

"A Philosophical Analysis of the Traditional
Christian Orthodox Concept of Hell."

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This thesis opens with the distinction between two models of hell -- the so-called static and dynamic. The static model asserts that damned individuals are punished only for their sins accumulated during their temporal lives; that is, free will does not exist after death, and those in hell are retributively punished for eternity. The dynamic model, on the other hand, allows for the existence of free will after death. The damned are punished, or rewarded for their actions before and after death.

In the second section of the thesis, I examined punishment -- both retributive and utilitarian theories. We saw that, although there existed a "collective moral intuition" which defended the retributive punishment of the offender -- that is, the retributive theory may expose "who" to punish, and even provide a ceiling as to the amount of punishment -- it does not account for the results of the punitive actions. The utilitarian theory offers little to our discussion, although it demonstrates the need for punishment to account for its consequences. John Rawls offers a solution to this problem by stating that an offender can be retributively punished for a deed, but the activity, or institution of punishment exists with a higher end in mind, such as the reformation of the offender.

Section three concludes with an attempt to reconcile punishment and the two previously noted concepts of hell. The static model was found to appear tantamount to revenge, as it thoroughly ignored the lex talionis by instituting a punishment that did not fit the crime. The dynamic model was found to be the most morally justifiable of the two.

I. HELL

Nothing is more firmly rooted in the minds of Christians, both learned and uneducated, than that the torments of demons, and of damned men, since these too are immortal, will be eternal and will never end. This question we are discussing will therefore seem to some to be superfluous and even ridiculous.

- Denis Pétau

While a thorough historical overview of the concept of hell is an inappropriate task for this thesis, I would nevertheless like to briefly explain the evolution of the terminology pertaining to what we understand as "hell". The Hebrews had two different words for what is commonly referred to as hell: Gehenna and Hades. Gehenna is a place of everlasting punishment, similar to what traditional Christian orthodoxy knows as hell; Hades, on the other hand, is not unlike the Roman Catholic concept of purgatory, as it is a place of purgation, where sinners spend time being cleansed of their sins in order that they may enter into heaven. In translating these terms into English, the distinction between Hades and Gehenna was somewhat blurred. Hell is "derived from the name of a Teutonic goddess of the underworld," and it is the term most closely associated with Gehenna.¹ It is with Gehenna and not with Hades that this paper is concerned.

¹ Jeffrey Burton Russell, Satan -- The Early Christian Tradition (London: Cornell University Press, 1981), p. 120.

A. What is Hell?

Arthur Chambers, in Our Life After Death, offers a definition which enables us to commence our examination of hell. Although we will more fully expound upon his definition as this project unfolds, he says that the orthodox doctrine of an everlasting hell teaches that it is

...a place, or condition, of never ending suffering and woe, into which all persons, unsaved at death, will either pass at once, or after a period of fearful anticipation; and that in that condition their misery will be of such a character that no earthly mental or physical tortures, however intense, can possibly be compared with it.²

Whether hell is a location or a state of being is irrelevant to our discussion; as there is no living person in a position to validate either of the above possibilities, it will suffice to say that those in hell are subjected to a considerable amount of pain and misery. The reason that this punishment is inflicted upon these souls, it is argued, is because they deserve it. They have violated God's law, and because God has pronounced them guilty, they are to endure eternal punishment³.

² Arthur Chambers, Our Life After Death (Philadelphia: George W. Jacobs & Co., 1899), p. 210.

³ Throughout this paper I will use the term "eternal punishment" to denote the specific torments of what we have named "hell". I cannot thoroughly examine the implications of the word "eternal", for that would far exceed the scope and limitations of

Hell-fire and damnation preachers, such as Jonathan Edwards, in an attempt (one would assume) to maximize the deterrent effect that the threat of such future punishment has on human beings, often translate the above definition into vivid, and sometimes repulsive metaphors. Edwards, in his classic sermon, "Sinners in the Hands of an Angry God", spoke of the devil "seizing" sinners while other demons stood patiently waiting, like "hungry lions".⁴

Perhaps the following quotation from a work entitled "The Sight of Hell" by the Reverend J. Furniss, C.S.S.R., will more effectively demonstrate how the all-too-common use of metaphorical imagery has only served to distort the concept of hell.

Little child, if you go to hell, there will be a devil at your side to strike you. He will go on striking you every minute forever and ever without stopping. The first stroke will make your body as bad as the body of Job, covered from head to foot with sores and ulcers. The second stroke will make your body twice as bad as the body of Job. The third stroke will make your body three times as bad as the body of Job. The fourth stroke will make your body four times as bad as the body of Job. How, then, will your body be, after the devil has been striking it every moment, for a hundred million years without stopping? Perhaps, at this moment, seven o'clock in the evening, a child is just going into hell. To-morrow evening, at seven o'clock, go and knock at the gates of hell, and ask what the child is doing. The devils will go and look. They will come back again and say -- "The child is

this paper. In the final section, however, I will briefly examine a few of the possible meanings of the word "eternal" in so far as they relate to Biblical texts, without resorting to an in-depth analysis of the eternal and its relation to time.

