

The Light in the Darkness

An Assessment of the Retributive Urge

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Abstract

In this thesis I examine in detail the retributive emotions, or the retributive urge, which typically precede retributive punishment. The four main chapters are dedicated to individual issues regarding the retributive urge: its genealogy, its schematic structure, its rationality, and its moral status. These issues draw together three philosophical fields: emotion theory, virtue ethics, and sociobiology. My conclusions are as follows. (1) Retribution and revenge are distinct forms of behaviour with different emotional bases. (2) The retributive urge has a genetic heritage, and evolved as a means to aid survival in the face of environmental pressures. (3) It consists of a complex conglomeration of components provided by its three constituent emotions: anger, fear, and disgust. (4) The common perception that the retributive urge is irrational is unjustified. (5) The manifestation of the retributive emotions suggests a virtuous character. Hence these emotions should be encouraged within reason, rather than repressed or condemned.

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I

INTRODUCTION

The retributive emotions, otherwise referred to as the *retributive urge*, have long been a focus of suspicion. They are often portrayed as dark, desperate, fiery, irrational, barbaric, brutal, self-indulgent, sadistic and thoroughly undesirable. The opening passage of Foucault's *Discipline and Punish*, in which he describes in morbidly fascinating detail the brutal hanging, drawing, and quartering of a criminal, quickly helps one appreciate the evolution of such convictions. The above adjectives certainly describe historical retributive *punishment*¹, the action typically engendered by the retributive emotions. Especially in medieval times, punishment was quick in deliberation, but merciless, brutal, and sadistically thorough in its execution. It was openly participated in by the public, turning it into a spectacle, a bloody ritual which pampered the cruel tendencies of a public which understood little of punishment's real function. Indeed, some wonder if retributive punishment had a "real" function at all. The castration, disemboweling, quartering and burning of people alive was more in keeping with the satiating of sadistic desires than in procuring just desert. Nietzsche described punishment "as a festival, namely as the rape and mockery of a finally defeated enemy"². The criminal, who had previously commanded fear and

¹ Retributivists justify punishment on the grounds that a criminal *deserves* to be punished for a crime. A criminal deserves to suffer if he causes unwarranted suffering.

² Nietzsche, F. *On the Genealogy of Morals*, II.9.

respect from society, suddenly found himself a helpless victim of a hysterical group, each reveling in the ability to inflict pain and suffering without fear of reprisal. Many suspect the public were no better than the criminal, that their savage, ruthless tendencies were kept in check by the power of the rulers, and were only exercised with the latter's blessing. On this reading, the public were inferior to the criminal, for the criminal at least had the strength to openly contest the rulers' authority. What the public wished they could do, but couldn't, was successfully achieved by criminals. The jealousy and fear this generated was most responsible for the brutal manner with which society demanded the criminals be treated when caught. Public executions were always popular entertainment and it is plausible to infer that they satisfied in persons a dark and sick bloodlust. Thankfully, such public indulgence was, over time, scuppered by most governments which rightly realised that punishment is ideally a private affair between state and offender. Yet even today there are those who call for a return to such barbarism, although this time with the so-called justification of deterrence:

For effective deterrence, punishment should be deeply terror-inducing, even to the most evil and hardened criminal...To be thoroughly practical about it, we really need to return to physical torture. A punishment comprising a few hours of high-tech torture every week for the next five years should be an excellent discouragement to those contemplating violent crime. It should be televised in prime time so that a maximum audience can be deterrently impressed by the horrific writhings, frantic convulsions and agonised screams of the subjects.³

No doubt utilitarians (and all other reasonable moral theorists) would be appalled by this suggestion, and rightly so. It leaves one wondering what the primary motivation behind the suggestion is: deterrence or sadism? It is possible there exists in our society a large number of sadists, hence the high crime rate. If so, such torture would not require prime time screening. Prime time would become defined by the slot reserved for such public torture. Such letters are good arguments for punishment being state-controlled. The deterrence value from such shows would be quickly overshadowed by the brutality and sadism it would breed in society. The letters also alert us to the existence of a deeply disturbed faction in our society, and not one which can necessarily be dismissed as the looney fringe.

³ Letter to the editor, *The Argus*, Southern Edition, 1 February 1996.

This suspicion is compounded with the belief that “retribution” and “revenge” are synonymous. Mafia gangsters refer to their mob hits as “retribution” when revenge is quite evidently the true motive. The two concepts are so liberally used that their borders have become obfuscated to the extent that few believe they are separate concepts at all. (Indeed, this is a problem aggravated by many academics.) Revenge has become a social boogy-man, rejected for its pathological nature. Consequently many believe retribution necessarily suffers the same fate.

No doubt these two suspicions were significantly responsible for the development of the deterrence and rehabilitation theories. Deterrence theorists argue that punishment is justified only to ensure the future safety of society. Our punishment must, they claim, aim to *deter* the same person, or other people, from committing future crimes. Rehabilitationists, who can be viewed as a branch of deterrence theorists, believe we are justified in incarcerating criminals only to rehabilitate them. They prefer not to use the term “punishment” at all. Ensuring society’s safety is important, but they believe it is neither morally justifiable nor prudent to use punishment as a means to this end. Criminality is an illness which, like all ailments, should be cured, not punished. These two theories are ostensibly more “humane” for they ignore the desires of the emotionally brutal. (Obviously rehabilitation is regarded as the most humane.) They are also ostensibly more “rational” because they take into consideration the consequences of punishment (or rehabilitation). Deterrence and rehabilitation, they argue, unlike retributive punishment, have a *telos*, a goal. Hence they are rational.

The sides of the punishment debate are clearly drawn, and are largely determined by the moral theories their advocates support. Retributivists are bed partners with deontologists, while deterrence theorists and rehabilitationists are traditionally teleologists. Retributivists attach more significance to an act’s intrinsic worth, and do not appreciate the deterrence theorist’s (and rehabilitationists’) fixation with consequences. The opposite relationship also holds. These two positions have been thrashed out since the time of Immanuel Kant, but are no nearer solution. Deontologists and teleologists find debate a tricky art, for neither accepts the other’s basic principles of morality. This conceptual incommensurableness has, I believe, stagnated the punishment debate. (This might similarly explain the stagnation of many ethical questions, ranging from abortion to the death penalty to informed consent.) Hence it is important to expand

the theatre of debate.

One relatively neglected area is virtue ethics. Instead of considering an act's intrinsic worth or consequences, perhaps we should investigate the *character* of the agents occupying one position or the other. We intuitively applaud virtuous traits such as courage, mildness of temper, wisdom, generosity, moderation, justice, wisdom, etc. It is dubious anyone would want to live a life where no attention was paid to the quality of that life, no matter how altruistically they behaved⁴. A moral agent devoid of these character traits would be incomplete and uncolourful. Promoting the quality of others' lives without any consideration of one's own seems, in some sense, wrong. It suggests a failure to appreciate one's own life, and it seems unlikely such a person could appreciate the lives of others. Altruism can thus become a mechanical way of life, much like tightening bolts in a car factory. Failure to appreciate what makes our own lives special and enjoyable implies a hollow altruism performed out of habit, and not for itself. The punishment debate has considered, *ad nauseam*, the implications of punishment on others, both the criminals and the general public. In utilitarianism we compare the misery caused to the criminal by punishment with the potential misery caused to society if he is not punished. In Kantianism, we concentrate on the intrinsic evil of the crime itself, and who is responsible for it. But we have neglected how punishment relates to the individual seeking justice. It is time to consider self-regarding morality as well as other-regarding morality. If we found that, generally, unvirtuous, base people supported retributive punishment, and that virtuous, flourishing people deplored it, would this not be a helpful commentary on the moral status of the retributive urge? Making room for such an expansion of discourse is the aim of this thesis. I say "making room" because I do not intend to pursue this line of argument very far. My object is to provide the structure which makes such an investigation possible (I briefly consider how retributive punishment comments on the character of retributivists in Chapter V). Hopefully this structure will provide new avenues of investigation which will revitalize the punishment debate⁵.

There is a general objection which might be raised at this point. Those who follow a

⁴ See Pence, G. "Virtue Theory", p252.

⁵ For a detailed description of virtue ethics, see J. Oakley, "Varieties of Virtue Ethics"

particularly narrow conception of morality claim we *can not* be immoral to ourselves. Ignoring our own good lives is foolish, but not morally wrong. Hence any reference to our own character or good lives is superfluous to the moral status of retribution, and thus unimportant to the punishment debate as a whole. It is difficult (if not impossible) to draw such staunch moral externalists⁶ along. This is just another case of conceptual incommensurableness. However, as I implied, most of this thesis does not revolve around virtue ethics. The work is the formulation of a structure which should enable one, among other things, to perceive in terms of virtue, the moral status of the retributive urge. But it also provides important information regarding the genealogy of the urge (of interest to sociobiologists), its schematic structure (of interest to emotion theorists), and its rational status (pertinent to many philosophical fields). Furthermore, the chapter concentrating on the retributive urge's moral status does not concentrate exclusively on virtue ethics. It also addresses other moral structures.

Support for the retributive urge does not share the campfire with all retributivists. Some find the powerful emotional complex an embarrassment. For instance, Immanuel Kant argued for the principle of just requital on purely rational grounds (although it is dubious that his preceding intuitions were not embedded in the retributive emotion). Despite such embarrassment, the intuition that the concept of punishment derives from the retributive emotions is extremely difficult to avoid. However, this stubborn intuition has been employed by others as an argument in itself. Mackie argues that punishment has a definitively retributive flavour. Punishment makes reference to emotions which help formulate the belief that the offender's action was wrong⁷. I believe it is important to confront the fact that retributive emotions lie deep in the heart of punishment. If this was not commonly suspected, deterrence theorists would not have such an aversion to retributive punishment.

If this emotional base is the underlying instinct in punishment, it would be ludicrous to ignore it. Beginning in Chapter II, I answer four main questions. They are:

- (a) How did the retributive urge evolve, and why is it so prevalent in our society?

⁶ I use this term to refer to theorists committed to the exclusively other-regarding nature of morality.

⁷ Mackie, J.L. "Morality and the Retributive Emotions".

- (b) What is the schematic structure of the retributive urge?
- (c) What is the rational status of the urge?
- (d) What is its moral status?

To summarize the main assertions of the dissertation: The retributive emotions delivered unto society the practice of punishment. This occurred through a process of evolution, wherein the retributive urge aided survival. The urge itself is an emotional complex, consisting of a dynamic interaction between the various components of three different emotions. We are not entitled to judge the retributive urge as an irrational complex, for in many cases it may be interpreted as rational. Lastly, the retributive urge should not be rejected as an immoral concatenation of emotions. Throughout these chapters I refer in detail to the revenge urge, which must be separated as a logically distinct concept from the retributive urge.

There are some points which should not be assumed by my position. First, I am not committed to the death penalty. One may be a retributivist yet disapprove of this method of punishment, while still observing the principle of *lex talionis*. Secondly, I am not required to approve of South Africa's prison system to remain a retributivist. Prison policy is grossly inadequate, with vast, unnecessary expenditure, and brutal conditions which propagate crime at an alarming rate. There must be ways to provide a criminal with their just desert while providing them with the social and technical skills necessary for a peaceful reintegration with society.

I hope my arguments will provide insights into those passionate calls for justice. The retributive urge is generally construed as a vast, unthinking, savage, powerful storm, drowning out calls for patience, impartiality or forgiveness. I believe this is grossly unfair (although perhaps understandable). The retributive urge may be strong, passionate and powerful, but need not be unthinking, savage, or unfair. Although the retributive urge has, in the past, rampaged unchecked through societies, and impacted negatively on various punishment establishments, this need not repeat itself. In a country where punishment is divorced from society, we can effectively control the passionate conglomeration, and distill from it its positive attributes at the expense of its negative ones. It is easy to dismiss the retributive urge as irrational and immoral when we pass cursory judgement. Superficial investigation is blinded by the potential dangers accompanying the urge. But substantial probing reveals within the darkness a light which should not be ignored.

II

THE GATHERING OF THE CLOUDS

This chapter aims to provide an explanation and description of retribution. By **retribution**, I refer to the act of exacting just desert from an offender¹. Note that I do not intend to provide a *justification* for **retributivism**. Retributivism is a theoretical justification of punishment, which holds we are justified in punishing an offender because (and only because) he is morally culpable for the crime he has committed.

My interest in retribution bypasses the theoretical baggage which comes part and parcel with retributivism. Instead I have chosen to examine in detail the differences between three types of similar behaviour: spontaneous retaliation², revenge, and retribution. The differences between these three behaviours can be separated into two groups: motivational and methodological. The motivational differences are differences concerning *why* we pursue the three behaviours, while the methodological differences concern important features regarding *how* they are pursued.

In the second half of the chapter I present a sociobiological explanation of the evolution of retribution, explaining why retributive behaviour is so ingrained in our behaviour today.

¹ I use the term “offender” not in the legal sense, but in a moral sense.

² I borrow this term from J.L. Mackie, “Morality and the Retributive Emotions”.

Section One - Spontaneous Retaliation & Retribution

When one dog is attacked by another, it generally has two options: firstly, it can flee the vicinity and minimise the chances of further injury, or, secondly, it can immediately return the attack, aiming either to incapacitate the animal, or convince *it* to flee the vicinity. The choice presented here is known as the "fight or flight" strategy. Fighting will be the option most often adopted when the injured animal has something relatively important to lose by fleeing (say, forsaking its food for the day).

It is mistaken, although perhaps tempting, to think that punishment of a wrongdoer is mere spontaneous retaliation, the prevention of a criminal repeating his injury on society. Spontaneous retaliation is a strategy which occurs in the heat of the moment which ensures no future damage is incurred from the same source³. But although its motivation is self-preservation, it is implausible that the motivation is conscious⁴. When we crush our fingers in a door, we often instinctively lash out and punch it. This obviously hampers the preservation of our best interests. Payment for repairs to the door would endanger our interests. This suggests spontaneous retaliation is an impulsive, animalistic reaction. When we are able to control that urge, and count to ten instead, it is only an example of mental control over animalistic impulses.

Retribution differs from spontaneous retaliation in three ways:

(1) It is not a spontaneous, unconscious reaction.

(2) Its motivation is not that of self-preservation.

(3) It has a further motivation: to restore an integral element of the victim's personhood.

Consider number (1). Retribution is clearly not a spontaneous, unconscious reaction. It is not spontaneous because it generally occurs some time after the offence. Some

³ Nietzsche, F. *The Wanderer and His Shadow*, p180.

⁴ Mackie, J.L. "Morality and the Retributive Emotions", p216.

retribution occurs years after the crime, such as the execution of Adolf Eichmann, who was executed in 1962. It is also not unintentional. We do not exact retribution by mere reaction; this is true by definition. We exact retribution because we are aware that X willingly did Y, Y is wrong, and thus X deserves punishment P. There is, as Scheler puts it, a consciousness of "tit-for-tat"⁵. We seek to inflict pain on X because we believe X deserves it.

For (2), retribution seeks to bring harm or suffering to another, even *at further expense to the punisher*. We foot lawyer's fees, face heavy handed "discouragement" from friends of the offender, even place our lives in danger to see justice done. MacDuff engages MacBeth in combat, risking his life to kill the murderer of King Duncan and his own wife and child. In retribution, self-preservation is not high on the list of priorities, if it registers at all. However, when we retaliate spontaneously,

we act that way *without* any wish to do harm in return, merely in order to *get away* with life and limb.⁶

(3) But retribution often has a further motivation: to regain or restore some aspect of a person's self which was destroyed or sullied by the crime:

Retributive desires also flow from a need to restore 'something missing' - a sense of physical and emotional integrity that is shattered by violence.⁷

After a rape, the violation of the body preys on the mind, violating the victim's thoughts and emotions too. Retributive behaviour often originates from the belief that punishment of the offender has the restorative power to heal one's injured integrity or at least staunch the mental anguish of such a violation⁸.

It should now be obvious that retribution can not be equated with spontaneous retaliation.

⁵ Scheler, M. *Ressentiment*, p46.

⁶ Nietzsche, F. *The Wanderer and His Shadow*, p180.

⁷ Jacoby, S. *Wild Justice*, p298.

⁸ Whether this belief is founded or naive is not presently under discussion. See Hampton, "The Retributive Idea" for a discussion of the restoration of victims' sense of value.

There are three motivational differences: One, with spontaneous retaliation, the motivation is immediate and unconscious, whereas with retribution it is conscious and deliberate. Two, with spontaneous retaliation, unlike retribution, the motivation (if one can talk of unconscious motivation) is to escape the situation intact⁹. Three, unlike spontaneous retaliation, retribution frequently aims at restoring "something missing", which is integral to personhood. This latter difference is not definitive of retribution, it is just a trend, but it is illuminating all the same.

There are also methodological differences: One, spontaneous retaliation is initiated in a manner which (hopefully) best preserves one's immediate self-interests, while the seeker of retribution places his/her immediate self-interests in jeopardy. Two, spontaneous retaliation is instantaneous, and does not operate outside the moment of danger. Retribution, however, can extend from the almost immediate to the very distant future.

Section Two - Revenge & Retribution

There is the common belief that "retribution" is a mere euphemism for "revenge"¹⁰ - a politically correct term for a concept otherwise treated with suspicion and viewed to possess an aura of savagery. Even among academics there is great confusion over the two terms. Susan Jacoby, a firm advocate of retribution, asserts the necessity of seeing retribution for what it is - revenge¹¹. Unfortunately, she provides no reasons for why revenge and retribution are identical in all but name and reputation, but it seems a widespread belief in both layperson and academic circles today that this is the case. For Jacoby, society's acceptance of revenge being incommensurable with judicial procedure is mere lip-service, quickly terminated when the courts' judgements of culpability or desert contradict its own¹². Exponents of the community have difficulty understanding why the law cannot be taken into the community's hands when it is failed by the judicial system. They view revenge as a legitimate form of

⁹ Just what the motivation of retribution is will become evident as this thesis develops.

¹⁰ Jacoby, S. *Wild Justice*, p4.

¹¹ There are those who choose to distinguish between vindictive and non-vindictive revenge (see G. Wallace, "Wild Justice"), but I believe this distinction is more sophistry than anything else. However, to keep matters simple, for the sake of my argument, I assume the vindictive flavour of revenge.

