopt a multi-layered approach to the relationship between legal responses to femicide and public affective regimes, examining media representations, political discourses, and victims’ everyday engagements with justice. Such an approach would make it possible to rethink the democratic limits of retributive justice not only in terms of legal outcomes, but through the dimensions of affective equality, recognition, and citizenship.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

References

Ahmed, S. (2014). *Duyguların Kültürel Politikası (Çev. Komut, S.)*. Sel.

- Anderson, P. J. (1996). *The Global Politics of Power, Justice and Death: An Introduction to International Relations*. Routledge.
- Bedau, H. A. (1978). Retribution and the Theory of Punishment. *Journal of Philosophy*, 75, 601-620. <https://doi.org/10.5840/jphil197875114>
- Bell, E. (2011). *Criminal Justice and Neoliberalism*. Palgrave Macmillan.
- Calanchi, A. (2014). Crime, Fiction and Media: Public Emotions in Italy. *Law & Humanities*, 8, 183-201. <https://www.jstor.org/stable/43926748>
- Costantino, R. (2006). Femicide, Impunity, and Citizenship: The Old and New in The Struggle for Justice in Guatemala. *Chicana/Latina Studies*, 6, 2-24. <https://www.jstor.org/stable/23014586>
- Cropanzano, R., Stein, J. H., & Nadisic, T. (2010). *Social Justice and the Experience of Emotion*. Routledge. <https://doi.org/10.4324/9780203840474>
- Emmons, D. C. (1970). The Retributive Criterion for Justice. *Mind*, 79, 133-134. <https://doi.org/10.1093/mind/lxxix.313.133>
- Feinberg, J. (2014). The Expressive Function of Punishment. *Monist*, 49, 397-423. <https://doi.org/10.5840/monist196549326>
- Garland, D. (2001). *The Culture of Control*. University of Chicago Press. <https://doi.org/10.7208/chicago/9780226190174.001.0001>
- Garland, D., & Sparks, R. (2000). Criminology, Social Theory and the Challenge of Our Times. *British Journal of Criminology*, 40, 189-204. <https://doi.org/10.1093/bjc/40.2.189>
- Haque, A. A. (2005). Group Violence and Group Vengeance: Toward a Retributivist Theory of International Criminal Law. *Buffalo Criminal Law Review*, 9, 273-328. <https://doi.org/10.1525/nclr.2005.9.1.273>
- Hochschild, A. R. (1979). Emotion Work, Feeling Rules, and Social Structure. *American Journal of Sociology*, 85, 551-575. <https://doi.org/10.1086/227049>
- Howe, A. (2020). Speaking out against Violence: Toward a Body-Focused Feminist Legal Agenda? *Australian Feminist Law Journal*, 46, 39-55.
- Kelly, E. I. (2009). Criminal Justice without Retribution. *Journal of Philosophy*, 106, 440-462. <https://doi.org/10.5840/jphil2009106840>
- Roberts, J. V. (2004). Public Opinion and Punishment. *Crime and Justice*, 32, 1-58.
- Scheffler, S. (2000). Justice and Desert in Liberal Theory. *California Law Review*, 88, 965-990. <https://doi.org/10.2307/3481202>
- Shalhoub-Kevorkian, N. (2002). Femicide and the Palestinian Criminal Justice System: Seeds of Change in the Context of State Building? *Law & Society Review*, 36, 577-605. <https://doi.org/10.2307/1512163>
- Shaw, J. J. A. (2020). *Law and the Passions. Why Emotion Matters for Justice*. Routledge. <https://doi.org/10.4324/9780203797709>
- Smilansky, S. (2006). Control, Desert and the Difference between Distributive and Retributive Justice. *Philosophical Studies*, 131, 511-524. <https://doi.org/10.1007/s11098-004-7486-x>
- Walker, N. (1999). Even More Varieties of Retribution. *Philosophy*, 74, 595-605. <https://doi.org/10.1017/s0031819199000704>
- Weisman, R. (2016). *Showing Remorse: Law and the Social Control of Emotion*. Routledge. <https://doi.org/10.4324/9781315609089>
- Zaibert, L. (2006). Punishment and Revenge. *Law and Philosophy*, 25, 81-118. <https://doi.org/10.1007/s10982-004-6727-7>