⁴ John Gerstner, Jonathan Edwards on Heaven and Hell (Grand Rapids: Baker Book House, 1980), p. 58.

burning. Go in a week and ask what the child is doing. You will get the same answer -- "It is burning." Go in a year and ask. The same answer comes -- "It is burning." Go in a million years, and ask the same question. The answer is just the same -- "It is burning." So, if you go forever and ever, you will always get the same answer -- "It is burning in the fire."⁵

While it cannot be proven as such, one suspects that the punishments of hell are not primarily physical tortures inflicted by the "devil" and his comrades, but rather the pain and suffering which are a result of the "...unholiness and separation from God,...of which fire and brimstone are symbols."⁶ Although it is permissible to view this metaphoric imagery in whatever manner one wishes, he is missing the point if he does not acknowledge that the most painful aspect of hell is the absolute separation from God.

B. The Doctrine of Hell, its Weaknesses...

Although there are numerous arguments against (the likelihood of) hell's existence, or its moral justifiability, I will limit my discussion to the three which, in my opinion, carry the most weight; namely, 1) the traditional concept of hell seems to neglect the notion of responsibility and damns many persons undeserving of eternal punishment; 2) it is useless as a

⁵ Chambers, p. 211-212.

⁶ Augustus Hopkins Strong, Systematic Theology, 12th ed. (Philadelphia: The Judson Press, 1907), p. 1035.

deterrent; and 3) Ernst Soner's "Theological and Philosophical Demonstration that the eternal punishment of the wicked does not show God's justice, but His injustice"⁷.

As we shall see in the following section entitled "Punishment", the moral responsibility of the offender is a necessary condition for the infliction of punishment. However, the orthodox doctrine of hell asserts that, for example, unbaptized infants who die at birth are damned. How can morally sensible persons find justification for inflicting pain on those who have done nothing to deserve it? Furthermore, it seems quite unjust for a benevolent God to create a world with the foreknowledge that most human beings would be denied admission to heaven and instead damned to hell. John Zeis, in "To Hell With Freedom", an analysis of how and why the majority of human beings are damned (a work we will later examine in greater depth), argues that in order for human beings to experience the bliss of heaven, it was necessary that God create them with free will, and consequently, those unwilling to freely participate in a "love relationship" with Him, will be damned. Although Zeis' article is logically sound, it nevertheless omits reasonable justification for the multitudes who will suffer eternal punishment.⁸

W?
H?

In the following section(s) we will see that hell is often justified on the basis of its value as a deterrent. There are,

⁷ Daniel P. Walker, The Decline of Hell (Chicago: The University of Chicago Press, 1964), p. 43.

⁸ John Zeis, "To Hell With Freedom," Sophia 25 (April 1986), p. 45.

however, two inherent psychological flaws which prevent this argument from being effectively validated. As Marie Huber, in Sa Vie, ses Oeuvres, sa Théologie notes, "everyone is persuaded that he himself is not of the number of the wicked, whose Portion shall be in the Lake of Fire and Brimstone."⁹ That is, although one may acknowledge hell's existence, he is unable to admit that any crimes that he is capable of would warrant eternal punishment, thus minimizing hell's deterrent value.

The second psychological flaw of the "deterrent effect" is that human beings are inclined to discount the reality of the magnitude of hell's torments. This does not mean that these punishments are not real, only that most human beings are unable to regard them as a serious threat. As Chambers notes:

Tell a disobedient boy that you will cut his head off, or burn him alive, if he persists in his wrong-doing, and the probability is he will disregard your threats, on the ground that he knows the punishment to be too atrocious ever to be inflicted. Threaten him, on the other hand, with a punishment that he knows to be reasonable and just, and he is likely to be affected thereby.¹⁰

Thus, the threat of eternal punishment is not a viable deterrent, as the common man is 1) unable to envision himself ever being in such a position, and 2) unlikely to consider eternal punishment as a plausible consequence of whatever

⁹ Walker, p. 41.

¹⁰ Chambers, p. 206-207.

crime(s) he may commit.

In order to defend the rational plausibility of hell's existence, it has been argued that one must demonstrate that eternal punishment is proportionate to the offender's crime(s). Bayle, in "la règle ordinaire des Théologians", argues that

demerit increases in proportion to the dignity of the person offended; from which [it is concluded] that sin deserves infinite punishments, since it offends an infinite Being, but that, since they cannot be infinite in degree, they must be so in duration.¹¹

Ernst Soner uses a reductio ad absurdum to counter this argument by stating that if every sin deserves infinite punishment in intensity and duration, then it is impossible to properly punish every sin, for as soon as one sin is infinitely avenged, the offender's eternal life is filled, leaving no room for punishment of the rest of his sins. Likewise, this applies to Augustine's assertion that evil actions result in guilt-- eternal guilt -- and that this guilt warrants eternal punishment. Soner further asserts that no pain can be called "infinite" if any other pain can be added to it.¹² Thus, as the orthodox doctrine of hell demands that all sins are punished proportionately, it follows that this is impossible once even one sin is infinitely punished.

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all functions, etc.

¹¹ Walker, p. 43.

¹² Walker, pp. 43-44.

C. ...And its Strengths

The first and most obvious argument for the existence of hell comes from Biblical texts. In Matthew 25:41 Jesus says, "Depart from me, you cursed, into the eternal fire prepared for the devil and his angels." Revelation 20 mentions a "lake of fire" into which the wicked shall be cast. If one accepts the authenticity and validity of these texts, they, at the very least, offer an indication of the possibility of eternal punishment for those who sin against God.

Although we have examined the deterrence value of hell and found that it contained two significant psychological flaws, its value is nevertheless appealed to when seeking justification for the existence of hell, and for this reason, we will acknowledge it if only to introduce a useful distinction between static and dynamic concepts of hell.