¹² By "society" I refer to layperson society.

retribution once it is clear the courts and police are powerless to act in the manner they desire. An example of this is that of the group People Against Gangsterism and Drugs (Pagad) in Cape Town, in 1996. Two hundred members of Pagad executed Hard Livings Gang leader, Rashaad Staggie. The police were unable (and, some believe, unwilling) to protect local residents from the Hard Livings Gang. In a *Cape Times* phone-in survey, an estimated seventy percent of callers supported Pagad's undeniably brutal actions¹³.

Jacoby alerts us to society's immense support for theatre and films with themes of revenge. We need only consider the popularity of movies such as the *Death Wish* series, with Charles Bronson, to be aware of the popular belief that the distinction between revenge and retribution is purely equivocal:

The powerful appeal of the revenge theme in mass entertainment is simply one more manifestation of the gap between private feelings about revenge and the public pretence that justice and vengeance have nothing, perish the uncivilized thought, to do with each other.¹⁴

So is retribution only a euphemism for revenge? I would argue not. There are five differences between revenge and retribution. **These differences must not be taken as definitive of revenge or retribution, as not all features will necessarily be present in any given example.** These differences, save one, merely typify the respective characters of revenge and retribution; they do not signify hard and fast rules. The exception is number five, which is a necessary distinction and the criterion for the terms' logical differentiation.

(1) Revenge concerns itself with the concept of honour, whereas retribution concerns itself with integrity.

(2) Revenge takes advantage of innocent, third parties. Retribution refrains.

(3) Revenge is disproportionate, unlike retribution.

(4) Revenge employs an agency different from that of retribution.

(5) Revenge is always personal; retribution can be either personal, or impersonal.

¹³ Editorial, *Cape Times*, 8 August 1996.

¹⁴ Jacoby, S. *Wild Justice*, p8.

2.1 - Honour versus Integrity

We have seen that one motivation of retribution is to restore the victim's integrity. This is not the case in revenge. Nietzsche identified honour as a central concern of those who seek revenge, which is wholly different from integrity. When dishonoured, we perceive a loss of face in the eyes of others. Damage to our honour occurs when our aggressor displays before others our inability to induce in him a sense of fear¹⁵, regard or respect, which directly undermines our social standing. In fact, in order to damage our honour, the aggressor *deliberately* undertakes a risk. According to Elster, one of the most common forms of revenge was/is the feud:

Important causes of feuds were acts undertaken with the knowledge that a feud might ensue, and undertaken only because a feud might ensue, although not for the purpose of causing a feud.¹⁶

Tweaking the nose of danger is a prerequisite for damaging the honour of another, and has the result of improving the aggressor's social standing and honour. When an aggressor damages our honour, he obviously does not *want* a feud to start - he only wants society to recognise the danger that such an event *could* occur. This is evident in the comment made by a gang spokesman after the Hard Livings Gang revenge murder of Pagad member, Faizel Ryklief. The gang did not wish to become bogged down in a blood feud with Pagad:

We don't want to get involved in a war with Pagad. Such a war would not contribute to development or Cape Town's hosting of the Olympic games.¹⁷

Besides displaying a dubious commitment to sporting excellence, this portrays their alleged lack of fear for Pagad.

But, Nietzsche says,

¹⁵ Nietzsche, F. *The Wanderer and His Shadow*, p181.

¹⁶ Elster, J. "Norms of Revenge", p869.

¹⁷ Editorial, *Cape Times*, 8/8/96.

If our *honour* has suffered from our opponent, then revenge can *restore* it.¹⁸

We restore honour through revenge, because revenge is an expression of *our* lack of fear for our aggressor, displaying that we consider *him* to be of low standing, and hence his judgement of us carries little or no weight. This effectively annuls the damage to our honour.

We must note that revenge very often centres around this concept of honour; this is not the case with retribution. Retribution need possess no guise of civility or honour. It need not aim to display a lack of fear for one's opponent. This is sometimes a point of confusion. Retribution does have the requirement that the offender understand *why* they are being punished. If a wrongdoer does not understand the reasons for his pain and suffering, it is not punishment, but simply harm. And although this sometimes requires forsaking easy chances of seeking retribution, like slashing someone's throat in the middle of the night, this is not because retribution pays homage to honour, but because it desires to communicate to the offender that the pain they are to suffer is a direct result of their preceding wrongful act¹⁹.

Retribution is not a reaction to lost honour, it is a reaction of indignation in response to a harm. The restoration of honour in the eyes of others is a very common cause of *revenge*. Revenge focuses on the self as imagined through the eyes of others. Retribution, however, pays little regard to outward appearance. When we seek retribution for a personal harm, we often assess ourselves internally - we assess our integrity. When we seek retribution for harm done to those we love, we focus on a combination of our loved one's integrity and that of ourselves'. Our own integrity enters the equation because we believe friendship demands ensuring the stability (not only protection, but restoration) of our friends' integrity. If we are remiss in this responsibility, our negligence injures our *own* integrity. When we seek retribution on behalf of a friend, it helps to heal the integrity of both our friend and ourselves.

2.2 - The Sanction versus the Rejection of using Third Parties

When our honour is indirectly harmed - by harm to a loved one - our opponent has used

¹⁸ Nietzsche, F. *The Wanderer and His Shadow*, p181.

¹⁹ Feinberg, J. "The Expressive Function of Punishment".

him/her to harm us. Susan Jacoby²⁰ explains in cynical detail how women were raped by their lover's, husband's, father's, brother's (etc.) opponent. The rape is a tool to damage the honour of the man who "took title" to the woman. When a man avenges such a rape, it is to restore his injured pride and honour. The woman's integrity is, at best, a peripheral matter. As Elster sarcastically puts it,

Honour is an attribute of free, independent men, not of women...²¹

Indeed, a common method of avenging rape was to return the compliment by raping the opponent's wife/daughter/lover²². Likewise, the murder of friends or family was often avenged by murdering the opponent's friends or family members. Hence, the sullyng of honour and the revenge it elicits often involves the use of innocent, third parties. These third parties are simply a means to an end: revenge.

Such behaviour is not evident in retribution. Retributive behaviour forbids the use of third parties as tools of punishment. On this point retributive behaviour is explicit: desert is paid *only* to the wrongdoer. Retribution aims to address a wrong, and to inflict harm on a third party just to inflict pain on a wrongdoer is as worthy of retribution as the original crime.

2.3 - Disproportionality versus Proportionality

Revenge differs from retribution in its failure to observe the principle of *lex talionis*²³ - the principle which states that repayment of suffering must not exceed that which was originally suffered. We feel armed assault is worth about ten years, petty theft maybe a year. Revenge often does not observe such culturally defined restrictions: its vindictive nature renders the notion of proportionality frivolous²⁴. Sometimes in conflicts the victim limps off, licking his

²⁰ Jacoby, S. *Wild Justice*.

²¹ Elster, J. "Norms of Revenge", p867.

²² Jacoby, S. *Wild Justice*, p193-196.

²³ Elster, J. "Norms of Revenge", p867.

²⁴ Wallace, G. "Wild Justice", p368.

damaged pride, only to return with ten armed friends who indulge in collective violence far exceeding the original offence. Such overkill is not condoned by the retributive institution.

2.4 - Personal Agency versus Non-Personal Agency

Revenge also requires a relationship of agency different from that of retribution. With revenge, it is insufficient to allow a disinterested party to inflict suffering on the offender; one must play an active role oneself. And because the method of restoring honour requires the display of a lack of fear for one's opponent, one must be at personal risk, forcing personal involvement in the deliverance of the suffering. Although it is optimal for deliverance, actual physical presence is unnecessary, though one should provide at least a strong guiding hand.

Even in retribution, we would prefer to turn the key to our offender's cell, to have a direct effect on his suffering, but we can be satisfied by handing our complaint and injury over to the state, and allow it to punish the offender in our stead. This is because we do not aim to raise our status or honour in the public eye - we wish only for our offender to suffer as we suffered.

The objection might be raised that no real difference exists between the agency of the avenger and the agency of she who exacts retribution. In the latter, the victim still plays a direct role: he brings the offender to court. In pressing charges, we initiate a causal chain of events, similar to how a mafia boss initiates a causal chain of events by ordering an assassination.

But the causal chains are significantly different. The mafia boss's hired muscle are his own direct representatives - under his control. When they act, they are mere extensions of his authority. Had he not made the order for assassination they would not have acted. However, with retribution the state is not a direct representative of the wronged party: the state may pursue the wrongdoer with or without the permission of the victim. The state acts as an independent body. For this reason I refer to the agency of retributivism as *non-personal*. The victim might still initiate a causal chain of events by reporting a crime (it would hardly be called 'agency' at all, otherwise), but the agency becomes *non-personal* with the intervention of the state. Policy and decision making rests in the hands of another independent party (the state), unlike in the case of the mafia boss.

2.5 - Interestedness versus Disinterestedness

The most distinguishing feature of revenge is its personal nature. When I seek revenge, I generally do so because of a personal slight. I have been dishonoured directly, by damage or insult to my person, or indirectly, by damage or insult to a third party playing an important personal role in my life. I would not seek to avenge myself for damage done to Helmut Kohl, Mother Theresa, Salman Rushdie, or Nigel Mansel. They are not variables in my honour equation. I can only lose honour indirectly if the third party plays an important personal role in my life, which is not the case for these people.

However, with retribution we are not restricted to the realm of personal relations. I can desire to see the orchestrators of South Africa's notorious "third force" activity in the dock. I could not wish to seek revenge against them, however - there is no personal relationship between myself and the victims.

This does not mean retribution is *always* impersonal. We may seek retribution for a harm to ourselves or a loved one. What is important is that retribution does not share the motivational or methodological aspects of revenge. Retribution may be personal or impersonal; revenge is only personal.

This also follows for ignoble, vindictive revenge unconcerned with honour. For example, my neighbour might get the police to ticket my car which is partially blocking her driveway, and in return I call the police to force her to turn down her music during a party the following night²⁵. But I cannot avenge the ticketing of Salman Rushdie's car because of his neighbour's complaint, for I have no personal connection with him.

We must keep in mind that I refer to fairly pure versions of revenge and retribution throughout this thesis, for conceptual clarity. However, the two become intertwined in certain circumstances. For example, when I respond to defamatory speech, am I trying to exact revenge or retribution by suing the offender? If X makes a defamatory claim on a rugby field empty save for himself and I, then I would most likely feel angry at the accusation, and perhaps want to cause him some discomfort, but I would not rush out to the courts to press charges. And this is not because I have no witnesses, but because there were no third parties

²⁵ My thanks to David Brooks for this point.

to hear the accusations. My desire to cause him discomfort, then, would be retributive in nature, for it would aim to protect my own integrity, not my honour. However, defamatory speech is seldom made in private, and hence, if heard by a third party, I would seek to press charges in order to (at least partly) defend my public honour.

The threat of defamation causes us to respond in a hybrid manner employing both revenge and retribution. Revenge and retribution are two separate complex reactions, coming into play depending on the state-of-affairs. At certain times the circumstances calling for revenge blend into the circumstances calling for retribution. Despite such blending, the two are separate concepts. At a certain point, like in connection with defamation, revenge and retribution operate together in response to the same issue, but this does not mean revenge and retribution are ever *the same*. Retribution never seeks to restore honour, and revenge does not seek to restore integrity, although this might be the appearance when both operate simultaneously. How the two operate together will become clear in the next chapter.

Allow me to summarize the important differences which may occur between revenge and retribution. Motivational differences centre around honour. We are most often motivated to seek revenge to restore honour in the eyes of others. Retribution never aims to restore honour. If anything integral to personhood is to be restored, it is integrity.

There are four methodological differences. First, with retribution, there exists a strong moral code of restrictions, forbidding any indirect forms of punishment, say, via a third party (punishment is dealt only to the offender). Second, retribution forbids more suffering to be inflicted on the offender than is judged to be deserving by that society (*lex talionis*). Neither of these restrictions hold for revenge. Third, the pursuit of revenge makes personal involvement in the repayment of pain necessary, unlike when we seek retribution. Fourth, and most importantly, revenge is an act which is necessarily *consistently* personal, as opposed to retribution, which is only *occasionally* personal.

Section Three - Evolution & Retribution

Something which seems obvious is that retribution is almost always preceded by some form of emotion. Such an emotional base is often referred to as *moral indignation*. There may indeed be an isolated few who do not react to a dreadful crime with moral outrage. Perhaps there are

those who emotionlessly assess the culpability of a person who, like Steven Judy, raped and murdered a woman stranded with a flat tire, drowned her three young children and showed no remorse whatsoever²⁶. But by and large we react emotionally to such accounts. The question to be answered here is *why*? Why is it that *we*, unlike those few other cool-headed folk, do not (or cannot) assimilate information of a crime and pass cold, calculating and rational judgement on culpability and desert? In what follows I argue that our retributive emotions exist as part of our evolved human nature. Emotionless retributive judgements are nothing more than successful vetoes of this aspect of our human nature by the intellect.

The primary objection to retributive punishment is that it generates no beneficial results. The harm already exists and is irreversible - punishment cannot undo the harm. But we still seek retribution when someone harms us. It is clear retributive behaviour can be detrimental to our material wellbeing. It almost always includes some personal risk, be it in the form of lawyers fees, attacks from acquaintances of the accused, etc. But no matter how much rationalising we engage in, we still desire retribution, regardless of its negative impact on our future.

But if there *is* a negative impact, and if the principle of natural selection is true, the risks accompanying the tendency to seek retribution should have eradicated those genes which generate such tendencies. In natural selection, a creature is exposed to environmental pressures. If it possesses a gene giving rise to behaviour or organs conducive to survival (if they increase the chances of that creature surviving the environment), then that creature will live to produce offspring, resulting in the continuation of such a gene. When, or if, a particular gene is *not* conducive to surviving environmental pressures, there is a fair chance the superfluous gene will slowly be bred out of the creature's descendants, leaving only those genes which *are* helpful. An example of this is our wisdom teeth and appendices. Neither are useful for survival. In fact, both are detrimental, and will slowly disappear. If the gene *hampers* the creature's survival (what Dawkins calls a "lethal gene"²⁷), the gene will actually be responsible for the death of its host, reducing the number of offspring it can produce, and hence, over a period of time, destroying that particular gene strain entirely. A lethal gene

²⁶ Moore, M. "The Moral Worth of Retribution", p184.

²⁷ Dawkins, R. *The Selfish Gene*, p43.

carries with it its own seeds of destruction. For example, the gene providing eyes on fish living at great depths will be a lethal gene - the fish will have no light to use their eyes, and will most likely bump into sharp objects, causing injury and infection. This will result in early death, no offspring, and hence the demise of the lethal gene.

The problem here is that if retributive behaviour hampers our survival rather than helping it, why is retributive behaviour so proliferate today? If the "retributive-gene" (for lack of a better term) is degenerate, why has it not been eradicated? De Sousa rightly points out that we cannot attribute emotions to "chance genetic drift" as we can with different eye colours²⁸. Genes neither conducive nor harmful to our survival may indeed remain in our hereditary DNA structures, but emotion-genes are not of this nature. For emotions, unlike eye colour, play a profound role in our lives, and greatly affect our actions. It matters not that you have blue, green, or brown eyes, but it does matter that you feel love, jealousy, hatred, grief, and, yea, the retributive urge.

Frank²⁹ argues that the human species genetically evolved "predispositions". Such predispositional behaviour would cause in humans a tendency to behave in particular, predetermined manners. For instance, some people tend to faint in particularly dangerous situations. On occasion, such predispositions might be detrimental to an individual. For instance, the tendency to faint in extremely stressful situations, say, when being mugged, will enable a thief to steal the very clothes off one's back. But such cases are anomalous. More often than not, predispositional behaviour serves our best interests.

Imagine you, for some reason, steal food from dogs. You have a choice: Fiffi, Rex and Butch. Someone with knowledge of the dogs informs you that Fiffi growls pathetically, but does not stop someone taking his food. Rex, however, bites anyone's hand he catches in the act. But someone can steal Rex's food while he is otherwise occupied at the bottom of the garden, and still make another appearance the following day and steal his food without fear of attack. Your last choice is Butch. If anyone tries to steal *his* food he bites the offending hand. Waiting for him to spend a penny is also useless, because Butch carries a grudge. If he does not catch the offender on the spot, he chases him all the way home. If he still hasn't got a

²⁸ De Sousa, R. "The Rationality of Emotions", p135.

²⁹ Frank, R. *Passions Within Reason*.

good bite in, he waits until he sees the offender again, whether he is trying to steal his food, or just casually strolling through the park. The question I put to you is this: Which dog would *you* steal from?

In case it requires explanation, Rex symbolizes a person who retaliates spontaneously, while Butch symbolises someone who retaliates spontaneously and is predisposed to seek retribution. Spontaneous retaliation is an effective predisposition for deterring current attacks and thefts. Possessing both this *and* a retributive predisposition, however, is better. So retribution is conducive to our survival because of its deterrence value, even if, at times, it hampers our survival in the form of lawyers fees, etc.

What of the charge that a retributive predisposition can result in our death? If we are assassinated by the Mafia for bringing them to trial, how is this conducive to survival? Such cases are obviously *not* conducive to survival. But the predisposition is analogous to defending oneself with a gun. It is, generally, a useful survival strategy. A gun which backfires and kills its wielder is unfortunate, but the predisposition to use a gun is still an effective means of defence.

According to Frank, it is the very so-called *irrationality* of a retributive predisposition which deters³⁰. Suppose I can harm one of two people: A is a purely "rational" fellow (ie: he only acts in a manner deemed to be in his best interests), while B is "irrational" (ie: B will act contrary to his best interests if retribution makes this necessary). It is because we think B is irrational that we steer clear of harming him, and choose A instead. Thus Frank states:

Often it will be prudent to exact revenge even at considerable personal cost. This is especially true when the action helps to create a reputation that will deter acts of aggression.³¹

3.1 - Emotional Predispositions

For people to *be* predisposed to behave retributively, there must exist some mental state causing them to afford little or no consideration to the negative impact retribution has on their immediate self-interests. Frank believes it is very difficult to identify the obscure advantages

³⁰ *Ibid*, p5.

³¹ *Ibid*, p83.

of certain predisposed modes of behaviour and attempt to follow such modes *intentionally*. For without aid of an overriding mental state to deal with occasions where such behaviour is detrimental to one's immediate best interests, one will have difficulty motivating oneself to behave in such a manner.