According to the traditional Christian orthodox view of hell, there is a "complete moral freezing at death; neither the damned nor the saved can acquire merit or demerit."¹³ Commonly referred to as the static concept of hell, this view asserts that the damned are punished only for sins committed during their life on earth. One facet of their punishment is that their wills become "immutably evil", and therefore what wrong-doings they are guilty of in hell cannot be properly construed as "sins"; thus they are punished only for the crimes they committed during their

¹³ Walker, p. 23.

temporal lifetimes. One of the most curious aspects of this claim is that it completely ignores a common justification for eternal suffering -- that the damned continue to freely sin, and thus their actions are eternally, and justly punished.¹⁴

If, however, the orthodox doctrine of a morally static hell is altered to admit that the damned possess free will -- the dynamic concept -- it results in the possibility of universal salvation, for if sinners are able at every moment to freely choose to continue in sin, it likewise follows that they can choose to repent, and sin no more. We will return to this possibility at the end of this paper.

or of universal damnation?

One of the earlier justifications for the existence of hell which has received little attention since the 17th century is that part of the reward of those in heaven consists in their ability to view the suffering of those in hell. Saint Augustine and Thomas Aquinas heartily endorsed the belief that not only was this an occasion of joy because it gave the "saved" an opportunity to witness God's Justice, but it also heightened their awareness of their particular good fortune. However, as mentioned above, it has fallen into disfavor because of humanity's increased resistance to take pleasure in other peoples' suffering. As Aldwinckle so relevantly asks:

What man of sensitive conscience and compassion would really want to receive eternal life from a God who is content to assign the vast majority of the human race

¹⁴ Walker, pp. 23-24.

to eternal punishment in a hell where suffering is purely retributive, and by definition can have no value either as purifying or in the sense of rehabilitation?¹⁵

Finally, retributive punishment, the doctrine which asserts that wrong-doing deserves to be punished, is also viewed as a justification for the possibility of hell's existence. We will discuss this concept in detail throughout the following sections, but for the moment, let it suffice to say that although the "validity" of retributive punishment does not necessarily justify the existence of eternal punishment, the refutation of this theory makes "any justification extremely difficult...if not impossible."¹⁶

¹⁵ Russell Aldwinckle, Death in the Secular City (Grand Rapids: William B. Eerdmans Publishing Co., 1972), p. 103.

¹⁶ Walker, p. 27.

II. Punishment

Only when human society can justly punish every evil will Hell be forgotten.

- Alan Bernstein

Bernstein has hit upon one of the most crucial aspects of hell. As described above, hell is a conflagration of punishments. Our task is to thoroughly examine the peculiar notion of punishment, and attempt to ascertain whether or not it is possible to justify punishment in hell. Philosophers and theologians alike have continually attempted to justify the institution of punishment, for it is a difficult thing when we, as autonomous beings, must justify the suffering and pain incurred by individuals forced to submit their will to that of another.

In the following sections I will present two theories of punishment -- of particular interest is the retributive concept -- and then examine their potential implications for the concept(s) of hell as outlined above. I will conclude the final section with an investigation of the phenomenon of punishment in hell in order to ascertain whether or not it can be conceived as morally justifiable.

A. What is Punishment?

There are many distasteful or unpleasant incidents which we as human beings encounter during the course of our lives, and there are some who view each of these negative incidents as a "punishment" of some sort. Perhaps these people have a need to justify how such a thing could happen to them. Of those unfortunate circumstances in which another human being is responsible some would say, "He doesn't like me, and is punishing me." Such natural occurrences as fires, floods and the like are sometimes attributed to an act of God -- punishment for engaging in wicked pastimes. But these superstitions are a far cry from the true meaning of the word "punishment", for as Lucas observes in On Justice, "Not everything unwelcome, not everything that befalls us against our will, is to be construed as a punishment".¹⁷ Punishments, if they are indeed to be construed as such, must be deliberate actions undertaken by a being or beings in order to bring about the discomfort, harm or inconvenience of another.

As mentioned above, these actions must be deliberately undertaken in order for punishment to exist; without the qualifier "deliberate", any actions which harm or inconvenience another are merely accidents, or examples of irresponsibility. The woman who cuts her boyfriend's hand while carving a turkey is

¹⁷ J.R. Lucas, On Justice (New York: Oxford University Press, 1980), p. 125.

not punishing him unless the "slip" of the knife was intentionally carried out in order to harm him.

Likewise, her boyfriend must recognize that she has deliberately cut him if the concept of punishment is to be applied. As Lucas observes:

I may, out of ill will, harm a person, but I cannot represent it as punishment unless he recognises that he has suffered. The drama is incomplete unless in the last act the truth is revealed, and the victim knows what misfortunes he has brought upon his own head."¹⁸

A notion central to the theory of retributivism (see below) is that a punishment must be exacted "for" some specific action(s); that is to say, the victim must be perceived as guilty of some particular crime(s). Indeed, as Garland and Young observe, "The word 'punishment' bears the definite connotation of a retributive penalty for wrong-doing".¹⁹ Although it can be argued that punishment exists in order to achieve some future goal, and not as an end in itself, we will assume for the moment that people are punished for past actions in order to stress some of the less obvious implications of the term "punishment".

To further illuminate the idea that punishment can only be inflicted as a result of the victim's past actions, our knife-wielding woman in the example above is punishing her boyfriend

¹⁸ Lucas, p.126.

¹⁹ David Garland and Peter Young, ed., The Power to Punish (Atlantic Highlands: Humanities Press, 1983) p. 11.

only if he has done something wrong. It cannot properly be depicted as punishment if she cuts him to see if he bleeds, or because she suspects him of infidelity; he must have deliberately transgressed her law, and furthermore, she must ascertain that he has in fact done so. Punishment differs from other unfortunate consequences intentionally brought about by others because when we demand to know why the punishment has been inflicted, the response begins, "Because you have..." According to Lucas, "There must be some wrong done, and some connection between the wrong done and the person being punished in virtue of which he can be held responsible for it."²⁰

While it is not impossible to inflict pain or suffering upon an innocent person, this cannot be properly construed as punishment. It is, in the words of Quinton, "terrorism" or "judicial error". The punishment of only the guilty is a logical decision, not a moral one. It is not, as some would believe, that the innocent may not be punished and the guilty ought to be punished; rather, as mentioned above, the innocent cannot be punished, and only the guilty must be punished.²¹ This last sentence does not necessarily demand that the guilty always be punished, for as we shall see, mercy remains an option, even at the hands of some of the most adamant retributivists.

One of the most common arguments against punishment

²⁰ Lucas, pp. 127-128.

²¹ Gertrude Ezorsky, ed., Philosophical Perspectives on Punishment, (Albany: SUNY Press, 1972) "On Punishment," by A.M. Quinton, p. 10.

(particularly retributive punishment) is that it is often confused with, and viewed as a justification for, revenge. Punishment, however, is not revenge, as there exist several fundamental differences between the two; namely: 1) the "anger" vented through revenge is self-interested, whereas that of punishment is disinterested; and 2) the nature and severity of punishment is open to argument, whereas that of revenge is not. With respect to vengeance, the more pain and humiliation inflicted upon the victim, the better.²²

Let us now examine these two claims in depth. The first claim in 1 above seems reasonable enough. If one says that he is going to exact vengeance from someone for some past action, it must be that he seeks to satisfy a need; that is, if I plan to avenge my brother's murder, I have taken it upon myself to satisfy my personal need for retribution. But what of the second claim in 1? How is it that the punisher is viewed as a "disinterested party"?

Ewing, in The Morality of Punishment, explains that this anger is not personal but impartial. It is brought about by an "aversion" to moral evil and not as a result of a personal need for retribution. Those with the capacity to strive towards the good, in an attempt to strike a balance between good and evil, often express their hatred of evil through punishment.²³

²² Lucas, pp. 130-131.

²³ A.C. Ewing, The Morality of Punishment (Montclair: Paterson Smith, 1929), p. 33.

Ewing and Lucas concur that there exists in some human beings the capacity to recognize and strive toward the good, and this natural capacity to recognize the good often leads them to impose punishments upon others in order to preserve a universal harmony of good and evil. As Lucas observes:

One requires some locus standi to inflict punishment. Although in one sense, punishment is my business, as it should be of any other rational man, simply because of the disinterested and universal concern which leads us to impose it, I still have to explain why I, rather than anyone else, should take it upon myself to exercise that office on behalf of rational humanity. Punishment differs from revenge, in being imposed not only out of a disinterested concern but in a representative capacity.²⁴

We will return to Lucas' observation of "representative capacity", but for the moment let us examine the claim of two above, which further separates and serves to effectively distinguish punishment from revenge.

There is no limit to the amount of revenge one should take on another, whereas in the case of punishment, it is proper, and even advisable in some circumstances to question not only the punisher's authority, but the methods and severity of the punishment as well. For to punish a human being more harshly than the nature of his crime warrants is a highly immoral act, and should not be condoned under any circumstances -- a problem central to this thesis. Revenge, however, is not measured in

²⁴ Lucas, p. 130.

degrees of right or wrong. Indeed, as Lucas points out, it is impossible to exact "too much" revenge:

If a man insults me, and I kill him, nobody can say that my revenge was excessive. As far as vengeance is concerned, the more the better. As I see my lifelong enemy, who has often slighted me and spoiled my plans, carried off to an early burial, my cup is full, and all that is left for me to desire is that wild asses may dance upon his grave. Punishment, however, admits of argument. Even if it is established that the man did, indeed, do wrong, and that the man imposing the punishment is authorised to judge and to pass sentence, it is still possible to protest that the offence does not merit as great a punishment as has been imposed.²⁵

With regard to Lucas' notion of "representative capacity", it should be noted that the punisher must possess the authority to punish if the harm, discomfort or inconvenience that he causes another is to be recognized as punishment. J.D. Mabbott encounters this problem in his article "Punishment", and comments on our tendency, when we learn of some particularly atrocious moral or social action(s), to say "That should be punished." The problem which he perceives is the concern as to whose duty it is to punish these crimes. For when one visits a country in which it is not illegal to physically harm one's spouse or children, and subsequently witnesses such happenings, he might intervene with the intention to punish the one who is harming his family. But when the abuser retorts, "What business is it of yours? What authority do you have over me?", he is unable to reconcile his

²⁵ Lucas, p. 131.

limited authority with his desire to punish. He may have a moral duty to stop this man, and an effective course of action may be to physically attack him, but the attack is not a punishment as he lacks the authority to do so. "For a moral offence, God alone has the status necessary to punish the offender; and the theologians are becoming more and more doubtful whether even God has a duty to punish wrong-doing".²⁶ In the final section of this paper it is the justification of punishment in hell with which we are concerned, and should the question arise, we will assert that God indeed has the proper authority to punish.