A person might be able to calculate perfectly well that a tit-for-tat was the right strategy, and yet be unable to summon the discipline to implement it.³²

The problem is not one of calculation, but motivation. Emotions provide us with the mental state necessary to override considerations for those situations where our predisposition generates immediate negative results. An emotion such as anger shifts our attention from calculative rationality towards calculative pain infliction. The desire to benefit from the more immediate self-interests is offset by the desire to return the suffering, thereby ensuring a retributive reputation and its accompanying benefits in the future³³.

3.2 - The Expressive Mechanism of the Retributive Urge

Not only do we want to deter those with personal experience of our retaliation, but also people without such experience. People must have a method of determining who is likely to retaliate³⁴ and who is not. In other words, we must have a means of determining who has a retributive predisposition, and who does not. Predispositions are useless if unrecognised by others. If we cannot communicate our predisposition to retaliate, we will still become victims, *and* we will waste resources seeking retribution³⁵.

Emotions not only serve us in a motivational role, but *signal* our mental predispositions³⁶. Others can predict our behaviour if they can infer our tendencies:

³² *Ibid*, p89.

³³ *Ibid*, p83.

³⁴ By this I do not mean "spontaneous retaliation". I refer to any aggressive reciprocal behaviour.

³⁵ Frank, R. *Passions within Reason*, p55.

³⁶ *Ibid*, p55.

To read the emotional configuration of another's body or face is to have a guide to what they are likely to believe, attend to, and therefore want and do.³⁷

A man prone to retaliate could signal this tendency via facial expressions, body language, eye movement, voice modulation, etc.³⁸ His face might display a steely expression, a set jaw, a stolid and proud stance, challenging and unflinching eyes, and a firm, commanding voice. These features inform us that we face someone confident of their prowess, who is not afraid, and even challenges us. We are more likely to attack someone who refuses to meet our eyes, slinks away, and speaks timidly. Although we can not calculate perfectly whether or not the former person is a retaliator, we can calculate is a greater *chance* of him being a retaliator than the meek person.

Jon Elster argues Frank's thesis contradicts itself. In a society of rational and irrational people, the rational would avoid crossing swords with the irrational - the ones who exact retribution. Thus the irrational would have an evolutionary advantage. But, says Elster, if this was the case, the proportion of the irrational genotype would grow, until there were more irrational people than rational. Consequently, the evolutionary edge of the irrational persons would cancel out, for they would no longer be deterred by the threat of defenders' reprisals. This would result in a decrease in the proportion of irrational people. Thus, Elster claims:

the population will have a mix of both [rational and irrational] genotypes, with equal expected reproductive success³⁹.

But it is Elster who makes the mistake. Frank's "irrational" retaliators are only considered irrational because their predisposition to retaliate sometimes produces a negative effect on their immediate self-interest. This does not mean they also possess a predisposition to *attack* others (or pass such a disposition onto their descendants), especially without considering the risk of retaliation. Elster has mistaken Frank's notion of "irrationality" for a notion of complete and utter irrationality.

³⁷ De Sousa, R. "The Rationality of Emotions", p137-8.

³⁸ Frank, R. *Passions Within Reason*, chapter 6.

³⁹ Elster, J. "Norms of Revenge", p881-882.

3.3 - Disinterested Retribution

Thus far retributive emotions and behaviour are indistinct from revenge emotions and behaviour, in terms of evolution. We can think of them both as one larger concept. But at some particular point in evolutionary history, what became retributive emotions and behaviour branched away from this large concept, thereby defining both itself and what was left behind - the revenge emotions and behaviour. When we started developing an interest in the well-being of others, the retributive urge evolved into its own, distinct experience with its own, distinct behaviour. We often respond with the retributive urge to a dreadful crime involving people with whom we have no personal relationship. *Why* this has evolved must be scrutinized.

J.L. Mackie suggests that "co-operation in resentment" is a useful survival strategy for humans⁴⁰. By adopting a strategy of mutual involvement in each other's wellbeing, we gain support when defending ourselves or seeking reprisal. Even the infirm, or disabled, can effectively reciprocate when harmed. People who support another's retaliation will benefit from similar support when the need arises. As Richard Dawkins writes:

Natural selection favours genes which control their survival machines in such a way that they make the best use of their environment. This includes making the best use of other survival machines...⁴¹

Herds of buffalo use each other's presence by bunching up, hiding individuals from predators. A herd of buffalo would be extremely strong if they *all* attacked an approaching predator. Humans possess a strategy similar to this. By grouping together and attacking an offender, humans lend each other strength instead of leaving the victim to seek retribution on her own. When we identify that certain kinds of behaviour are to be resented, and that such behaviour is injurious or detrimental not only to oneself, but to others as well (Mackie's first and second stages of universalisation respectively⁴²), we develop the "'disinterestedness' and 'apparent impartiality' that are characteristic of the moral sentiments."⁴³ By 'disinterested' Mackie does

⁴⁰ Mackie, J.L. "Morality and the Retributive Emotions", p217.

⁴¹ Dawkins, R. *The Selfish Gene*, p71.

⁴² Mackie, J.L. *Ethics, Inventing Right and Wrong*, chapter 4.

⁴³ Mackie, J.L. "Morality and the Retributive Emotions", p217.

not mean unemotional. The term refers to a state of mind whereby one puts the same value and interest in another's well-being as one does in one's own well-being.

The sentiment of indignation for another's undeserved suffering works, on Frank's account, in two ways. First, through a variety of bodily mannerisms, it warns potential aggressors of a collective response to any attack on any member of that group. Second, it provides the mental state which discourages self-interested behaviour and encourages the selfless defence of a victim during an attack, or reprisal if the defence is unsuccessful.

Section Four - Conclusion

Retributive behaviour can be explained in terms of this sociobiological model. Frank clearly states (and I concur) that his intention is not to champion the belief that biological forces are the only forces governing our behaviour⁴⁴, only that they have *some* influence. Just how strong that influence *is* remains a moot point - undoubtedly the unconscious has a role to play. I use Frank's thesis only to provide what I believe is a plausible and accurate account of the origins of retributive behaviour in society. My hypothesis is that retribution, a survival strategy limited to particular genes, has evolved from revenge, which in turn evolved from spontaneous retaliation. This pattern of evolution makes sense when we consider the strategic advantage retribution has over revenge. For with revenge, a victim operates in isolation, which, for the weak, makes revenge practically impossible, and hence a much more attractive proposition to those of a predatory nature. With retribution, however, a victim need never act alone, and may have the entire weight of a government behind them. The strategic edge enjoyed by retribution obviously helps the retributive gene proliferate.

However, it is one thing to assert that retribution evolved from revenge, but quite another to explain *how*. In the next chapter I will provide an analysis of the retributive urge and show how it differs from the revenge urge. Because these two urges are primarily responsible for retribution and revenge respectively, the analysis should provide insights into how the evolution occurred.

⁴⁴ Frank, R. *Passions Within Reason*, p45.

III

MAPPING THE TEMPEST

The second chapter served, among other things, to highlight how the *modus operandi* of retribution differs from that of revenge. For instance, we observe two principles which regulate retribution: (1) the principle of responsibility, which stops us punishing innocent parties; and (2) the principle of proportionality, which prohibits us from serving less or more suffering than that received¹.

Unfortunately, this proves nothing. It is possible that retribution and revenge are identical in all but name and accompanying circumstances. Perhaps retribution is nothing other than revenge sanctioned by the observance of these two principles of retribution. Perhaps those who seek retribution merely repress their vengeful impulses when they find no "justification" in the form of such principles, but when such "justification" exists, release themselves into an indulgent orgy of sadism.

What I must prove, then, is the existence of inherent differences between retribution and revenge. I need to show that retribution is not simply revenge in the presence of certain exonerating states of affairs which give us the peace of mind to inflict suffering on another human being.

¹ Sorell, T. *Moral Theory and Capital Punishment*, p146.

My other task is to provide an analysis of the retributive urge, the emotive complex which often generates the act of retributive punishment², as this will provide the necessary groundwork for later discussion regarding the rationality and morality of the retributive urge. Therefore I intend to combine the two tasks by analysing the retributive urge and comparing it to the revenge urge. The analysis shows there are four components in the retributive urge: feelings, cognitions, evaluations and desires. These components are *constituent* of the urge, ie: are logically necessary. By means of the analysis, I elucidate differences between the emotional components of the retributive urge and those of the revenge impulse. Because these four components define their respective urge/impulse, any difference between their components means a difference in the emotional complexes, resulting in the conclusion that the retributive and revenge impulses are different. Obviously, the greater the differences in the components, the greater the differences in the overall urge/impulse. However, we should not expect overly vast differences between the retributive urge and the revenge impulse, for it is my contention that the former evolved from the latter. Hence the urges share many characteristics. But, it must be noted, the differences which *do* exist are sufficiently relevant to distinguish the two.

To approach the retributive or revenge urges as simple emotions would be naive. They are intricate complexes of emotional components which are supplied by the interaction of various simple emotions, but which transcend any one particular emotion. This is because, as Plutchik states, simple emotions and simple emotional models frequent the minds of theorists, but seldom occur in the practical world. In the practical world emotions merge, much as colours do. A pure colour is an abstract term - perhaps a pure emotion is too³.

However, to understand an emotional complex, we must understand its components. As I have stated, the retributive and revenge urges exist as complex interactions between various emotional components. To best understand these components, we should think of them as the

² I say "often", because we may make retributive judgements and pursue retributive punishment in the absence of preceding retributive emotions.

³ Plutchik, R. *The Emotions: Facts, Theories, and a New Model*.

constituents of pure emotions. If given three distinct emotions which enter into a dynamic relationship with each other, the constituent components of each emotion interact and generate an impure complex consisting of the same components, but with a different structure.

To decide which components can interact in this manner, we must consider what components constitute a pure emotion. Theorists all argue for or against emotions consisting of at least one of the following: cognitions, evaluations, desire, and affects. Some argue an emotion is only an evaluation (Solomon) while others argue for its tri-partite structure: cognitions, desires and affects (Oakley). Other theorists choose different combinations. All four categories are intuitively plausible contenders as participants in emotional models, for all theorists spend time accepting or rejecting them⁴.

I aim not to argue for or against a particular theory of pure emotion, but to provide an analysis of the retributive urge in order to differentiate it from the revenge urge. To do this, I will need, on occasion, to refer to arguments employed by various authors in the emotion-model debate as to what components actually *can* exist in pure emotions.

To successfully analyse the retributive urge, we need an example to illustrate the differences and similarities in the two urges. Let us take the following scenario for purposes of analysis. Four people, A, B, C, and D stand in a circle, playing a simple ball game - throwing the ball from one to another in no predetermined pattern. Assume A and B are close friends, but no other interpersonal relationships exist one way or another. Sometime during the game, A throws the ball hard and catches C in the face, starting a nose-bleed.

⁴ For a detailed summary of the various emotional models, see C. Calhoun & R. Solomon (eds.), *What is an Emotion?*

Section One - Cognition

1.1 - Event Recognition & Intensional Object

There are several aspects to the cognitive component of the typical emotion. First, we must recognise as a necessary condition for an emotional reaction such as the retributive or revenge urge, that some event has taken place in which someone has been harmed in some way. Call this the *event-recognition* aspect of the cognitive component. In this case, we recognise A threw the ball which injured C. It should be obvious why we must recognise such an event before it can affect us emotionally. Closely related to this is the *intensional object*, the second aspect of the cognitive component. By “intensional” I mean that the emotion is “about” something - it has an object. The object of the urge is not the aim of the emotional response, but with what the emotional response is concerned⁵. In this case it is person A, who has thrown the ball⁶. There is debate as to whether we can have objectless emotions⁷, but it is clear that the retributive urge necessarily possesses an intensional object. I cannot experience the retributive or revenge urges unless I have an intensional focus. This is not to say I must have a specific individual in mind. I might wish to punish the category of Criminals, or the category of people who have humiliated me. In such cases, my intensional object is a *type* and not a *token*.

Here we can identify the first difference between the retributive and revenge urges - the categories in relation to which we may experience the emotional responses. There is a difference between the *types* and *tokens* of the retributive urge, and those of the revenge urge. We can not desire to avenge harms to people to whom we are not personally connected. For example, in the above scenario, if A throws the ball into C's face, C may well become emotionally involved in the

⁵ Kenny, A. *Action, Emotion and Will*, p187-8.

⁶ The intensional object in this example will change, depending on the emotion experienced. For instance, if sympathy is experienced, the intensional focus will move from A to C.

⁷ See Lamb, R. “Objectless Emotions”; Lyons, W. *Emotion*; and Robinson, J. “Emotion, Judgement and Desire”.

situation. He might experience (assuming the difference exists) retributive or revenge emotions. But, given that C was hit by the ball, D is incapable of feelings of revenge. This is because D has no personal relationship with C, and hence does not believe he has been harmed by the event. However, D *can* experience retributive emotions. Despite having suffered no harm, he can empathise with C's undeserved pain, and make a suitable emotional response. This is a very important point. We might wonder whether C's emotional reaction to being struck is retributive or vengeful in nature, for we can expect both reactions (assuming they are different). But the same confusion does not exist for D's reaction, for he *can not* react vengefully. D's emotional response must thus be something above and beyond mere revenge impulses. To assert otherwise is not only extremely implausible, but attempts to redefine the very meaning of revenge - the infliction of harm for a harm (personally) experienced. Hence there exists an inherent difference between revenge and retribution regarding intensional objects. For revenge, our range of possible intensional objects is limited to the personal realm.

1.2 - Belief

However, the cognitive component possesses more than an intentional object. There is also the *belief aspect*. I must believe something in connection with the intensional object - the object must be embedded in a belief context. For example, as Kenny identifies, we can only envy something we believe will be good (for us)⁸. Intuitively we demand of our intensional object the property of culpability before we can experience the retributive urge. For example, if A throws the ball into C's face, in order to experience the retributive urge, D must *believe* that A is culpable, and this is determined by assessing whether or not A *intended* to hurt C. This property is not demanded for the revenge urge. C may assess A to have unintentionally caused the harm, yet still desire to march over and headbutt him in return. We would agree that if C believed A to be innocent, yet still harmed him in return, that C was acting vengefully, not retributively. But if C assessed A to be guilty of intentionally throwing the ball into his face, there is the original confusion: is he acting

⁸ Kenny, A. *Action, Emotion, and Will*, p190.

vengefully or retributively? It seems impossible to determine. If C believes A was guilty, then we might just be witnessing revenge within a context of social sanctioning. A's guilt justifies C to return the harm - but this does not mean C is acting retributively as opposed to vengefully.

We cannot, in this case, prove C is experiencing one emotional complex instead of another, but this is not overly important. It is clear D's response is retributive and not vengeful, and this establishes the distinction between the retributive and revenge urges.

So there are two basic differences between the two urges at the cognitive level. First, the urges possess different ranges of intensional focus. The retributive urge can be experienced in connection to impersonal, unknown intensional objects, unlike the revenge urge which can only be experienced in connection to personal, known intensional objects. Second, it is a necessary requirement for the retributive urge, unlike the revenge urge, that we attribute culpability to our intensional object.

Section Two - Evaluation

At some stage in the unfolding of the retributive urge there exists an evaluation. The evaluation surpasses the mere belief that A committed a harmful deed. Not only does D believe A harmed C, but that the harm ought to be repaid by punishing A. Because A harmed C, D judges that A deserves to be punished accordingly. It is this evaluation of just desert which is so problematic in the debate between retributivism, rehabilitation and deterrence theories of punishment. Critics of retributivism claim there is a gap in our deductive reasoning - that there is no logical deductive flow from the premise that A committed a crime to the conclusion that A deserves to be punished. Luckily I do not have to argue for such a conclusion. It is important to note, however, that almost all of us make such an evaluation when confronted with a particularly nasty crime.

It might be suggested the evaluation I am referring to occurs prior to the retributive urge. It is possible, some might say, that we have mentally constructed a category judgement regarding crimes. The category judgement would ensure that whenever we identified a crime, we would

seek to punish the wrongdoer. Thus the retributive urge would not contain an evaluative component, only a belief component which would be applied to a category judgement.

But this is wrong. It is possible to have the prior category judgement that crimes deserve to be punished, identify a crime, yet not be moved by any retributive emotions. I can judge the Unabomber as deserving of punishment for the lives he destroyed without feeling emotional. This is because I have not seen the crime in a particular way. I can understand the Unabomber's fixation with technology's alienating effect on society. I view the Unabomber as a naive but tragic figure (if not slightly mad), and this evaluation is insufficient for the retributive urge, even though I judge him to deserve punishment. It is *how* we evaluate the particular crime token which determines the absence or onset of the retributive urge. Were it the mere application of a crime token to a category judgement, we would experience the retributive urge for any crime whatsoever, which is not the case. Placing a qualifier on the category judgement, such that only crime tokens which are relatively despicable can generate retributive emotions, will not help either, for two reasons. Firstly, to view crime Y as more despicable than crime Z is to evaluate the crime, which undermines the objection that the evaluation occurs outside of the retributive urge. Secondly, we can experience the retributive urge in connection with a relatively unimportant crime, and not with one which is more inhumane. I might feel retributive emotions towards a colleague whom I catch skimming money from my wallet, but pass emotionless judgement on a mass murderer in Russia.

What implications does this hold for the difference between the retributive and revenge urges? Let us recall the sceptics' theory: the retributive urge is nothing more than the revenge urge sanctioned by certain socially imposed conditions.

Suppose we return to our working example: After A has caused C's nosebleed, D believes A intentionally threw the ball into C's face. Furthermore, D judges A *ought* to be punished - that A is *deserving* of punishment. D has no personal relationship with C, yet still decides A should be punished. This will not be the case for revenge, because of the difference in range of intensional objects. Revenge does not extend into the impersonal, thus it can not contain the disinterested evaluation that A ought to be punished for his offence. To be sure, C might evaluate A to be

deserving of punishment, but this evaluation occurs from a personal perspective, and not an impersonal one.

Section Three - Desire

The desire to punish someone we judge deserving of punishment is the next necessary component of the retributive urge. When A harms C, D cannot be said to experience the retributive urge unless he *desires* that A be punished. The judgement⁹ that A deserves punishment does not necessarily play a causal role in the generation of such a desire (although I would argue it is a necessary condition). D will not automatically desire A's punishment for harming C simply because D believes A to be guilty and deserving of punishment. We may hold such beliefs and make such evaluations without triggering an emotional response. I believe Yeltsin is guilty of unfairly subjugating Chechnia, that he should make reparations, and offer a public apology, but I do not feel the onset of the retributive urge when I consider the matter. In other words, judgements are not sufficient conditions for desire.

We must insist on the presence of the desire component in the retributive urge, otherwise someone could claim to be moved by retributive emotions, yet want to reward X or play tiddlywinks with her¹⁰. The desire to punish is a defining characteristic of the retributive urge.

There is the possible objection that an *evaluation* of a crime just *is* seeing it in a particular way and being disposed to behave towards it accordingly. This objection is a derivative of Solomon's, who claims emotions are nothing more than collections of normative judgements, and once all necessary judgements have been made, we *must* react in accordance with the judgements:

[A]lthough one might well make one or several judgements of the system without having the emotion, my claim is that one cannot make *all* of them and not have the emotion.¹¹

⁹ I use "evaluation" and "judgement" interchangeably.

¹⁰ See Oakley, J. *Morality and the Emotions*, p27.

¹¹ Solomon, R. "Emotion and Choice", p275.

If Solomon is right, then there is no need for a separate desire component in an emotion, for the evaluations contain in themselves the desire to act in a particular way. But this is highly unlikely, for there is more evidence suggesting emotions are *not* only judgements than the contrary. For example, emotions take hold of us, unlike judgements¹². We often find ourselves caught up in anger, or infatuated with a lover. I do not claim emotions are unthinking, or non-rational, only that emotions develop in a manner unlike that of judgements, which are preceded by careful, rational consideration. Assuming judgements and emotions to share a common identity is intuitively discordant - they inhabit different areas on the conceptual map¹³.

The phenomenon of *emotional inertia*, where we change our judgement yet continue to experience the original desires and emotional feels, is also problematic. For instance, I might think highly of my brother, and love him dearly, because I think him a generous, caring man. Solomon would be comfortable accepting this emotional reaction to be the judgement of his moral fibre and integrity. But suppose one day I discover he is involved in organised crime, has killed more people than I can count on my fingers and toes, and is all in all a thoroughly ruthless person. Yet despite this I still love him and desire his company. We now have a case where the judgement which apparently generates the desire for his company as well as the warm feelings of love has reversed itself. We would expect a similar reversal in our desires for proximity and our warm feelings of love, but this is not the case. This can only be because emotional reactions and desires are separate from and independent of our normative judgements.

A possible defence is to suggest I have two competing judgements - a conscious one (that my brother is running for the position of the Anti-Christ) - and another, unconscious one which judges him as a wonderful, lovable person.

Such a move is very *ad hoc*. To hold unconscious judgements responsible for contradictory desires and emotional responses is a desperate attempt to salvage a floundering theory. I do not dismiss Freud's psychoanalytic theory as nonsense; I accept the existence and influence of unconscious judgements and beliefs. But there is no plausible reason to suppose

¹² Leighton, S.R. "A new View of Emotion", p134.

¹³ Calhoun, C. "Cognitive Emotions?", p330.

every judgement accompanied by a contradictory desire or incongruous emotional response can be solved in this *ad hoc* manner.

Furthermore, if we *did* have one conscious and one unconscious judgement in competition, we would, on Solomon's reading, expect an oscillation between two competing desires or emotional feelings, like my desire for my brother's company competing with a desire to be as far away from him as possible, or warm feelings of love struggling with cold, disdainful feelings of rejection. This need not be the case - I might never feel rejection for my brother nor desire his absence.

It also seems logically possible to make normative judgements without reacting emotionally. No matter how many cognitions and evaluations we are required to make, it is logically possible to make them without any emotional experience¹⁴. Of course, Solomon might assert our obvious failure to make all the relevant cognitions and evaluations, otherwise we *would* have responded emotionally. But this makes his theory unassailable, and the unassailableness of a theory is its greatest weakness. A tautologous theory is not one to be discussed - it is one viewed with suspicion.

So, contra Solomon, emotional feels and desires are not judgements. They are independent of judgements both logically and causally. This obviously has ramifications for the claim that retributive desires and feelings *just are* a retributive judgement, because the retributive urge is, as we shall presently see, a combination of emotions.

3.1 - Two Levels of Motivation

The desire components of the retributive and revenge urges are identical at one level. There appears no identifiable difference between the desire to harm someone for revenge or for retribution. At this level the desire components of the two urges are relatively primal. I hence refer to this level as the *primal motivation*. However, at a secondary level, an important difference between the desire components is evident: the act of inflicting harm is not initiated for

¹⁴ Oakley, J. *Morality and the Emotions*, p26.

its own sake, but for an ulterior purpose. This is referred to as *instrumental behaviour*¹⁵, hence I refer to the secondary motivation as the *instrumental motivation*. In chapter II I discussed how the honour-bound avenger must display to their opponent a lack of fear. In this case the infliction of harm is motivated not only by a desire to inflict harm, but to inflict harm for another reason - to flaunt fearlessness and thus restore honour. Of course, not all revenge is honour-orientated, and sometimes the desire to inflict pain is for purely vindictive reasons. This comes close to the realm of sadism, where we are titillated by the infliction of suffering. For retribution, on the other hand, the secondary level motivation would not be that of honour or vindictiveness. No honour is afforded to D when he responds in anger to A's cheap throw. The motivation to punish A will be seconded by the desire to restore C's integrity, or see justice served. This is clear, because D has nothing to gain (and only opens himself to possible reprisal) by siding with C. Alternatively, D might be motivated by considerations of fairness, or justice. In punishment we inflict suffering on offenders in one form or another. But our ultimate wish (although we are seldom indulged) is to receive sincere apologies from the offender for their wrong. We want them to feel guilty, or to feel remorse. Little satisfaction is gained from punishing an offender who laughs at our values and feels sorrow only for his capture. Our greatest satisfaction is to see our interest in justice adopted by, and reflected in, the offender's actions.

Thus there are two levels of motivation. The *primal* motivation exists in both urges, but we cannot define the desire component of either urge by this level of motivation alone. I hazard the suggestion that *spontaneous retaliation* was the harbinger of the *primal* motivation, but that the desire components of the revenge and retributive urges evolved beyond this into a multi-tiered structure. The desire component of the revenge urge operates on a primal level, but also on at least one other level, which can be honour-orientated, vindictive, or both. The desire component of the retributive urge, however, is founded on the primal level, but seconded by considerations of integrity, justice, or both. Of course, this is easier claimed than supported. The critic can admit the cognitive and evaluative differences are enough to separate the two urges conceptually, but that the retributive urge still shares one important feature with the revenge urge: its vindictive

¹⁵ Berkowitz, L. *Aggression*, p11.

motivation. Once certain conditions such as culpability have been met, which satisfy our consciences, our vindictiveness manifests in the form of the retributive urge.

But this is implausible. If ever the retributive urge was vindictive, it would be in the personal realm, where we are personally involved in suffering. Our vindictiveness is surely easier sparked by personal suffering than the suffering of unrelated persons. But at the personal level, as we have seen, the retributive urge is non-vindictive, and for it to suddenly become malicious in the impersonal level seems fanciful. The most likely contender for vindictiveness is the revenge urge. And we would expect an urge largely motivated by vindictiveness to expand beyond the personal realm into the impersonal, to jump at any opportunity to inflict suffering. But this is not the case - the revenge urge remains personal, suggesting the retributive urge, which is less suspicious, is certainly not vindictive.

Of course, the critic might deny that the revenge urge remains personal. He might assert that it moves into the impersonal realm in the guise of the "retributive urge". But this criticism fails for a number of reasons. First, it sounds ludicrous to suggest the retributive urge extends vindictively into the impersonal realm in light of its secondary level motivations such as the restoration of integrity and justice. The co-existence of such incongruous desires in the retributive urge is extremely implausible. Second, we have already established the two urges are separate, independent concepts. In the personal realm the two urges are distinct. Why suppose they are indistinct in the impersonal realm? On this point the burden of evidence should lie with the critic. Third, the revenge urge is a very selfish emotional complex. It concentrates on the restoration of honour, or in *schadenfreude*, the enjoyment of another's suffering. What partly defines the revenge urge's selfish nature is its disinterest in the plight of others. Another's integrity is of no interest to the avenger. So it is extremely doubtful that revenge ever extends into the impersonal realm, for it contradicts its selfish nature. Of course, vindictiveness is selfish, and this could draw revenge into the impersonal realm. But this seldom, if ever, occurs. The Hard Livings Gang avenges attacks on its own, but abstains from responding to crimes unrelated to it. Unless a crime impacts on gang honour or business, groups with a tendency for revenge are suspiciously absent when it requires reprisal.

Section Four - Feelings

A frequently asked question is why feelings are important to emotions. Theorists such as Kenny claim feelings are symptoms of emotions, not actually constituents. Such a criticism implies feelings are merely symptomatic of the retributive emotions, but not actually constituent thereof. Thus two points which must be addressed. First: what do I mean by feelings? Second: why are feelings necessarily a constituent of emotion?

4.1 - The Nature of Feelings

By feelings I refer to the physiological or psychic sensations we typically experience when embroiled in an emotional episode. Physiological feelings are physical sensations of which we are aware during an emotional episode: palpitations of the heart, cold sweats, dry mouth, moist palms, shaking muscles, etc. Psychic feelings are those description-resisting "feels" or *qualia* of which we are aware, such as the very "anger-ness" of anger, the "fear-ness" in fear, etc. I believe only feelings, physiological or psychic, of which the subject is *aware* count as feelings *per se*. This hypothesis extends to all emotions, not just those of the retributive urge. This is a relatively radical break from recent emotional theory. Justin Oakley asserts the existence of unfelt, unnoticed physiological or psychic affects. That is, unconscious physiological or psychic occurrences can, on occasion, replace the need for physiological or psychic *feelings* which are consciously perceived by the person involved in the emotion.

[W]hen we do have an emotion without feeling it...our emotion would still have an affective dimension if we were undergoing certain unusual bodily changes which were here associated with our emotion.¹⁶

¹⁶ Oakley, J. *Morality and the Emotions*, p9.

Such unnoticed feelings are, Oakley asserts, sufficient to count as the affective component of an emotion. Oakley's justification is that we can have emotions for extended periods of time yet only *feel* them intermittently¹⁷. I might be angry with my lover for a week yet not *feel* angry with her while teaching philosophy, watching television, or tying my shoelaces. For this reason Oakley concludes:

feelings cannot be an essential part of the concept of emotion.¹⁸

He believes feelings are a sufficient, but not a necessary constituent of an emotion. Oakley implies four categories which count as the affective component of an emotion: (1) physiological feelings, (2) psychic feelings, (3) physiological affects, and (4) psychic affects.

I argue the contrary: feelings *are* essential to the concept of emotion. I categorically reject the notion of standing emotions - emotions which extend for a long period but are only felt sporadically. I accept we can feel an emotion in varying *intensities* over an extended period of time, such as constant depression, but this is not the same. The dichotomy between what Lyons refers to as "occurrent emotions" versus "emotions considered dispositionally"¹⁹ is not as Oakley interprets it. Oakley rejects Lyons' claim that dispositional emotions are merely the tendency to feel emotions when certain cognitive cues are triggered, his reason being that an emotion such as grief colours the subject's life, affecting thought and action even in the absence of the conscious sensation of the emotion in question²⁰. Thus, Oakley believes, a long-term emotion felt intermittently still counts as an emotion because it alters thoughts and actions - it colours our view of the world and affects our actions accordingly.

¹⁷ *Ibid*, p8.

¹⁸ *Ibid*, P8.

¹⁹ Lyons, W. *Emotion*, p53.

²⁰ Oakley, J. *Morality and the Emotions*, p11.

Unfortunately, Oakley has confused the notion of *constituency* with *causality*. It might well be the case that grief colours our perception of the world, and hence also affect our actions. It is for this reason we are wary of the retributive emotions. But this does not mean such colouring actually *is constituent of* the emotion. All it suggests is an emotion exerts a causal influence on our perceptions and actions for some time after the cessation of the emotion's manifestation.

So how do standing emotions operate? I agree with Lyons' dispositional account, that we are disposed to react emotionally when certain circumstances are in order. But this does not mean there exists an emotion beyond such emotional reactions. For this would deny not only the necessity of *feeling* something when we have an emotion, but also the necessity of having a conscious intensional object, a conscious judgement, or a conscious desire. Once we have denied the necessity of all conscious components of emotion, we are no longer dealing with emotion, but complex Freudian psychology. To call such internal, unconscious influences an emotion is so intuitively incongruous we are left wondering if we are discussing emotions at all.

4.2 - The Necessity of Feelings

To return to the original discussion: what count as feelings and why do they play a structural role in emotions? We have seen the feeling component of emotion is not satisfied by unconscious and unnoticed physiological or psychic affects. Such affects are neither necessary nor sufficient. Conscious physiological or psychic feelings are, however, necessary and sufficient to count as the feeling component of an emotion.

The next question we need to ask is: why are feelings a necessary component of emotion? Although Oakley refers to a broader range of possible affects than I allow, we might use one of his thoughts to start the discussion. Oakley argues that certain emotions are indistinguishable unless reference is made to their affectivity. He employs two different emotions sharing the same cognitive, evaluative and desire components to support this claim. Admiration and envy can both involve the intensional object X, and the belief that X has a certain quality. Both emotions can include the evaluation that the quality possessed is a fine one, and both emotions can include the

desire to possess the quality. Yet one emotion is admiration, the other envy²¹. For example, I might admire a politician's skill of oratory, but I might also envy it. The two emotions are indistinguishable unless we refer to the raw feels, the very "*gee hockey-sticks*" feeling of admiration, and the gnawing, irritating feeling of envy.

However, even if the above account is correct, Oakley's point does not achieve its aim. Reference to feelings might be necessary to distinguish one emotion from another, but this does not mean feelings are logically necessary to emotions. A doctor might need to refer to red spots to distinguish measles from mumps, but this does not mean the spots are part of measles - they may be purely symptomatic. We can imagine another world where measles are distinguished by stripes, and not spots, but the ailment would still be measles.

Although this stops Oakley's point in its tracks, something can be salvaged. The analogy between measles and emotions breaks down when further pursued. We can imagine a world where measles are distinguished by stripes, sure enough. It is even possible we could find a human who, due to strange physiology, reacts unorthodoxly to measles, displaying stripes rather than spots. But try to imagine a world where we find an inhumane crime truly despicable, and desire to punish the offender, yet find the affair hilariously funny. Note: this does not just mean behaving *as if* it were funny, but actually experiencing its light, intoxicating funniness, along with any accompanying physiological states. It is clear we cannot. If we were to experience such feelings, we could not truthfully claim to be experiencing the retributive urge; we would be confused as to *what* we were feeling. The feeling in an emotional episode is a logically defining feature of that particular emotion or emotional complex, irreplaceable by any other feeling. Similarly, feelings cannot be excluded altogether. Just as we cannot claim to be in pain unless we *feel* pain, so we cannot claim to be angry unless we *feel* angry. In the case of the retributive urge, we cannot exclude feelings, for the mere cognitive belief that X has committed a crime, the evaluation that X deserves to be punished, and the desire to punish X, are insufficient to count as the retributive urge. Such a combination is what we would expect in the head of an impartial judge, not in those clamouring for the death of a murderer. The retributive urge is partly defined

²¹ *Ibid*, p31.

in terms of the hot, intense feelings of hurt and anger we experience when evaluating cruel and inhumane crimes.

4.3 - Retributive Feelings versus Revenge Feelings

Is there a difference in the feelings of the retributive urge and those of the revenge urge?

Intuitively we think not. We feel the intense anger generated by the cognitive and evaluative components, and respond in a manner aimed at harming the offender. But on closer examination, we find this intuition mistaken. Retributive feelings differ from those of revenge feelings, because although both urges share two emotions, each is also composed of a third, which is different.

The retributive urge has three primary emotions: anger, fear and disgust. These are three of Plutchik's eight primary emotions²² from which all other emotions supposedly originate²³. Plutchik offers an evolutionary explanation for these eight primary emotions. As animals which need to survive in our environment, we must be capable of certain modes of behaviour. One is to destroy that which threatens us. For this to occur, we developed the emotion of anger, providing the physical and mental energy necessary to attack and destroy. Flight was also important, and hence fear evolved. Lastly, we needed to reject things we found dangerous which we could neither flee nor destroy, such as poisonous foods, rotting meat, etc. This generated the emotion of disgust.

However, as Plutchik points out, we seldom find a case of a pure, primary emotion. More often than not, we experience a combination of emotions or a hybrid emotion. The primary emotions can all combine, yielding these combinations or hybrid emotions²⁴. Therefore, given the three primary emotions in the retributive urge, we can derive a greater number of actual emotions. There are the three primaries - (1) anger, (2) fear, and (3) disgust, and the impure emotions - (4)

²² Plutchik, R. *The Emotions: Facts, Theories, and a New Model*.

²³ It is not within the scope of this paper to argue for or against Plutchik's thesis, but I will employ certain parts of his theory.

²⁴ *Ibid*, p118.

anger + fear, (5) anger + disgust, (6) fear + disgust, and (7) and anger + fear + disgust. But Plutchik also claims there are four intensity levels²⁵. For example, annoyance, irritation, anger and rage are four intensities of the same emotion: anger. Add the fact that there can be interaction between these intensity levels (eg: irritation + revulsion, or terror + disgust, etc.) and we can derive scores upon scores of different emotional reactions in the retributive urge. This interaction explains why so many of us respond in such a myriad of different ways to different crimes. A priest is more likely to view a crime with disgust than anger, while many women respond to news of a brutal rape with a leaning towards fear rather than rage.

The revenge urge differs in its emotional constituency. It also contains three emotions: anger, fear and vindictiveness. Anger is particularly prevalent, and is the most characteristic emotion in revenge. Upon consideration of the harm done to us, we desire to harm our intentional object, and experience the intense feeling of anger. However, there is also the element of fear. We avenge ourselves to display our lack of fear for our intentional object. But although we may or may not fear him or her, we can still fear our peers' scorn if we do not exact revenge. Hence we may act partly out of *fear*, and partly out of anger when we exact vengeance. However, we do not act in disgust. It makes no sense to say that we avenge ourselves because we are disgusted with our intentional object's act. Disgust implies rejection, and summons images of us locking our intentional objects away from society, of society *rejecting* them. But in revenge our aim is never to reject our intentional object, but to harm him/her (unless rejecting him/her is a means to harming him/her).