The final problem with punishment to be presented in this section centers around the notion of intent. The receiver of punishment, if it is to be properly represented as such, must have possessed the foreknowledge that his actions were in violation of a specific law. He must deliberately set himself in opposition against said law(s) if he is to be viewed as truly guilty; for without guilt, as determined above, there is no justification for punishment. This is not to say, however, that such actions are to go unnoticed -- to the contrary, these illegal or immoral actions must be brought to the attention of the unwitting lawbreaker, thus introducing the concept of penalty, to be discussed below.

In summary, the necessary and sufficient conditions for the infliction of punishment, as defined above, are 1) the offender

²⁶ Gertrude Ezorsky, ed., Philosophical Perspectives on Punishment, (Albany: SUNY Press, 1972), "Punishment," by J.D. Mabbott, pp. 167-168.

must deliberately and with full knowledge of his action(s), violate a generally acknowledged and valid law; 2) the punisher, whether an institution or being, must ascertain his guilt, and undertake the task of punishing him in a disinterested capacity to express distaste for moral evil as such; and finally, 3) the offender must recognize that he is being punished.

We have thus examined the necessary and sufficient conditions for the infliction of punishment, what constitutes punishment and what does not, and examined a few of the more common objections surrounding this controversial issue. We will now proceed to examine the two grand theories of punishment, their strengths and flaws, and attempt to ascertain which of these (perhaps a combination of both) is applicable to our previously presented concept of hell.

B. The Retributive Thesis

As determined above, the first condition necessary in order to inflict punishment is guilt; this is not to say that the offender must feel guilty, only that he or she has deliberately transgressed the law, and the proper authorities have ascertained that he or she has done so. While innocent persons can suffer pain, this pain cannot be properly construed as punishment. Thus, the first premise of the retributive theory is that the objective guilt of the offender must be established.

Quinton sets forth three other characteristics of the retributive theory in his article "On Punishment", these being that punishment: 1) is the negation or annulment of evil; 2) must fit the crime (the lex talionis); and 3) is a right that offenders, as moral agents, are entitled to; that is to say, morally responsible persons not merely deserve punishment, they are entitled to it. Furthermore, as rational moral agents they should be treated as ends and not merely as means.²⁷

The negation or annulment of past evil in one above is not to be regarded as the elimination of past actions, for although it would "...undoubtedly be a good thing if the past evil could really be annulled, [it] cannot be meant literally because what is once done cannot be undone..."²⁸ Rather, what one is ideally striving for by inflicting punishment is to bring about consequences whereby the evil of past actions is somehow lessened. What Quinton is attempting to do, with the aid of G.E. Moore's "Principle of Organic Unity", is to provide a justification for retributive punishment. While it may or may not be possible to justify retributive punishment as an end in itself, Moore's Principle of Organic Unity states that pain, although an evil when considered by itself, can, when added to a preexisting evil state of a specific nature, bring about a state of affairs which is less evil than it would have been had pain not been inflicted. In other words, the addition of pain to the

²⁷ Quinton, p. 6.

²⁸ Ewing, p. 22.

aforementioned state of evil may result in a lesser degree of evil within this state as a whole. Whether the addition of pain can achieve thoroughly positive results is another question. 29

By way of example let us posit the existence of an evil man, one who is guilty of numerous crimes against humanity. His state of being is indeed evil in itself. If we reward him with something which is generally recognized as a good, such as approval, he remains, on the whole, unimproved; in fact, his evil may increase. Yet when we punish him -- and Moore is careful to add that we do not punish him more severely than the nature of his crimes warrant -- we may bring about a state of being which is less evil than if he had gone unpunished.³⁰ This is one of many common arguments attempting, in a roundabout way, to justify punishment as an end in itself.

The lex talionis, as set forth in two above, is often objected to on the grounds that 1) there are many crimes which cannot be equally compensated for; and 2) in order to effectively accomplish the goals of the lex talionis we would have to ascertain the assailant's intent, state of mind, character, and numerous other unascertainable facts. In response to the former objection, it is not always necessary that crimes are always "repaid" with the same type of punishment. As Donald Clark observes, the lex talionis does not mandate that we

²⁹ Gertrude Ezorsky, ed., Philosophical Perspectives on Punishment, (Albany: SUNY Press, 1972), "An Organic Unity," by G.E. Moore, p. 115.

³⁰ Moore, pp. 114-115.

...take an eye for an eye, and a tooth for a tooth, but only [that we] restore a condition of equality between the injurer and the injured. The sensible and external form in which this payment takes place is immaterial to justice -- it is necessary only that the payment should be equal in value to the debt incurred. Although the lex talionis embodies all that is essential to the idea of punishment it need not be literally interpreted; there is no excuse for retaliation in kind when the settling of debts is possible in a different currency from the original.³¹

Thus, the lex talionis demands that those crimes which result in a greater degree of evil should be dealt with more severely than those which result in a lesser degree of evil. In order to "repay" those who have incurred a larger "debt", the punishment inflicted will be of a more exacting nature. Therefore, instead of interpreting the lex talionis literally, we will apply it to punishment and utilize it as a ceiling for the amount of punishment which can be justifiably inflicted on the guilty party.