The last emotion involved in the revenge urge is vindictiveness. Oftentimes we exact revenge and feel satisfaction. This is not the satisfaction from witnessing justice or the restoration of integrity, but the satisfaction from inflicting pain. The infliction of suffering is desirable in itself. Whether vindictiveness is a recent development to the revenge urge, paralleling the development of disgust in the retributive urge, is not easily determined. It might be the case that the retributive urge evolved from the revenge urge by replacing the vindictive quality with one of disgust. What is important is to notice the great dissimilarity between the two urges on this

²⁵ *Ibid*, p71.

count. Where the retributive urge can manifest itself in any combination of anger, fear and disgust, the revenge urge manifests itself in combinations of anger, fear, and vindictiveness. This is enough to distinguish the revenge urge from the retributive urge. Not only are the impulses characterised by different combinations of feelings, but the range of potential evaluations and desires differ in respect to disgust and vindictiveness.

It is interesting that our emotional response can contain more than one evaluation. I might evaluate the crime as despicable, but I might also evaluate it as terrifying. I might also have confused feelings on the matter. I might feel angry yet anxious, disgusted yet apprehensive, terrified yet beside myself with anger. But essentially all the cognitions, evaluations, desires and feelings are the interactions of the various emotions' components and their respective intensities. The difference above should display beyond doubt that the two urges are separate emotional complexes with very different accompanying desires and cognitions.

Section Five - Inter-relatedness

An important point to consider about all emotions, including those constituting the retributive urge, is the dynamic relationship between their components. The presence of cognitive, evaluative, desire and feeling components are necessary, but insufficient to count as an emotion. Consider the following: I might believe X has insulted me, evaluate that the insult deserves physical reprisal, desire to enact reprisal, and notice the physical sensations of adrenaline and twitching muscles. But this does not equal anger, for my physiological sensations might have its origin in some amphetamines I had taken an hour previously. There must exist an internal relationship between the components²⁶. I must feel adrenaline and twitching muscles *because* I judged the received insult as deserving of physical reprisal and because I want to execute such action. Likewise I must desire to attack X *because* of my judgement concerning the insult, and not because I dislike his face, his nationality, or an irritating twitch in his left cheek. However, this

²⁶ This point is derived from J. Oakley, *Morality and the Emotions*, p16.

should not be mistaken to mean that judgements *cause* desires, or that beliefs *cause* feelings. No one component causes the other, but all must be present and there must exist a concordance between them all. This concordance ensures that they are all components related to the same issue, and not different issues. There must exist a cohesive focus linking cognition, belief, desire and feeling.

Because the revenge urge plays host to dynamic interactions which differ from those of the retributive urge, the gap between the urges widens. The components in the emotion of disgust (and its various intensity levels) can play no role in the generation of revenge feelings or desires, unlike in the case of retribution. The opposite relationship holds for vindictiveness.

Section Six - Conclusion

The first conclusion to be drawn is that the retributive urge possesses strong elements of cognition and evaluation. We have event-recognition, intensional objects, beliefs, and we make evaluations in the process of the urge. This effectively blocks objections to the retributive urge which depict it as a purely reactive, unthinking and unrestrained expression of bloodlust or sadism. Beliefs and evaluations are integral, and, like all beliefs and evaluations, can be good or bad²⁷.

However, a second conclusion must be noted. Although the cognitive and evaluative components partially constitute the retributive urge, there is no assurance that these components are not severely affected by the urge's desire and feeling components. Is it not possible these latter components overrule our better judgement and condemn us to irrationality?

We might respond that the evaluations precede the desires and motivations in an emotion. I cannot desire to punish someone or feel the flush of anger unless I judge the crime to merit punishment. This flow from judgement to desire and feeling thus ensures the latter do not affect the former.

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This avenue of discussion will be pursued further in chapter IV.

Such a defence presupposes a singular directional flow, which can not be assumed. It is possible there exists a hermeneutic relationship between these components. Our feelings might well bolster the conviction of our judgement, which in turn intensifies our desires or feelings. The rationality or irrationality of our emotional judgements will have to be argued for further, which I do in chapters four and five.

Third, we must conclude the retributive urge is not a simple emotion. It is neither a single pure nor primary emotion, nor is it a single hybrid emotion. Rather, it is a concatenation of emotions, resulting in a dynamic, interactive conglomeration of cognitions, evaluations, desires and feelings.

Finally, a distinction must be drawn between the retributive urge and the revenge urge. Although they share much evolutionary history, and might both have evolved in order to deter potential aggressors, the retributive urge possesses different cognitive, evaluative, desire and feelings qualities from those evident in the revenge urge.

With the information uncovered in this chapter, I can now comment on the case of defamation mentioned in chapter II, where a person, call him X, made a defamatory comment, which we will call Y. The retributive and revenge urges operate simultaneously in connection with the same state-of-affairs because their respective emotional complexes share some common elements. In the cognitive component, both urges possess the same *event recognition* (that X said Y), and the same *intentional object* (X), as well as the same *belief aspect* (that X deliberately said Y with the intention of it being defamatory). In the evaluative component, the same *evaluation* (that X should suffer for Y) holds for both the revenge and retributive urges. With so many elements in common, it is not difficult to see how the two urges seem to blend into each other to appear as the same. But in such cases there still exists complex desires and feelings which are not the same, and these serve to distinguish to what extent the suing is a case of revenge or of retribution.

IV

IN THE EYE OF THE STORM

We intuitively believe emotions are either rational, irrational, or non-rational. Melancholia is accepted as a non-rational emotional experience - as something which forces itself upon us, something beyond our control. We might even be unable to identify *why* we are melancholic (perhaps due to mere chemical imbalances in our brains). However, we often think of other emotional episodes as rational or irrational. A joyful response to a friend's murder seems an irrational reaction, whereas a response of grief, horror or fury seems more rational. Besides the reaction type, we also believe the degree or intensity of the reaction can be assessed as rational or irrational¹. If a man reacts with rage to a petty insult, we view his emotional response as irrational. However, a reaction of mild irritation seems a rational response.

Of course, this assumes a particular account of rationality, one not necessarily universally accepted. The aim of this chapter is to explore the rationality of the retributive urge. We have already seen that the retributive urge shares many similarities with the revenge urge, but have also highlighted some important differences between them. The focus of this chapter is predominantly centered on the retributive urge. My primary reason for using this method is that the rationalities of the two urges are very similar indeed. However, at the end of the chapter I explain what differences *do* exist. I do not attempt to prove that the retributive urge is rational so much as aim

¹ See Broad, C.D. "Emotion and Sentiment", p293.

to show that the common arguments *against* the rationality of the urge do not hold water.

The first step is to consider what it means to say the retributive urge is rational as opposed to non-rational. This is a category distinction. Thereafter I consider whether, given that the retributive urge is *categorically* rational, it is *evaluatively* rational or irrational. Here I examine in detail how we can view the retributive urge as rational or irrational in both *consequential* and *psychological* senses. Following this, I discuss another variant of rationality - *appropriateness*. Some philosophers hold an emotion is rational if it is appropriate to the situation. Whether this is a legitimate variant of rationality is an important consideration. I will sum up my findings, reiterating the main issues, in the conclusion.

Public opinion has it that the retributive urge is like an unthinking storm - an emotional episode devoid of any serious thought. What thought does exist, so the belief goes, is superficial and quickly ignored when the passionate nature of the emotional complex reaches its climax. To address this suspicion, we must peer deep into this emotional complex, and study what rationality or reason (or lack thereof) lies at its center.

Section One - Rational versus Non-rational

When we consider rationality, we must make two distinctions. The first is a category distinction. The dichotomy here is rationality on one side, and non-rationality on the other. By non-rationality I do not mean *irrationality* - that is something entirely different. If something is non-rational, it means it has no claim to be rationally significant: it is neither rational nor irrational. For example, my preference for chocolate ice-cream over vanilla is a non-rational preference - it cannot be assessed as either rational or irrational.

To claim emotional episodes are non-rational, we must assert that such episodes preclude beliefs, judgements or desires, for these (as categories) are all open to rational assessment². Such a model, as asserted by Shaffer, holds that emotions are nothing more than physiological or

² One might claim that only occurrences of beliefs, judgements or desires which *are* open to rational assessment need be exempt from emotional episodes, but this *ad hoc* maneuver is highly suspicious.

psychic sensations generated by preceding beliefs and desires (or judgements)³. Emotions *themselves* are purely non-rational by-products of beliefs, judgements and desires. All rational assessment falls on the beliefs, desires or judgements which generated the emotions.

I do not wish to pursue a general model of emotion, but I have already provided a schematic model of the retributive urge, and clearly both it and (if I might assert more than I am legitimately entitled to), emotions in general, do not fit Shaffer's model. The retributive urge *does* contain the elements of belief, judgement and desire, and hence is exposed to rational assessment. Categorically, the retributive urge is rational. The important question is whether it is rational or irrational. It suffers more damage from a charge of irrationality than from a charge of non-rationality.

Section Two - Rationality versus Irrationality

2.1 -Consequential Rationality

That which is past, is gone, and irrevocable; and wise Men have enough to do with things present, and to come: therefore they do but trifle with themselves, that labour in past matters.
(Francis Bacon, "Of Revenge", p19)

Bacon, who failed to distinguish revenge from retribution in a manner typical even today, seems to address a prime concern prevalent in our society. Most of us believe the retributive urge is irrational, for it achieves no positive results. More than this, the act of seeking retribution can interfere with our long-term goals and plans. It is received opinion that rational persons cut their losses after suffering a harm. To pursue retribution achieves nothing except further costs.

Rational action is concerned with outcomes. Rationality says: If you want Y, do X.⁴

³ See Shaffer, J. "An Assessment of Emotion".

⁴ Elster, J. "Norms of Revenge", p863.

This version of rationality could be referred to as *consequential rationality*, stressing the achievement of ends or goals. If X increases the likelihood of achieving goal Y better than other options, then it is only rational to do X. Within consequential rationality, then, an emotion is rational if, and only if, it increases one's chances of achieving one's goals.

One way to assess the rationality of the said urge, then, is to examine the extent to which it promotes our chances of achieving our long term goals. On the face of it, it appears the retributive urge generally hinders our chances. Seeking retribution is not only emotionally, economically, and mentally taxing, it exposes the seeker to direct reprisal from the accused. On this reading the urge is irrational. For all it costs, retribution yields very little in terms of goals, it is thought.

But things are not so simple. We have already seen, in Chapter II, that the retributive urge played a significant role in our genetic survival in the face of environmental pressures. It is the very so-called *irrational* nature of the retributive urge which ensures our safety. When others recognize our tendency to exact retribution, they often avoid us, picking instead on less "irrational" victims. This is in their own best interests. Aggressors who victimize those possessing the retributive gene soon experience an increase in environmental pressure, often leading to the termination of the gene which generated such predatory behaviour. Such irrational behaviour is thus multi-faceted, and may be interpreted as both irrational and rational. It is irrational at a basic level, but surprisingly rational when we accept the strategic importance of avoiding predacious behaviour.

In response to this argument, Elster contends that society's tendency to exhibit retributive action,

may be maladaptive today and yet have been adaptive at a stage in history when the human genome evolved and, for practical reasons, became fixed.⁵

This is indeed an important point. The human appendix must have played an important role in the development of the human species at some time in history. Today we find it not only useless to

⁵ *Ibid*, p885.

our survival but, with its negative medical ramifications, also a liability. The situation could be similar with the retributive urge. No longer does the human species find itself in the crucible of environmental pressures. We have established large police forces and judicial systems which pursue our case even after death. It is no longer a case of one human defending him/herself against another. It is now an entire bureaucracy with vast funding against any aggressor. (At least, this is how it works in theory.) The retributive urge, it might be argued, interferes with that bureaucracy, actually doing more harm than good, in a manner analogous to how the appendix interferes with our survival. This has particular relevance when we consider that society demands tougher prison sentences and environments for convicted criminals as crime escalates. Society wants to see criminals *punished*, not looked after. Such demands could have detrimental effects, however. For instance, in South Africa, according to the recent Nedcor report, 87.5 percent of ex-convicts become involved in crime again⁶. Our presently short-sighted prison system throws convicts together, cooped up, with only other criminals for company, discussing criminal techniques to pass the time. Instead of dissolving their criminal tendencies we nurture them. Far from the retributive urge promoting our survival, it might be partly responsible for our rising crime figures.

However, the problem may be viewed differently. There are those who argue that criminal tendencies are largely dependent on genetic inheritance. Such criminal behaviour results not from a conscious decision to commit a crime, but from genetic determinism. A British study showed that forty percent of criminal's sons became convicts themselves, as opposed to the thirteen percent of sons whose fathers were not criminals⁷. The retributive urge thus finds itself the center of criticism. It appears as an irrational and immoral reaction to people whose criminal behaviour is genetically determined, and hence undeserving of moral condemnation or imprisonment.

But there exists a school of thought, call its members *Genetic Imperativists*, which argues that given the truth of such genetic determinism, throwing such people in prison might be indeed unfair, but it might also be imperative for society's survival. The upsurge of academic writing

⁶ For a particularly intensive, although one-sided, examination of this problem in general, see Karl Menninger, *The Crime of Punishment*.

⁷ Osborn, S.G. & West, D.G. "Conviction Records of Fathers and Sons Compared".

from authors like Menninger, it argues, forces society to feel guilty for its retributive desires which are portrayed as dark, destructive, and barbaric. But hidden within the folds of these liberal proclamations lie the seeds of society's downfall, for society is being forced to embrace its very destabilizing feature: crime. Consider the following quote from Menninger:

If a burglar takes my property, I would like to have it returned or paid by him if possible, and the state ought to be reimbursed for its costs too...This would be equitable; it would be just, and it would not be 'punitive'.⁸

Likewise, it would be foolish. Menninger certainly has no understanding of justice. More to the point, he has a profoundly naive understanding of the criminal mind, despite his studies in that field. If one simply requires a criminal to return stolen goods, and perhaps pay the courts for legal costs, theft would be rapidly in *vogue* - it would be a criminals' market in the light of such ridiculous deterrents. Those of Menninger's mind-set would be a criminal's favourite prey, and would soon own nothing more to steal. This much is obvious to anyone. But, according to the Genetic Imperativists, what is particularly alarming is that society is being forced into adopting this "beaten dog" approach to crime - something Nietzsche warned us of a long time ago:

There comes a point of morbid mellowing and over-tenderness in the history of society at which it takes the side even of him who harms it, the *criminal*, and does so honestly and wholeheartedly. Punishment: that seems to it somehow unfair - certainly the idea of 'being punished' and 'having to punish' is unpleasant to it, makes it afraid. 'It is not enough to render him *harmless*? why punish him as well? To administer punishment is itself dreadful!'⁹

Unable to decisively control the reproduction of the crime gene by executing or imprisoning its criminal hosts, society is witnessing the gene's proliferation, and even actively protects it.

What solution could this school advocate? Despite its fascist flavour, it would be unlikely to call for a mandatory death penalty for all felonies in an attempt to wipe the genetic slate clean. But if there were unwilling to adopt such drastic measures, what options are open to us, given the

⁸ Menninger, K. *The Crime of Punishment*, p203-4

⁹ Nietzsche, F. *Beyond Good and Evil*, section 201.

danger of our penal system nurturing criminality? One less radical answer lies with the progress of genetic engineering. It is possible the criminal gene could be eradicated through such engineering¹⁰, although such a course is pregnant with its own philosophical implications. The point worthy of consideration here is that although the retributive urge is frowned upon in a moral sense by the learned, policy making echelons of society, we cannot discard without argument the opinion that it *could* be the caretaker of society's future, and its suppression, although lauded as a step forward for humanity, could see that society shake itself to pieces. If this *is* the case, the retributive urge is indeed strategically rational.

To argue the retributive urge generally hinders, or interferes with, our achieving our goals is an impractical task which does not define, but confuse, the debate. For instance, what are goals? We say the retributive urge interferes with our goals, but after we have suffered offence, can the pursuit of justice not become an important, even over-riding goal? When justice triumphs, is the mental relief less important than our other goals? Whether the retributive urge is strategically rational or irrational is not clear. There are plausible arguments both for and against. Instead of hounding this fruitless debate further I advocate the investigation of the *psychological rationality* of the retributive urge.

2.2 - Psychological Rationality

Because emotions include intensional objects, beliefs and judgements they are, to that extent, categorically rational. The retributive urge, which is a conglomeration of these components, is thus categorically rational in this sense. Before I assess how the urge can be judged *evaluatively* rational or irrational, however, it is necessary to address a criticism from Behan McCullagh regarding the categorical rationality I have thus far accepted:

Emotions involve some sort of reaction to an evaluation, usually at least the onset of feelings about it, sometimes desires and physiological changes as well. These reactions are not

¹⁰ Although genetic engineering will never solve crime's largest source: poverty.

rational, but automatic responses, and therefore emotions cannot be wholly rational...The emotion itself is not really rational at all.¹¹

Although the retributive urge has qualities which may be evaluated as cognitively rational or irrational, there are also parts of the emotion which are involuntary, automatic responses, and are hence non-rational. Insofar as there are non-voluntary, automatic responses in the retributive urge, it is not rational.

But there is a problem with Behan McCullagh's thesis. Nowhere has it been claimed the retributive urge or another emotional reaction must be *wholly* rational. Will it not suffice to establish a criterion of *sufficient* rationality for emotional responses? There is no reason to blindly believe that if any aspect of an event is non-deliberate, the entire event is non-rational. If this were so, we would have to revise our standing on judgements. Judgements involve many unconscious or subconscious factors. A child whose parents impressed upon her daily the necessity for financial success above all else will make judgements which afford her financial gain (as opposed to other gains) with less deliberation than other people. To this extent these judgements are non-rational. If we follow Behan McCullagh's thesis, we would have to claim judgements, being partly non-rational, are not really rational at all. But if we asserted the non-rationality of judgements, rationality would lose its most plausible candidate, and probably its coherence, too. This is reason enough to reject Behan McCullagh's criticism.

We may now investigate the evaluative rational status of the retributive urge. We can not concentrate exclusively on its cognitive and evaluative components, and from this assessment infer its overall evaluative rationality. This much Behan McCullagh has established. We must consider the retributive urge in its entirety.

There exists a major concern: the intensity of the non-intentional motivational and feeling components are so pronounced in the retributive urge that the rational components of intentional object, belief and judgement are drowned in a wave of irrational impulses. The retributive urge, it might be asserted, thus turns out to be *more* irrational than rational. If this is correct, it is

¹¹ Behan McCullagh, C. "The Rationality of Emotions and of Emotional Behaviour", p53.

reasonable to label it as evaluatively *irrational*. But, of course, we may not deem the retributive urge *type* to be irrational. There are conceivably many instances where the motivations and feelings involved in the retributive urge do not bludgeon all reason to oblivion, but remain proportionately co-operative with the more rational components. We can only assess particular *tokens* of the retributive urge as rational or irrational. Any attempt to define the retributive urge *type* as evaluatively irrational by citing the non-intentional quality of its desire and feeling components, is sure to fail.

2.3 Emotional Appropriateness

As it stands, there appears to be two types of rationality: what I refer to as (1) consequential rationality, and (2) psychological rationality. An action is rational if it is the sort of action most likely to help us achieve our goals (consequential), while a belief or a judgement is rational if it was formulated in a manner which usually generates true beliefs or judgements (psychological)¹². But these two types of rationality do not always lead to the same conclusions. Suppose a man strongly suspects his wife's faithfulness, yet suppresses his suspicions and believes her faithful instead¹³. He has formulated a belief in a manner not normally conducive to the generation of true beliefs. Hence it is psychologically irrational. However, he may be much happier believing his wife to be faithful instead of himself a cuckold. If one of his goals is happiness (and there seems no reason it should not be), his belief is rational in a consequential sense.

Given the fact that such clashes exist between consequential rationality and psychological rationality, we should also be prepared to accept clashes between *other* species of rationality. We can examine the clash which occurs when we judge an emotional episode consequentially irrational, yet *appropriate* all the same. We say anger is an appropriate response to an insult, although we may act aggressively, which can interfere with our goals and ambitions. Grief is appropriate when a friend dies, yet it is painful; it interferes with our happiness and can prevent us

¹² De Sousa, R. *The Rationality of Emotion*, p163.

¹³ I borrow this from A. Gibbard, in *Wise Choices, Apt Feelings*, p36-7.

from pursuing our goals. But would we call such a response *irrational*?

Before I go further, I should explain what I mean when I say an emotion is appropriate. An emotion is appropriate if it is a response warranted by the situation in which it occurs¹⁴. For example, anger is appropriate if we are insulted or attacked. Grief is appropriate if we have lost a loved one. In order to be angry, we must identify something in the situation with which to be angry. In order to feel grief we must identify something worth grieving about in a situation. If we cannot legitimately identify such an aspect, the emotion is irrational.

Behan McCullagh objects that emotions do not enjoy the quality of intentionality. Emotions, he claims, happen to us - we do not deliberate on them, weighing up the pros and cons before they take effect.

In most cases feelings follow immediately upon awareness of their object. They do not wait upon consideration of whether they are prudent or virtuous.¹⁵

He argues that for something to be considered rational, it must be done intentionally with the aim in mind of bringing about an intended result. Just as actions are not deemed rational unless they are the result of the agent's considerations for performing them, so too emotions are not rational unless they occur as a result of such deliberation¹⁶.

Panting after violent exercise is appropriate, but we would not regard it as rational. It is just an automatic response. So, too, are our emotions.¹⁷

So Behan McCullagh denies that emotional appropriateness can count as a species of rationality. The retributive urge is not experienced as a result of our judging it as advantageous for achieving our goals. If the urge *is* appropriate to our situation, it is simply fortuitous.

¹⁴ De Sousa, R. "The Rationality of Emotions", p133.

¹⁵ Behan McCullagh, C. "The Rationality of Emotions and of Emotional Behaviour", p49.

¹⁶ *Ibid*, p49.

¹⁷ *Ibid*, p49.

So how are our intuitions mistaken? On the one hand we believe emotions are rational if appropriate to the situation, and yet there is the argument that emotions, being beyond our control, are not intentional, and hence although appropriate, are appropriate by chance, and thus non-rational. The answer to this, I believe, lies in a bias which favours outcomes and neglects non-teleological considerations. Behan McCullagh denies the rationality of emotions because of the absence of a deliberative prelude to the emotional episode. But we have already seen there are clashes between rational criteria. Something may be psychologically rational yet consequentially irrational. It begs the question to dogmatically state that a rational event *must* include the prior deliberation of goals.

To further elucidate this, let us subdivide responses into two components: *emotional episodes* and *emotional reactions*. An emotional episode is simply the emotion or emotional complex we experience in a given situation. An emotional reaction is the action generated by the emotional episode. For example, attacking the person who insulted me is a (rather irrational) emotional reaction to my emotional episode of anger. But just because the emotional reaction might be detrimental to our goals, this does not mean the emotional episode is irrational. The emotional reaction is mutually distinct from the emotional episode. Thus it can and must be assessed in its own right as rational or irrational¹⁸.

Emotional episodes are not concerned with outcomes - they deal with the present. To dismiss them as non-rational because they do not conform to teleological constraints is unreasonable. If we want to assess them as rational or irrational, we must do so in terms of the present. This has been examined in great detail by De Sousa. He argues that any emotion which is regarded as categorically rational must be describable as evaluatively rational under some set of particular circumstances¹⁹. Although the emotion might be evaluatively irrational in its *actual* context, there must necessarily exist a certain set of circumstances, a particular context, wherein it would be a rational response. De Sousa refers to this as the principle of *minimal rationality*.

¹⁸ De Sousa, R. "The Rationality of Emotions", p144.

¹⁹ *Ibid*, p130.

The concept of minimal rationality does not require the state or event in question be [described] as (evaluatively) rational in the light of all wider perspectives...[T]he emotion will retain its basic intelligibility (its minimal rationality) provided it can be seen in the light of its own, narrowest, proper scenario.²⁰

This is important because De Sousa believes we learn stock responses to what he terms *paradigm scenarios*²¹. These stock responses might be ostensibly consequentially irrational because of their emotional reactions, but they are rational when we consider *how* the involved agent *actually perceives* the situation in the emotional episodes. Throughout childhood we learn a repertoire of responses for a range of different scenarios. We learn when an angry response or a sympathetic response is appropriate. As life continues, we are exposed to new and complex situations, and it lies with the individual to identify the correct response. We do this by means of the *formal object*.

The formal object is a second-order property in the sense that it is supervenient on some other property or properties: something is frightening by virtue of being dangerous, for example.²²

By identifying the formal object in the current situation, De Sousa claims, and by cross referencing it to a previously learnt paradigm scenario, we can respond appropriately. For example, I might have learnt that if struck for no reason, I am to become angry. Suppose one day I am attacked in the street. I cross reference the attack with the paradigm scenario stating that when unfairly struck, I should feel angry. Insofar as I can (1) identify the formal object of unfairness in the current situation, (2) cross reference it with the formal object in the paradigm scenario, then (3) draw on the scenario's token response of anger, and (4) shape it to fit the current situation, I am behaving in a rational manner. If I were behaving irrationally I would more likely end up screaming profanities into a toilet bowl or douching myself with petrol and lighting a match. From a consequential perspective this stock response can be interpreted as highly irrational. If attacked by fifteen armed thugs, the stock emotional episode of anger might lead to

²⁰ *Ibid*, p145.

²¹ *Ibid*, p142.

²² De Sousa, R. *The Rationality of Emotion*, p132.

retaliation, which will more likely result in my death than if I simply took a beating. But here the anger is perfectly appropriate - it is rational, even if the retaliation is not *consequentially rational*. Note, however, that even the emotional reaction is *minimally rational* - retaliation is an appropriate response to an attack. This stock emotional reaction (being part of the stock response) was identified and imported to the current situation, even if it was detrimental to the agent. Of course, my aim is not to show the stock emotional reaction to the retributive urge is rational or irrational. My object is to show that the urge itself is appropriate to the situation, and the rational status of its emotional reaction should not influence this assessment.

One might object that although a paradigm scenario's stock emotional episode is appropriate to a given situation, this does not mean it is rational. Conventional, socialized responses to various scenarios can be very foolish, and certainly not rational²³. For example, deadly anger is the stock emotional episode for certain religious fundamentalists in response to any questioning or criticism of their faith. Such anger can not be seen as rational, only foolish.

But this objection is not valid. Just because a convention is irrational or foolish does not determine as irrational the acts of identifying the formal object and importing the foolish stock response of that paradigm scenario to the current situation. It still requires a cognitive capacity and so is still rational. Applying a foolish stock response which one believes is correct is not irrational, the stock response is just not insightful.

Section Three - Retribution & Revenge

The retributive and revenge urges share many rational features. They both possess intensional objects, beliefs and judgements, and so, given that these are rational, are rational to a particular extent. The revenge urge can not be labeled irrational simply because, on occasion, it advocates the utilization of innocent, third parties. Firstly, we are prohibited from laying a blanket charge of irrationality on the revenge urge *type* for the same reasons as with the retributive urge. Not all examples of the revenge urge advocate such behaviour. Secondly, a charge of confused

²³ Behan McCullagh, C. "The Rationality of Emotions and of Emotional Behaviour", p53.

intensional object does not stick, because the avenger can be fully aware of the third party's innocence, but in a twisted, ruthlessly clinical process of reasoning, realizes that attacking the third party provides the best chance of achieving his or her goal of revenge²⁴. However, despite enjoying this consequential rationality, it also *suffers* a charge of irrationality from the same quarter. Honour often demands the display of fearlessness for an opponent by flouting one's safety, such as in the form of a duel. This great danger, being an obvious risk to achieving any goal, is hence also irrational.

As for emotional appropriateness, the revenge urge can be as rational as the retributive urge. Although revenge as an emotional reaction can be unstrategic, the cognitive application of a stock response to a particular situation is a rational activity.

I have tried to highlight the differences between the retributive and revenge urges throughout this thesis, but they possess remarkable rational similarities, no doubt because the former evolved from the latter. There are differences in the cognitive elements of the two urges, as discussed in Chapter III, but no significant differences exist in their respective rationalities. The main differences exist in their moral status, which will be discussed in Chapter V.

Section Four - Conclusion

We cannot hope to assess the retributive urge in a purely teleological fashion. Although the retributive urge may, on occasion, thwart our goals, we must take seriously the interpretation that its influence of crime actually stabilizes society, which is a goal most find attractive. A large proportion of the retributive urge is cognitive. Like any judgements or beliefs we form about intensional objects, they can be psychologically rational or irrational, and we cannot assess the emotional episode *type* as rational or irrational. However, contained in the urge are particularly intense motivational and feeling components which may blind those judgements and beliefs. It should be plain the retributive urge is not rational in the manner of pure judgements and beliefs.

²⁴ An exception is someone who mistakes her intensional object, believing the third party guilty. This would be a clear case of irrationality because she has failed the cognitive task of correctly identifying her intensional object.

But it is naive and unfair to demand such narrow constraints. The retributive urge operates in the present, and to assess it from a purely teleological perspective will yield a firm, but, I believe, a vacuous, answer. In assessing the rationality of an emotional episode we must be sensitive to its emotional nature, not shun or ignore it. The retributive urge can be seen as a rational cognitive activity where we identify the salient similarities between our present situation and a previously learnt paradigm scenario. By recalling the stock response to the paradigm scenario, we respond appropriately to the current predicament. It is a rational cognitive exercise to reliably identify the formal object in a situation as resembling the formal object in a paradigm scenario, and to respond accordingly.

Many will argue that this conclusion does not capture what is meant when we claim the retributive urge is irrational. Although there are some species of rationality deep in the eye of the storm, they are still surrounded and, no doubt, overpowered by the storm's passion. Critics are concerned that the raw energy of the retributive urge drowns all rational considerations, inevitably leading us to impulsive and immoral behaviour. This is a worthy criticism which I address in detail in Chapter V.

V

AS THE THUNDER ROLLS

Now I can really hear what they have been saying all along: 'We good men - *we are the just*' - what they desire they call, not retaliation, but 'the triumph of *justice*'; what they hate is not their enemy, no! they hate 'injustice', they hate 'godlessness'; what they believe in and hope for is not the hope of revenge, the intoxication of sweet revenge (- 'sweeter than honey' Homer called it), but the victory of God, of the *just* God, over the godless...

- Nietzsche, *On the Genealogy of Morals*, I.14

The spirit of Nietzsche's critical, cynical words are still lauded today by those who view retribution as a degenerative throwback, as an ineffective, expensive, unjust, and barbarous ritual¹. Ineffective and expensive, it might well be. The ineffectiveness is largely a deterrence issue, of little interest to retributivists. But one need not forsake retribution if one favours an overhaul of the penal system, to make it less expensive². Whether or not retributive punishment is unjust or barbaric, is another story entirely. Because I distance myself from a defence of retribution *qua* retributive punishment, and concentrate rather on the emotional arena, I will not address the former issue. What can be addressed is whether retribution is barbaric. When the term "barbaric" is used, it summons to our minds images of ferocious tribal witch-doctors deep in

¹ Menninger, K. *The Crime of Punishment*, p18.

² Obviously if punishment also acted as a deterrent for future crime, this would be considered a beneficial side-effect.

the jungle with bones through their noses savagely mutilating hapless Royal Geographical Society explorers. Obviously this is not precisely what we mean when we call retribution “barbaric”, although we can draw some similarities. For example, we think those clamouring for the punishment of a wrongdoer simply express an unthinking, animalistic desire to see others in pain. We judge such instincts depraved, believing they belong buried in the past next to stone-tipped spears and hapless-RGS-explorer-sized cauldrons. Of course, these barbaric impressions point to the emotional base from which the desires and resulting actions originate. Hence I feel comfortable addressing this emotional issue. Certain issues in the field have been addressed in previous chapters, i.e., I discussed whether the retributive urge is an unthinking, irrational reaction. Chapter III elucidated complex cognitive and evaluative components in the retributive urge, so it certainly cannot be seen as unthinking. Chapter IV addressed the issue of whether the retributive urge is by nature irrational. I concluded that although there might be *tokens* of the retributive urge which are irrational, we are not entitled to declare as irrational the retributive urge *type*.

Although we have come this far, the central issue remains: is the retributive urge, by and large, irrational? What prevents us from assuming the retributive urge to be, generally speaking (or more often than not), irrational? This is a particularly salient issue, because it has serious moral ramifications. The implication of this irrationality is that, more often than not, we act on judgements which have been warped and twisted by the dark, barbaric motivational and feeling components of the retributive urge. This supposedly results in immoral actions in the form of retributive punishment. The punishment might appear to us as moral, but, due to its irrational etiology, it is in fact immoral.

In order to address this concern, I must change my approach from that of the negative argumentation employed in Chapter IV to that of a positive argument in defence of the retributive urge. I want to assess the truth of Menninger’s claim that,

No matter how glorified or how piously disguised, vengeance as a human motive must be personally repudiated by each and every one of us.³

³ *Ibid*, p280.

Because emotions are comfortably subsumed under neither deontological nor teleological moral structures, I will approach this moral issue from the perspective advocated by Patricia Greenspan and Gabriele Taylor, *viz.*, virtue ethics. It is my contention that the morality of the retributive urge can only be fully investigated and appreciated when the character of the agents who experience such emotional episodes is considered. I do not defend virtue ethics as a model of morality. Hence any assumptions following the adoption of this model will also not be argued for or against.

The structure of this chapter is as follows. Section one addresses the moral differences between the revenge and retributive urges. These differences take the form of moral implications generated by discussion in previous chapters. Section two is a brief examination of the importance of the retributive urge in terms of the flourishing life. Section three concerns the apparent irrationality of the retributive urge and its resulting immoral behaviour. Here I do not address the irrationality charge head-on, but instead argue for the moral soundness of the retributive urge *via* another, morally secure emotion: remorse. The findings of this debate should influence our views on the rationality question. My object is not to prove the unprovable: that the retributive emotions **do not** influence us to react in ways sometimes undesirable. All I wish to show is that sometimes, instead of actually hindering our perception of a situation, the emotions can actually help us understand it with a clarity normally unavailable to those unmoved by such emotions.

Section One - Revenge & Retribution

In Chapter III we noted the important differences between the retributive and revenge urges. One of the most significant is the presence of vindictiveness in revenge. With revenge our interest lies in causing our opponent pain or misery, whereas in retribution our aim is to restore an upset balance of integrity (either our own, or another's), or justice, *by means* of causing our enemy pain or misery. It is this difference at the secondary level of motivation which delineates a difference in the urges' respective morality. With the retributive urge we desire the suffering of another as a

means to restore integrity or uphold justice, whereas with the revenge urge the infliction of suffering on another is either a means to restore one's honour, or is pleasurable in itself. This obviously highlights a difference between the character of the agent moved by retributive considerations, and that of the agent moved by revenge considerations. Not only this, we can predict disproportional retaliation from vindictive persons, for they concentrate more on 'getting their own back' than on what the offender *deserves*⁴. It is the inherent concept of proportionality in the retributive urge which contributes to its moral flavour. We consider any violation of this 'eye for an eye' constraint a crime in itself, as worthy of punishment as the original offence. The retributive urge is an emotional complex which holds dear the spirit of justice, whereas the interest of the revenge urge lies not in justice, but in self-gratification.

The revenge urge can differ from the retributive urge in that it is often unfocused. It was discussed in Chapters II and III that oftentimes we avenge ourselves by means of innocent third parties. Although aware of their innocence, we ruthlessly view them as a simple means to an end - vengeance. It is, I take it, the received view among academics and human rights activists that culpability is a necessary prerequisite for the infliction of punishment on a person. To punish an innocent is not only conceptually recalcitrant⁵ but blatantly immoral to boot, because it denies one of the pillars of justice - the principle of responsibility. It seems extremely doubtful that we can experience the retributive urge in connection with innocents, which raises the urge to a higher rung on the moral ladder than the revenge urge. Retributivists observe the principle of responsibility because they value concepts of fairness. It is the sundering of fairness in the first place which sparks the onset of the retributive urge. However, it is equally important not to flout these self-imposed constraints of fairness ourselves. A retributive party might well recognise the efficacy of inflicting suffering on their enemy's loved ones, but such unfairness is not a genuine consideration. The object of retributive action is to restore integrity or justice, not simply to 'get one's own back'. Retributivists are aware that the infliction of pain on innocents does not restore integrity, nor does it realise justice; all it achieves is further injustice or imbalance. I am aware

⁴ Wallace, G. "Wild Justice", p368.

⁵ See Rawls, J. "Two Concepts of Rules".

how dangerously close I am to begging the question, but it seems we can distinguish the mental attitude of retributivists, who simply rule out the infliction of pain on third parties, from the attitude of the avengers, who consider innocents fair game.