As for the second objection, we will assume that God, as an omniscient being, knows full well the assailant's intent, state of mind, character and degree of guilt and will take these facts into consideration while formulating the amount and type of punishment the sinner is to incur. Thus, for our purposes, the lex talionis serves only as an upper limit to the amount of punishment which can be justifiably inflicted on the guilty

³¹ Donald Clark Hodges, "Punishment," Philosophy and Phenomenological Research 18 (September 1957-June 1958), p. 208.

party. Indeed, as we shall see, it may be said of the retributive doctrine that this is all it is capable of doing -- establishing the amount of punishment to be exacted from the offender.

Punishment as a right to which all offenders are entitled no doubt strikes the majority of us as a rather strange right, one which most of us would be loathe to exercise. However true this may be, if we are to be recognized as rational beings, we must acknowledge that human beings are responsible for their actions. While there are some who argue that punishment is not a right, but a violation thereof as it is an imposition on the offender's will, to assent to this view would serve to negate the notion of responsibility and reduce man to the level of an animal. As Hegel observes, this right is established by the offender himself through his action(s):

The reason for this is that his action is the action of a rational being and this implies that it is something universal and that by doing it the criminal has laid down a law which he explicitly recognized in his action and under which he should be brought as under his right.³²

By exercising his free will through his action(s), the offender assumes responsibility, and as punishment may only be inflicted upon the guilty, we may assert that

³² Robert M. Hutchins, editor in chief, Great Books of the Western World, 54 vols. (Chicago: Encyclopaedia Britannica, 1952), vol. 46: Hegel. The Philosophy of Right by G.W.F. Hegel, trans. T.M. Knox, p. 37.

...punishment is regarded as containing the criminal's right and hence by being punished he is honoured as a rational being. He does not receive this due of honour unless the concept and measure of his punishment are derived from his own act. Still less does he receive it if he is treated...as a harmful animal who has to be made harmless.³³

Thus when we assert that "human beings, as rational moral agents, have the right to be punished", we are imputing to them a rational capacity, or dignity which is not merely assumed to be present in all beings. Let us not forget that there are many human beings to whom we do not ascribe this dignity, do not hold responsible for their actions, and consequently do not punish.

For example, the man who "sacrifices" his family to the gods because his neighbor's dog told him to do so is clearly, by no means, to be viewed as a rational being. Although we may be horrified or even infuriated by his actions, this man is not held liable; he is not a criminal, and lacking the aforementioned rational capacities, is not "entitled" to punishment. Rather, society sees this man as incomplete, lacking the essential mental elements which constitute a morally responsible person, and hence, instead of punishment, we prescribe such methods as institutionalization, therapy, and drugs to bring him to an acceptable level of mental competence. ^(at least) _{or behavior}

Thus, the phenomenon of being viewed as a rational moral agent is more than an internal state of being; it is external in the sense that it is a concept imputed to one by the rest of

³³ Hegel, p. 38.

society; hence, the right to be viewed as a rational being is generally acknowledged unless the person behaves in such a way that causes society to deny him this respect, or dignity, and in doing so also relieves him of his right to punishment.

Finally, it must be noted that the concept of retributive punishment is established only by means of a collective moral intuition that the wicked deserve punishment. This is not necessarily to be viewed as a limitation of the theory, for as Ewing notes, all (ethical) truths are in some sense based upon "...knowledge obtained otherwise than solely by inference or observation."³⁴

However, as we shall see in the following section, to posit retributive punishment as an end in itself -- that is, irrespective of future consequences -- is one of the most common arguments against the retributive thesis. Although it may not be possible to justify retributive punishment as an end in itself, this does not imply that it should not be one of the factors considered when punishment is an appropriate course of action.

C. Utilitarianism

The utilitarian theory of punishment argues that since pain is evil, punishment is evil, for punishment entails the

³⁴ Ewing, p. 14.

deliberate infliction of pain upon human beings.³⁵ Therefore, utilitarians reject the argument that punishment can be justified as an end in itself, and instead believe that punishment can only be justified by its specific results, such as deterrence or reformation.

I am not going to counter utilitarianism with the traditional arguments that it permits the punishment of the innocent; or that it treats the offender merely as a means to another's end; or even that there is "no logical relation to actual or expected utility."³⁶ Rather, aside from the inherent "psychological flaws" as demonstrated in an earlier section, utilitarianism is irrelevant to our discussion, for one of the necessary and sufficient conditions for its successful implementation is verification; to argue that utilitarianism is an effective deterrent, (n) society must be able to ascertain that the punishment is indeed inflicted.

Perhaps it will serve us better to distinguish between actual utilitarianism and the threat of punishment as they relate to deterrence. As determined in the preceding paragraph, utilitarianism cannot be viewed as a true deterrent due to the lack of verification. Because those who are supposedly subjected to eternal punishment have departed from this world, and no human being alive can testify to actually witnessing said punishments,

³⁵ Graeme Newman, The Punishment Response (Philadelphia: J.B. Lippincott Co., 1978), p. 203.

³⁶ Quinton, p. 13.

there is no basis for verification. If we wish to posit the threat of punishment as an effective deterrent, the psychological constitution of human beings (as determined above) minimizes whatever deterrent effect(s) hell may have.

Utilitarianism is not limited to deterrence, however, and in the following section we will examine the utilitarian goal of reformation and attempt to incorporate it into the retributive doctrine.