Of course, the principle difference noted between the urges is that the retributive urge may, unlike the revenge urge, be pursued disinterestedly. This is important, for it implies selflessness as opposed to selfishness:

Feeling (other regarding) feelings of indignation over injustices suffered by others is a symptom of sympathetic concern for others, and in general, of a special sensitivity to matters of morals.⁶

The experience of the retributive urge demonstrates sincere concern for the plight of others, even at personal expense to oneself. This often takes the form of restoring a third person's integrity⁷. With revenge, however, the focus of attention is far more egocentric: personal honour, not another's integrity, is of importance. As everyone, I hope, agrees selflessness and sympathetic concern for others are commendable character traits, they will agree the retributive urge is certainly more admirable than the revenge urge.

Section Two - The Good Life

I am cautious about delving into the effects of the retributive urge on the good or flourishing life. Although, reluctant as I am to alienate hard line deontologists and teleologists who might find it too far removed from their interests, I do believe that for the urge to be considered comprehensively, the effects should be briefly outlined.

Adopting a Neo-Aristotelian approach, we can assume the experience of the retributive urge to be categorically moral if it in some way affects our own flourishing lives or our dealings with others⁸. A positive influence in either of these spheres of life is morally

⁶ Neblett, W. "Indignation: A Case Study in the Role of Feelings in Morals", p139.

⁷ See Chapter II, section 2.1.

⁸ Oakley, J. *Morality and the Emotions*, p39.

(evaluatively) good, and *vice versa*⁹. In this section I deal exclusively with how the retributive urge affects our own flourishing lives. Note that this does not preclude any *reference* to others. Our feelings for and relationships with others are of particular importance to the flourishing life. The line I want to draw in this section separates how we promote our own good lives, including our relationships with others, from the actions such relationships engender. Our other-regarding actions will be dealt with in section three.

Oakley argues that,

The person who, through lacking affectivity, lacks emotions such as sympathy and compassion may thereby have certain defects of character, including psychic disharmony, detachment, and insensitivity...¹⁰

This certainly makes intuitive sense. We feel a person totally unmoved by the plight or suffering of others is a rather sad creature: heartless, unsympathetic and even pitiful. It makes us wonder what tragedy made them so cold and insensitive. Kant asserts the perfect moral agent is unmoved by anything save duty¹¹, but our intuitions tell us such persons suffer from serious character defects.

Critics might agree that sympathy and concern, being virtuous character traits, are indeed important to our being, and are desirable. But the retributive urge is popularly thought of as a dark conglomeration of 'base' emotions like anger¹², fear and disgust (and more besides) - purely negative, unvirtuous, to be avoided at all costs. Sympathy and concern are clearly absent in the retributive urge, they argue. Hence this "virtue-less" impulse contains nothing desirable.

But the wisdom in this belief is not so evident. It is possible the retributive urge

⁹ This is intended in an "all things being equal" context. I will not confuse the issue by dealing with the morality of the positive or negative effects our actions or emotions might have on unsavoury characters, like criminals, for example.

¹⁰ Oakley, *J. Morality and the Emotions*, p45.

¹¹ Kant, *I. Foundations of the Metaphysics of Morals*, p19.

¹² Francis Bacon ("Of Anger", p308) describes anger as "a kind of baseness; as it appears well in the Weakness of those Subjects in whom it Reigns; Children, Women, Old Folks, Sick Folks."

supersedes normal concern and sympathy. Perhaps its experience displays these virtues at their greatest intensities:

While it has a saintly ring to it to turn the other cheek so long as it is one's own cheek that has just been slapped, is it virtuous to feel nothing more than sympathy for the suffering of others at the hands of wrongdoers? Where is that compassionate concern for others that is outraged because another person could have so unnecessarily caused such suffering?¹³

To merely feel sad at another's suffering, or to pat their wrist comfortingly, lacks the moral force of complete outrage. The extent to which we are moved by another's plight indicates our degree of moral concern. Is it not plausible that anger, which undoubtedly moves us more than sympathy, is thus a greater display of concern than normal sympathy, and hence more deserving of admiration? I do not mean such emotional episodes should be taken to extremes, such as anger which causes the agent to sacrifice her life, or sympathy which causes the agent to sacrifice his mental health. I am referring to the emotional episode *types*, i.e., anger or outrage (as a constituent of the retributive urge), *as a type*, displays a greater involvement in, and concern for, the suffering of others than the emotional episode *type* of sympathy.

It might be objected that sympathy for the *wrongdoer* is virtuous. Understanding is also a virtue, so surely to understand the criminal's reasons for their offence is of moral value? Although this is true to an extent, we must be brutally honest when deciding with whom our true concerns should lie. Is it more virtuous to side with the wrongdoer or the wronged? To side with the wrongdoer confuses the issue of good and evil. Even if our criminal has many mitigating socio-economic factors in their favour, sympathy and understanding for the criminal should never replace or supersede our concern for the victim. Our angry concern for the victim is a virtuous reaction, although it might be yet *more* virtuous to review the criminal's case and, if we uncover important considerations, arrive upon the correct amount of sympathy for her as well.

However, feelings for others is only one building block for good character. We must also take an active role in promoting *our own* good lives.

The man who gets angry at the right things and with the right people, and also in the right

¹³ Moore, M. "The Moral Worth of Retribution", p210.

way and at the right time and for the right length of time, is commended...The deficiency...is blamed, because those who do not get angry at things that ought to make them angry are considered foolish, and so are those who do not get angry in the right way or at the right time or with the right people. Such a person seems to be deficient in perceptivity and sensitivity, and (because he does not get angry) incapable of defending himself; and to put up with insults to oneself...is regarded as servile.¹⁴

Anger at negative interference with our good lives shows we value and appreciate that good life. Do we just shrug when something of value is stolen or broken? No, we feel angry or sad. To feel angry when someone harms us displays interest in our lives. Failure to become angry hints at either arrogance, that the offender is below our attention¹⁵, or at a dullness of perception¹⁶. Both are flaws in our character. The experience of indignation for personal harms, Neblett claims, is central to important components of the flourishing life such as dignity and self-respect¹⁷. Moreover, indifference to personal offenses implies the inability to differentiate good and evil:

Certainly, an individual absent of all moral anger and indignation must be indifferent to the existence of moral evil, must be absent of all moral sensitivity.¹⁸

Although I do not wholly agree with Neblett here, his point is still insightful. I do not believe someone devoid of anger or indignation must be truly indifferent to evil. A judge, having heard rape case after rape case might no longer experience such emotions, yet still be concerned about Rape's explicit evil. But Neblett no doubt believes that laypersons *not* perpetually exposed to the horrors of crime who are unmoved by indignation or anger when they *are* confronted with a heinous offence, are simply indifferent to moral evil and its ramifications (such as the wronged party's suffering). This suggests that those who experience the retributive urge have perceptions,

¹⁴ Aristotle, *The Nicomachean Ethics*, NE 1125b14-34.

¹⁵ Taylor, G. "Justifying the Emotions", p398.

¹⁶ *Ibid*, p399.

¹⁷ Neblett, W. "Indignation: A Case Study in the Role of Feelings in Morals", p139.

¹⁸ *Ibid*, p140.

insights and understanding of moral evil not enjoyed by those 'moral lepers'¹⁹ who do not.

The particular aversion to violent assault, and the feeling that such crimes should be punished most severely, reflects a natural and admirable hierarchy of values.²⁰

Finally, it must be noted that for someone to forgive another, the forgiver must have resented the act of the forgivee²¹. Unless there is something resented we are in no position to forgive. Forgiveness is the cessation of the negative feelings of resentment, indignation, or anger towards the forgivee. Hence, those unmoved by resentment, indignation or anger at an offence are not in a position to forgive anyone. Because forgiveness is a virtuous character trait, the unmoved display yet another character defect. For, according to Hampton, the act of forgiveness is a sign that the forgiver has identified at least a shred of worth in the forgivee²², signifying the forgiver's interest in her enemy, her reassessment of him as an agent capable of change. She believes this is an important step to the salvation of the *forgivee*. The forgiver has found in him an ounce of decency, which might inspire him to identify that decency himself, and nurture it²³.

But although forgiveness is a virtuous character trait, one might object that the punishment which characteristically follows the retributive urge is still immoral. The critic could accept that feelings of indignation is a necessary condition for forgiveness, but the actual infliction of punishment is moral reprehensible. It is to this issue I now turn.

Section Three - The Accuracy of the Retributive Urge

The chief objection to the morality of the retributive urge is that it allegedly clouds our judgement, or unhinges our reason. The intense motivational and feeling components quickly

¹⁹ I borrow this term from Moore.

²⁰ Jacoby, S. *Wild Justice*, p299.

²¹ Murphy, J. "Forgiveness and Resentment", p20.

²² Hampton, J. "Forgiveness, Resentment and Hatred.", p85.

²³ *Ibid*, p87.

overrule any logical reasoning and guide us in an irrational fashion. The punishment which usually follows the retributive urge is, so the objection goes, action based on irrational judgement. If we condone this irrational behaviour, fully aware of its irrational origins, we are to be held morally responsible for the suffering it spawns. Here is the critical question: when we make retributive judgements²⁴ originating in the retributive urge, is that judgement an irrational one leading to immoral behaviour in the form of punishing a particular person(s)? We must be certain that what appears as a morally correct judgement (in this case a retributive judgement) is not, in actuality, what Moore terms a “moral hallucination”²⁵, i.e., an obfuscation of moral judgement due to the strong motivational and feeling components resident in the retributive urge, in a manner analogous to how a stick apparently bends when submerged in water. Although to our senses the stick bends, with science we have discovered this perception is an optical illusion caused by the refraction of light in the medium of water²⁶. It is possible that our retributive judgements, although they appear to us as morally correct, are in fact morally incorrect. One might even say that the strong motivational and feeling components of the urge ‘refract’ our judgements, making them appear as something they are not.

However, Moore argues that this apparent moral hallucination depends on the truth of two premises: (1) It must be shown that emotions are epistemically relevant to the truth of moral judgements, and (2) supposing the above premise can be proved, it must be shown that it is the virtuous nature of an emotion which signifies its epistemic import²⁷. Unless we can show that emotions have a positive or negative role to play in the truth of moral judgements, the concern that the retributive urge generates moral hallucinations is unfounded. And, moreover, if emotions *do* possess this quality, what is it about them which generate moral hallucinations? The obvious answer is the so-called unvirtuousness of the retributive urge.

²⁴ I use this term to refer to any judgement regarding the moral culpability of, and respective desert owed to, a wrongdoer.

²⁵ Moore, M. “The Moral Worth of Retribution”.

²⁶ *Ibid*, p198.

²⁷ *Ibid*, p198-199.

3.1 - The Heuristic Capacity of Emotions

Moore argues that emotions act as our “heuristic guides”. They are a source of moral insight, affording us with a moral awareness not provided by our sensory and inferential capacities alone.

The emotions involve specific attitudes and certain ways of looking at the world²⁸.

Martha Nussbaum provides an excellent example to illustrate this point²⁹. She refers to Aeschylus’s *Agamemnon* in which King Agamemnon of Mycenae, *en route* to lay siege on Troy, at the command of Zeus, is held back by adverse winds. The prophet, Clachas, informs Agamemnon that unless he sacrifices his daughter, Iphigenia, to the goddess Artemis, the expedition will remain becalmed, resulting in the fatal starvation of Agamemnon, Iphigenia, and his army, not to mention incurring the wrath of Zeus on his unfortunate soul. This appalling dilemma is discussed in great detail by Nussbaum, but I shall provide only the necessary points for my argument.

Agamemnon is initially aware that his actions will result in wrong either way. But, in a show of intellect, he judges the sacrifice of his daughter to be the better option. Nussbaum points out that where we would expect Agamemnon to feel remorse for the dreadful deed, he in fact adopted the attitude of a victim, justifying his actions to himself³⁰. She argues that the king’s emotional reaction was inappropriate:

...killing a human child with no more agony, no more revulsion of feeling, than if she had...been an animal of a different species...³¹

Instead of embracing the emotional dilemma, Agamemnon chose the purely rational answer and

²⁸ Taylor, G. “Justifying the Emotions”, p391.

²⁹ Nussbaum, M. *The Fragility of Goodness*.

³⁰ *Ibid*, p35.

³¹ *Ibid*, p33.

used it to placate his own pain, and, in a manner, to bury his head in the sand. Instead of maintaining he had committed a horrendous deed, Agamemnon considered the sacrifice of Iphigenia justified. Although forced by circumstances into committing a wrong, Nussbaum believes Agamemnon should have experienced the fitting emotion of remorse, and acknowledged his wrong, instead of trying to justify it³². Although Agamemnon believed he had found the best solution to the dilemma, his failure to harbour remorse highlights his inability to appreciate the full moral significance of the situation and his action. Not only does Agamemnon's response remark on his character, it also comments negatively on his ability to learn from experience. Moral dilemmas are occasions for learning about the human condition and for inspiring development³³:

An honest effort to do justice to all aspects of a hard case, seeing and feeling it in all its conflicting many-sidedness, could enrich future deliberative efforts.³⁴

Avoiding emotional distress throughout life nurtures a flawed, simplistic understanding of ourselves and the world. A purely rational, impassionate study of the world does not alert us to the diverse subtleties of human existence.

There is a kind of knowing that works by suffering because suffering is the appropriate acknowledgement of the way human life...is. And in general: to grasp either a love or a tragedy by intellect is not sufficient for having real human knowledge of it.³⁵

Within the tragedy of Agamemnon lies the possibility of both superficial and profound interpretations. The superficial interpretation is an exercise in utilitarianism, with the conclusion that Agamemnon would have been irrational had he felt guilty for an unavoidable act. But the deeper interpretation is that nestled in the painfulness of the tragedy lies a unique understanding of the predicament. The story is not so much about finding a solution as appreciating the depth of

³² *Ibid*, p43.

³³ *Ibid*. P44.

³⁴ *Ibid*, p45.

³⁵ *Ibid*, p45.

the conflict.

Aeschylus has indicated to us that the only thing remotely like a solution here is, in fact, to describe and see the conflict clearly and to acknowledge that there is no way out.³⁶

This shows that emotions such as sorrow and remorse are necessary human conditions for the full appreciation of a (moral) conflict. Without them we find only superficial solutions which ignore or deny the complexity of the situation. Indeed, instead of the emotions clouding our judgement, they might help us see the situation in an unrivaled clarity. If this is true, there seems no reason we cannot expect the same unrivaled clarity from the retributive urge, unless there is the qualification that intuitively virtuous emotions, like sorrow or remorse, help us see the situation clearly, while intuitively unvirtuous emotions like anger, fear and disgust, actually hide the truth.

3.2 - Virtue and Epistemic Import

For the anti-retributivist to wage a successful campaign, he can assert that the experience of a virtuous emotion is a good heuristic for determining true moral judgements, while the opposite holds for the experience of unvirtuous emotions³⁷. If he could (1) prove this, and (2) prove the unvirtuousness of the retributive urge, he would have a winning case. In what follows, I do not argue either way for (2). The case for the retributive urge can be made by simply examining (1).

It is not so clear that virtuous emotions are good heuristics for moral truths. For example, a dog might be hit by a car, leaving the driver distraught with remorse (a virtuous emotion). Despite her awareness that the accident was unavoidable, the driver still formulates the incorrect moral judgement that she is morally culpable for the dog's death³⁸. The virtue (or lack thereof) contained in an emotion "is not an infallible guide to the epistemic import such an emotion may

³⁶ *Ibid*, p49-50.

³⁷ Moore, M. "The Moral Worth of Retribution", p204.

³⁸ See Moore, M. "The Moral Worth of Retribution", p204-205 for further counter-examples.

possess”³⁹. However, for the sake of argument, I will grant that, by and by, virtuous emotions help generate true moral judgements and unvirtuous emotions help generate false moral judgements⁴⁰. An analogy with work is useful here. Work performed with carelessness, a lack of perception, lack of pride, etc., is likely to result in a poor outcome. Just as work performed by the unvirtuous person will typically generate shoddy results, so judgements based in unvirtuous emotions will typically generate shoddy evaluations. With this opening, the critic may put forward his argument thus:

- (1) Retributive judgements are always motivated by emotions of *ressentiment*⁴¹.
- (2) Emotions of *ressentiment* are unvirtuous.
- (3) Unvirtuous emotions typically lead to moral hallucinations.
- (4) **Conclusion:** We must avoid behaviour originating in the retributive urge.

I have already given my blessing to premise (3) for the sake of argument, and it appears that (2) is correct. The emotions of *ressentiment* appear a truly despicable collection which are certainly unvirtuous. The weak link in the argument is premise (1): retributive judgements are not always generated by the emotions of *ressentiment*. This idea is considered by Wallace, who asserts that retribution can be exacted in sorrow⁴², which I strongly doubt is an unvirtuous emotion. In fact, a retributive judgement can develop from virtuous emotions other than sorrow. For instance, Moore argues that we can generate retributive judgements from the virtuous emotion of guilt⁴³. Although I essentially agree with Moore, I disagree that guilt is a virtuous emotion. We may feel

³⁹ Moore, M. “The Moral Worth of Retribution”, p205.

⁴⁰ For details, see M. Moore, “The Moral Worth of Retribution”, p206-207.

⁴¹ This Nietzschean term is described by Moore (“The Moral Worth of Retribution”, p192) to be commonly thought of as “resentment, fear, anger, cowardice, hostility, aggression, cruelty, sadism, envy, jealousy, guilt, self-loathing, hypocrisy and self-deception”

⁴² Wallace, G. “Wild Justice”, p367.

⁴³ Moore, M. “The Moral Worth of Retribution”, p212.

guilty for non-moral occurrences, like spending the whole day mindlessly bathing in the glow of the television instead of reading a literary work⁴⁴. Guilt results from transgressing a (not necessarily moral) rule or law⁴⁵. Remorse, on the other hand, is always felt in connection with a moral wrong, and includes the desire to undo that wrong, or make amends⁴⁶. Lastly, remorse is more virtuous than guilt because it is concerned with one's actions and their consequences. With guilt one focuses on the failure of the self to abide by the laws it cherishes. For this reason Taylor believes remorse to be a healthier emotion, for the actor is unlikely to become embroiled in "self-preoccupation and self-indulgence"⁴⁷.