D. Some Final Thoughts on Retributive Punishment

The Russian Court does not exist for punishment only, but also for the salvation of the criminal. Let other nations think of retribution and the letter of the law, we will cling to the spirit and the meaning -- the salvation and the reformation of the lost.

- Fetyukovitch addressing the
jurors in Dostoevsky's The Brothers
Karamozov.

As demonstrated above, retributive punishment is based upon a collective moral intuition that evil actions deserve to be punished. Can there not be, however, other considerations which one must account for when inflicting punishment? Aside from "intuition", how does one justify this process whereby an evil action is requited with yet another evil action? Utilitarianism offers one solution to this problem, yet as we have seen, it too is unable to adequately account for the infliction of pain on

human beings.

Instead of drawing such distinct and separate boundaries around utilitarianism and retributivism, perhaps there lies between these two extremes an optimal theory of punishment. Rather than posit reparation, retribution or deterrence as the ultimate goal of punishment, let us consider the possibility that punishment, in its optimal and most just moments, seeks to prevent the recurrence of evil. Is this such an outrageous claim? Although highly unlikely to occur at any time in the near future, it seems that if evil were effectively barred from entering the world, there would be nothing left to punish. Says Rashdall:

If the purpose [of punishment is] to produce any effect upon society, it seems to be totally misleading to say that 'punishment is inflicted for the sake of punishment' or for 'retribution' and so on. If that purpose be anything else besides the production of good effects on conscious beings, it seems to me wholly immoral and irrational.³⁷

Throughout an earlier section we maintained that retributive punishment -- specifically the lex talionis -- provided a ceiling as to the amount of punishment which can be justifiably inflicted on the offender. A wholly retributive stand would be that it is our duty to exact this amount of punishment and no less because, as Kant argued, "although punishment causes the criminal to suffer, and does not make him a better man (it may even make him a worse one), he is unworthy of mercy in being unworthy of

³⁷ Hastings Rashdall, The Theory of Good and Evil, vol. 1, (Oxford: The Clarendon Press, 1907), p. 288.

happiness".³⁸

In order to more thoroughly examine this claim, let us use Ewing's example of two punishments for the exact same crime (in deed, intent, character of the offender, consequences of the crime, and so on): the first, a less severe punishment than as mandated by the lex talionis, which will reform the offender and make him a better person; the second, a purely retributive punishment, and consequently more damaging than the former, which we know beforehand will not reform him. Are we, as the retributivists claim, to ignore the consequences of our actions and punish him to the full extent as required by retributive law? Although we cannot know beforehand the future impact of our punitive actions, it seems, at least in the example above, an error on behalf of the punisher to disregard the consequences of his actions. As Ewing says, although retributive punishment may be an effective determinant in deciding when and whom to punish, the reformation of the offender is a more appropriate and just goal, and to seek to achieve the former when it will lead to the demise of the latter, seems "...not a moral duty, but positively, and in a serious degree, wrong."³⁹

correct w/h.

 P_1 & P_2 if

 equal reform,

 but $P_1 > P_2$

 + P_1 reform.

 + P_2 not?

The difficulty with which we are dealing here -- the conflict between retributive and utilitarian theories of punishment -- is addressed by John Rawls in "Two Concepts of Rules". He argues that there is a difference between justifying a

³⁸ Hodges, p. 210.

³⁹ Ewing, p. 18.

practice, an "activity" which is characterized by a series of rules, offices, penalties and the like, and specific, individual cases.⁴⁰ In the example above, punishment, as an institution or "activity" would be defined as the practice, whereas each of the two examples would fall under the heading of "cases".

If we argue that punishment as an activity seeks to bring about certain consequences (for example, the reformation of the offender), this does not preclude our ability to justify retributive punishment as it relates to specific cases. Rawls supplies the following argument: A young boy asks his father why Mr. X was arrested and jailed. The father replies, "Because he was found guilty of wrong-doing." In other words, he was retributively punished for his actions. But if the boy happened to ask instead, "Why are people in general put in jail?", the father might answer, "To protect society," or "In order that they might realize that what they did was wrong." Thus we see that a particular person is punished for some wrong imputed to him, whereas people are punished in general, for example, to reform them.⁴¹

Although punishment as an institution and punishment in specific cases may appear to have conflicting goals, this can be reconciled by the fact that there is a difference between punishment as an institution, and punishment in specific cases.

⁴⁰ John Rawls, "Two Concepts of Rules," The Philosophical Review 64 (January 1955); reprint ed., The Bobbs-Merrill Reprint Series in Philosophy, pp. 3-5.

⁴¹ Rawls, pp. 5-6.

Thus, retributive punishment -- the act of punishing offenders for past offenses, inflicting punishment which is proportionate to the crime(s), and so on, as per above -- can be justified as an end in itself in so far as it results in punishment, as an institution or activity, achieving another goal such as the reformation of the offender.⁴²

Does your theory of the end of punishment → Hell = Purgatory (intend'
only reformatory)? (pun. B)

⁴² This final page is not to be construed as my conclusion; at the beginning of Spring term I plan to submit to the Philosophy department an appendix -- one which will contain my concluding remarks.

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"A Philosophical Analysis of the Traditional
Christian Orthodox Concept of Hell --
An Addendum."

Joseph B. Amsbary, Jr.
Honors Thesis
Professor Sessions
29 April 1987

III. CONCLUSIONS

I shall venture to affirm that there never was a popular religion which represented the state of departed souls in such a light as would render it eligible for human kind that there should be such a state.