How, then, can we generate retributive judgements originating in the emotion of remorse? This can be done by merely substituting remorse for guilt in Moore's argument, which is broken into six steps⁴⁸.

Step one: consider the possibility of a thought experiment wherein we place ourselves in the shoes of a wrongdoer, say, a murderer. There seems no reason we should be incapable of this. Psychologist Willard Gaylin interviewed a branch of Christian monks, asking whether they could, no matter how unlikely it was to actually occur, imagine themselves in the shoes of Richard Herrin, smashing his girlfriend, Bonnie Garland, in the head with a hammer until she died. They all agreed they could, which suggests that the rest of us, the great theologically-unwashed, should have little difficulty in repeating the exercise⁴⁹.

Step two: ask ourselves how we would feel if we had committed a murder. In this case, we should hope to feel remorse in the extreme; anything less would be inhuman: "One ought to

⁴⁴ Taylor, G. *Pride, Shame, and Guilt: Emotions of Self-Assessment*, p88.

⁴⁵ *Ibid*, p88.

⁴⁶ *Ibid*, p98.

⁴⁷ *Ibid*, p101.

⁴⁸ For a breakdown of these steps, see M. Moore, "The Moral Worth of Retribution", p216fn.

⁴⁹ Gaylin, W. *The Killing of Bonnie Garland*.

feel so guilty one wants to die”⁵⁰.

Step three: we must consider the virtuous implications of feeling remorse. It is intuitive that remorse for a murder is far more virtuous than feeling nothing at all. Remorse is not itself a virtue, for it presupposes one has committed a moral wrong, which is unvirtuous in itself. However, to feel remorse in response to a moral wrong is more virtuous than simply ignoring it. It is a requirement for what Greenspan refers to as “imperfect virtue”⁵¹. The experience of remorse, although a sign of imperfection and unvirtuousness in one sense, is still an important experience for future virtuous action, for it encourages reparation. This, and the fact that it is an intuitively appropriate response to a moral wrong, establishes it as virtuous.

Step four: decide on the epistemic import of remorse. Sensations of remorse generally mean we are guilty of some moral wrong. I say “generally”, for we may suffer irrational remorse, like the driver who, unable to prevent it, killed the dog. But,

We should trust the judgements such imagined [remorse] feelings spawn because nonneurotic [remorse], unlike *ressentiment*, comes with good epistemic credentials.⁵²

Step five: to feel remorse, Moore claims, incorporates the judgement that we are indeed guilty, or responsible for a moral wrong. Inclusive in this judgement is the belief that we are deserving of punishment⁵³. We can not truly feel remorse for our actions, and wish to undo that harm, yet deny we deserve punishment. This does not necessarily mean we *want* to be punished. I can judge myself deserving of punishment and yet be scared of, and to some extent wish to avoid, the punishment. But such fears are symptoms of our animalistic instinct to avoid pain and promote our survival, and may be held simultaneously with the judgement that one *deserves* to be punished. In such cases we play host to two competing wants: the desire to avoid pain and the desire to be punished. The intensity of remorse can be so strong that, in the absence of

⁵⁰ Moore, M. “The Moral Worth of Retribution”, p213.

⁵¹ Greenspan, P. *Practical Guilt*, p111.

⁵² Moore, M. “The Moral Worth of Retribution”, p214.

⁵³ *Ibid*, p214.

punishment from others, we personally inflict it on ourselves. It is insufficient to simply offer compensation. Remorse demands punishment; it is an emotion dissatisfied with anything less⁵⁴.

Step six: infer the same judgement of desert on a third party - in this case the criminal in question. Moore believes such inferences are justified, for we should respect the agency of others in the manner we respect our own. Any reluctance to pass judgement on a third party must be carefully scrutinized, for it is

elitist and condescending toward others not to grant them the same responsibility and desert that you grant to yourself...To refuse to grant...the same responsibility and desert as you would grant yourself is thus an instance of what Sartre called bad faith, the treating of a free, subjective will as an object.⁵⁵

At this point Moore is dogmatic. Surely a debilitating socio-economic and historical background makes someone a candidate for being 'less free' than those who have developed into mentally healthy adults in secure socio-economic conditions⁵⁶. A digression into culpability would take me into territory too broad for these closing stages of this thesis. What I shall assert, however, is that Moore's projection of desert onto third parties makes sense for criminals without such mitigating circumstances. To what extent criminals who *have* had their personality influenced by poor socio-economic and historic conditions *are* morally culpable is a matter I leave to others. We can at least accept Moore's projection of desert on third parties in an *all-things-being-equal* scenario.

Section Four - Conclusion

The conclusions from this chapter can be divided into three main categories. Firstly, I have articulated the salient moral differences between revenge and retribution, caused by differences in both their *modus operandi* and cognitive components. Because revenge is often disproportionate

⁵⁴ Barring forgiveness from the offended party. See O'Hear, A. "Guilt and Shame as Moral Concepts", p73; and Taylor, G. *Pride, Shame, and Guilt: Emotions of Self-Assessment*, p85.

⁵⁵ Moore, M. "The Moral Worth of Retribution", p215.

⁵⁶ For an in-depth discussion of this point, see K. Menninger, *The Crime of Punishment*.

and readily involves innocent parties, its preceding urge can be viewed as unfair in the first instance and simply criminal in the second. The immorality of the preceding urge can be inferred from the immorality of the resulting act because contained in the urge is the rationalizing of how the revenge will be sought and what shape it will assume. The presence of vindictiveness in the revenge urge, being an unvirtuous emotional *type* is also important, as is the selfish interest of pursuing revenge only for one's own sake, not to mention the repugnant underlying consciousness of 'getting one's own back'. The retributive urge lacks these unvirtuous qualities, and is hence undeserving of the negative publicity it has received.

Secondly, it has been shown that the retributive urge is an important emotional complex for the security and stability of our flourishing lives. To begin with, experiencing the retributive urge marks us as persons with the important character trait of sensitivity to others. Moreover, the retributive urge is a sign of our self respect and dignity, and of our sensitivity to moral issues involving both ourselves and others. Not only this, but the virtue of forgiveness is not an option for those unmoved by emotional complexes which include anger or resentment⁵⁷.

Thirdly, the retributive urge is epistemically accurate. Its judgements are not moral hallucinations, and we can rest assured that the retributive judgements originating in the retributive urge request the same action as the retributive judgements generated by remorse. One might object that although retributive judgements can *in theory* be generated by remorse, they are *in practice* generated by the retributive urge. This is not a worry, however, for the retributive judgements generated by both emotional episodes are the same, and if we can vouch for the accuracy of one, we can similarly vouch for the accuracy of the other.

The accuracy of the one genre of retributive urge entails the accuracy of the other genre. This enables us to make inferences about the rationality of the retributive urge. If we accept the accuracy of retributive judgements which originate in remorse, we most likely also accept the judgement to be rational. Likewise, accepting the accuracy of retributive judgements resulting from the retributive urge suggests that the latter is also rational.

Early in this chapter I quoted Menninger pleading with us to "repudiate" vengeance, no

⁵⁷ I do not limit myself here to the retributive urge, for it is possible the revenge urge can not provide the necessary pre-condition of anger for forgiveness.

matter how admirably disguised it is. But from the conclusions which have been drawn, it should be clear that the retributive urge is not to be repudiated on moral or ethical grounds. Not only is retributive punishment an act which originates from an accurate and rational judgement, it is the result of a virtuous emotional complex which speaks well, not ill, of a society with a firmly embedded set of moral standards. Perhaps Menninger is correct in rejecting the motive of vengeance⁵⁸, but the retributive urge is not the revenge urge in a righteous shroud. It is an emotional complex which generates retributive judgements and retributive behaviour - all separate and distinct from their revenge counterparts.

⁵⁸ Although I think this issue is far more complex than he appreciates. Footnote 57 should shed some light on this matter.

6

CONCLUSION

Hopefully there now exists a new understanding of the retributive urge. An understanding of its genealogy, structure, rationality and morality should help us appreciate, in more depth, the complexity of its accompanying social behaviour. I would like, in this chapter, to briefly summarize the main points made from Chapter II to Chapter V, and to then comment on how we should view the experience of retributive emotions in today's society.

In Chapter II, I differentiated three similar modes of behaviour: spontaneous retaliation, revenge and retribution. All share certain features, but are also sufficiently distinct from each other, and are to be considered separate urges. Retribution has its earliest roots in spontaneous retaliation, a behaviour aimed at promoting survival in the face of environmental pressures. Revenge evolved from this spontaneous retaliation in an attempt to perfect the survival strategy. Revenge differs most significantly from spontaneous retaliation in the cognitive and evaluative components which elicit such behaviour. These complex developments in the cognitive and evaluative components most likely accompanied the development of reflective thought in the human species. Finally, retributive practices, underlain by the retributive urge, evolved, accomplishing yet another level of deterrence behaviour, extending beyond the individual to the whole group or community. Today we call this behaviour "punishment" (although many attempt to justify it for different reasons).

Chapter III was a detailed investigation of the structure of the retributive urge, and its

similarities and dissimilarities with the revenge urge. There are four components in each: cognitions, evaluations, desires, and feelings. The similarities between the retributive and revenge urges become clear when we consider them in this detail. But there are also significant differences in the feeling and desire components. It is the desire for, and feeling of, vindictiveness in the revenge urge which is of extreme importance. How vindictiveness replaced disgust to help form the retributive urge requires a detailed answer. It includes not only a complex investigation of genetics, but an in-depth study of the cognitive changes which society underwent at the time of this change. I choose to postpone this issue for later work.

Chapter IV dealt with the rational status of the retributive urge. The existence of complex cognitive and evaluative components in the urge affords it with a categorically rational status. We can attempt to define its rationality according to three species of rationality: consequential rationality, psychological rationality, and appropriateness. Both consequential rationality and psychological rationality are teleological. In the former, the focus is on whether the emotions will help to achieve a goal, and in the latter we assess whether the emotions are formulated in a manner which typically generates reliable, or correct, beliefs or evaluations. But emotions are not goal orientated, nor are they simple beliefs or evaluations. To assess the rationality of emotions according to these teleological yardsticks is futile - we must evaluate their rationality in a more appropriate manner. One might object that only their cognitive and evaluative components afford them with rational status, hence to assess their rationality evaluatively, we must refer to these components. Thus, it could be claimed, the evaluative rationality of emotions must be judged according to psychological rationality.

It is not useful to break emotions down into belief + judgment + all the other bits, and then assess their rationality accordingly. They are too complex to be simplified in this manner. Emotions and emotional complexes are dynamic, interactive gestalts, with each component (and its various aspects) playing an influential role on other components. We must assess the evaluative rationality of emotions and emotional complexes in a manner which appreciates this complexity. We do this by referring to whether or not the emotional complex is appropriate to the situation.

In Chapter V I first highlighted the moral differences between the retributive and revenge

urges. There are cognitions and evaluations in the former, unlike in the latter, which help prevent disproportionality, lack of focus, and a targeting of third parties. Of course, there may be irrational cases of the retributive urge where one, say, interprets a crime as warranting more punishment than it really does. Alternatively, one might confuse the intensional object, which could lead to my injuring a third party. But any such case will be unintentional, unlike for the revenge urge, which can intentionally plan such deviant behaviour.

Furthermore, there are important motivation differences between the urges. In the retributive urge our motivation is to restore integrity or justice, while with the other, it is either concerned with honour or pure vindictiveness. Lastly, the retributive urge can operate in connection with the impersonal realm, unlike the revenge urge, which can only be experienced in connection to the personal realm.

The next issue was how the retributive urge impacts on the good life. We saw that an absence of retributive emotions implies defects of the character, such as deficient moral perception, unconcern for others, no stable hierarchy of values, and an underdeveloped sense of integrity. Not only this, but the virtue of forgiveness is generally precluded by those unmoved by retributive emotions.

Lastly, we saw that the retributive emotions act as heuristics for accurate moral judgements. There is no worry about the strong desire and feeling components refracting our evaluations, for we can cross-reference them with the retributive judgements generated by the virtuous emotion of remorse.

Just how should these conclusions be applied to society today? One of the most important points to remember is that the retributive urge is entwined in our evolution. It has helped us survive environmental pressures, and is largely responsible for the institution of punishment. It will not help to deny the role such emotions play in this form of social behaviour. If we wish to sanitize punishment by removing all retributive considerations, we must consider the issue carefully. First, there is the question of practicality: *can* we ever truly remove all retributive considerations? Such emotions are so deeply ingrained in our genes, that it seems doubtful. Secondly, is it desirable? It is not sensible to embrace retribution *simply* because it is part of our genetic heritage. If rape

were part of our genetic heritage we should still not encourage it. But there are other considerations. We must take into account the usefulness of retribution as a tool for healing victims. To focus exclusively on the effects of punishment on the criminals downplays the importance of the victims' pain and suffering. Even if deterrence, or rehabilitation, does succeed, it does not mean we should absolve justice of its retributive commitment. Victims have emotional needs, as displayed in their experiencing the retributive urge. Attention must be paid to these needs, for their denial breeds disillusion. This is a serious danger in South Africa with the Truth and Reconciliation Commission (TRC). The TRC seeks to uncover the extent and details of the human rights abuses during the apartheid era. Truth and forgiveness are its corner stones, promoting honesty, forgiveness, and mercy. All are valuable and virtuous pillars of society. Unfortunately, their architects have placed them on shaky foundations. The TRC removes from victims their right to seek legal compensation against their aggressors, inducing feelings of impotence and unfairness. It is clear that the full extent of human rights abuses would not be uncovered unless amnesty is offered to all who wish to confess. But the commission is naive if it expects wholesale forgiveness. Forgiveness is an act which occurs between two groups: the victims, and the offenders. No third party can forgive on behalf of another. No third party can force forgiveness between victim and criminal:

There is no feeling of forgiveness in my heart. There is no constitutional duty placed on me to forgive. The chairperson of the Truth and Reconciliation Commission surely has no right to use public television and his position of power to call for victims to forgive.¹

The TRC's mass-discount forgiveness not only cheapens the entire concept, but it is a mere cosmetic cover-up, which does not exercise the demons of fear, anger and disgust which haunt so many South Africans. And these dark emotions could fester and grow, until they turn into the bitter conglomeration of *ressentiment*. Yes, forgiveness is a virtue, but forgiveness which comes too easy is a vice, for it speaks of someone who does not take seriously his own, or a loved one's, integrity; who does not appreciate the true evil of the horrendous deeds to which they have been subjected. Forgiveness for all deeds is ultimately desirable. For it suggests not only a

¹ Letter to the editor, *Sunday Independent*, 7 April 1996.

virtuous character, but signifies the closing of a deep internal wound, of a personal healing. But such forgiveness should only manifest after genuine remorse from the offender, and after a suitable price has been paid. To encourage immediate forgiveness in order to assure social and economic fortitude seems an unethical motivation, with undesirable consequences. The need for justice will be buried still kicking and screaming, and there is the risk that this will transform into *ressentiment* and return to haunt us. If it does not, the faceless victims will be left to stew in their own anger and frustration.

But if our society *can* engage in such mass forgiveness it is worrying in itself. First, it could suggest a remarkable failure to appreciate the difference between good and bad, between right and wrong, between justice and injustice, between fairness and unfairness. This seems plausible when a group can shrug and let bygones be bygones, when the crimes are as serious as they are. Alternatively, it might suggest a society which is so used to accepting the demands of leaders, that it is unprepared to defend its deep-set values, for those retributive beliefs are dismissed by many leaders as socially destructive, undesirable, and totally *passee*. Although we must beware the bloodhounds, calling for retribution in order to exact revenge, we must also beware the leaders who preach unconditional forgiveness. Those who need retribution should not be shunned, but understood. Those who are denied their much-needed retribution will be very slow to forgive, and they will never, ever, forget.

Another issue must be dealt with: the differentiation between retribution and revenge. These two concepts must be suitably distinguished if we are to understand either. For there exists two temptations: the first is to illegitimately dismiss retribution on the grounds that it is mere revenge. The second is to dress up revenge as retribution, making calls for blood appear as calls for justice. Only when the intricate complexity of these two concepts is understood will we accurately determine which behaviour is worthy of condemnation, and which is worthy of praise.

There is also an important lesson to be learnt from Chapter IV. Although the retributive urge is appropriate to certain situations, we must not naively dismiss the danger of retribution getting out of hand. It is a powerful emotional complex, and, especially in groups, may tug forcefully against the ropes of individual restraint. Such a loss of control was evident in the recent Pagad event in which Rashaad Staggie was executed. Prior to the killing, Pagad engaged

members of the Hard Livings Gang in a shootout. Two journalists were injured in the fighting. One had been directly in the line of fire when the gun battle began. This apparently meant little to the gun-toting mob. Furthermore, a man and his daughter who lived next to the house which was targeted were almost hit by stray Pagad bullets. Events like this highlight the importance of maintaining the state's sole mandate of punishment. Not only does it avoid lynch mobs and kangaroo courts, it also encourages clinical arrests which do not bring any other persons into harm's way.

It is time to stop running from the retributive emotions. It is time to question the fashionable, politically correct derision which accompanies its discussion. The emotions must be confronted and assessed, their morality compared to the morality of the other species of punishment. For a balanced understanding, we should assess deterrence and rehabilitation in terms of virtue ethics. For it might well be that deterrence bypasses the possibility of virtuous activity in both the criminal and the victim. A criminal is treated as a social obstacle, as a hurdle which slows down the progress of decent people. Hence the criminal is objectified, thrown in prison to keep him out of the social process, or simply executed, removed from society altogether. The victim likewise becomes objectified, as one half of a crime equation. Punishment is not initiated *for* the victim at all. It is also possible rehabilitation is found wanting on the virtue front. Not only does rehabilitation absolve criminals of moral guilt, hence undermining their moral assessment by others, it actively promotes unconditional forgiveness, which is not desirable, and, ultimately, impossible. Forgiveness will remain a virtue only so long as it is seen as a response to a moral wrong. When the criminal is absolved of moral guilt, and society is taught not to resent criminals for their acts, forgiveness as a concept (and a virtue) will wither into nothingness. We must not be blinded by the consequentially rational status of deterrence, nor by the putatively humane understanding of rehabilitation. The retributive urge is supposedly dark, yet we have seen it possesses within its depths a light. Conversely, within the ostensibly rational and humane inclinations displayed by deterrence theorists and rehabilitationists respectively, could rest an undiscovered, unsuspected inky darkness.

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