- Philo, in Hume's Dialogues Concerning Natural Religion, Pt. XII.

There are many arguments against the existence of hell, one of the most common being that God, as a thoroughly benevolent Being would not permit the deliberate infliction of eternal pain upon human beings. In "To Hell With Freedom", John Zeis argues that hell must necessarily exist as a direct consequence of Man's free will. God created Man with this capacity in order that human beings may freely enter into a "love relationship" with Him. The existence of free will, however, also permits the dread possibility of one exercising this capacity in such a manner that he gains autonomy even from his Creator, entering into what is commonly referred to as hell.⁴²

Rather than view persons as "...entities constituted by an episodic series of free choices, each of these choices being independent of the others"⁴³, Zeis argues that human beings are

⁴² John Zeis, "To Hell With Freedom," Sophia 25 (April 1986), pp. 42-45.

⁴³ Zeis, p. 45.

autonomous individuals possessing specific personality traits which serve as an indication of their character. By exercising his free will, the individual chooses his character, which, in essence, determines his "moral worth". Thus, God does not "send" anyone to hell; rather, the individual, in forming his character, either accepts or rejects the possibility of freely entering into a love relationship with God, and consequently chooses to enter heaven or hell.

I would like at this time to refer to the previously presented notions of the static and dynamic concepts of hell. As noted above, the static concept of hell is often referred to as the "traditional" model of hell, whereby human beings are sentenced to hell on the basis of how they lived their temporal lives. It is this model which Zeis adheres to, for nowhere in his article does he address the possibility of a continuing moral evolution of the sinner's character. Rather, he, as do many others, views the damned individual's soul as being "immutably evil" with no opportunity for redemption.

It can be said that God, as the omniscient Creator, not only has the ability to ascertain the moral worth of the offender (that is to say, his character), but also possesses the authority to punish -- He has the appropriate locus standi. Furthermore, as per the retributive theory, it is widely accepted that human beings deserve to be punished for having violated God's law. The static concept of hell, however, fails to adequately meet the prescribed conditions of the lex talionis. Whether we view the

individual's punishment as a consequence of his character, or of the sins he committed during his temporal life, there must necessarily be some saturation point whereby the punishment inflicted equals the offender's sins, or his moral "badness". As determined above, the lex talionis serves as a ceiling as to the amount of punishment which can be justifiably inflicted, and eternal punishment for a finite number of sins thoroughly violates this principle. And with regard to character, there is only so much "badness" that an individual can accumulate during his temporal lifetime.

As John Hick notes:

...the absolute contrast of heaven and hell, entered immediately after death, does not correspond to the innumerable gradations of human good and evil; justice could never demand for finite human sins the infinite penalty of eternal pain; such unending torment could never serve any positive or reformatory purpose precisely because it never ends; and it renders any coherent Christian theodicy impossible by giving the evils of sin and suffering an eternal lodgement within God's creation.⁴⁴

The static concept of hell thoroughly ignores the lex talionis by inflicting an inappropriate amount of pain upon human beings for developing an imperfect character, or accumulating a finite number of sins "...often done in ignorance or from habit."⁴⁵ Furthermore, it ensures the punishment of the bulk of

⁴⁴ John Hick, Death and Eternal Life (New York: Harper and Row, 1976), p. 201.

⁴⁵ Louis Pojman, lecture notes, p. 1.

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the human race who have lived beyond the influence of Christianity or before Jesus Christ.⁴⁶ The static concept of hell, as conceived by traditional Christianity, appears tantamount to revenge -- one could conceivably argue, in fact, that it is the most extreme form of revenge, for as described above, the avenger is not held accountable for the amount or the severity of the pain inflicted upon the offender; and hell, more so than any form of punishment known to man, is indeed the most severe.

The dynamic model of hell, to a greater or lesser degree, is a much more morally justifiable concept, as it allows for the potential redemption of the offender. Free will flourishes, for the offender is at every given moment responsible for his actions. He possesses the opportunity to accept God's love and repent his former crimes -- or ^{to} refuse to do so and thus remove himself further from God's presence. This model does not, however, diminish the offender's responsibility for his past sins.

Few people deliberately choose to sin with the knowledge that their actions are offensive to God; in fact, most sins are committed out of ignorance, or from force of habit. With this in mind, I would like to introduce a form of punishment alluded to above -- penalty. Says Lucas:

We do not convict the careless man of setting himself

⁴⁶ Hick, p. 225.

up in opposition to society, but we remind him, with a greater or lesser degree of sharpness, to mend his ways and take better care next time. Although he did not intend to do anything wrong, he did contravene the regulations, and could have complied with them if he had set about it properly. He is responsible, not in the original sense that he can say why he did it, but in the derivative sense that he had a duty to see that the regulations were complied with.⁴⁷

Thus the dynamic model of hell which incorporates penalty as punishment allows for the continued exercise of free will, and consequently, affords the ^{poss.} moral evolution of the offender and the possibility of universal salvation. It is the model which most precisely coincides with our examination of punishment in the preceding sections as it permits the retributive punishment of the offender (penalization) while at the same time seeking to achieve the superordinate goal of the reformation or salvation of the damned. It seems much more appropriate that the moral order of the universe is reckoned not over periods of years or even decades, but over a much longer span of time, and that the consequences of one's actions are "morally proportionate" and directed to the constructive end of salvation.⁴⁸) will.

In conclusion, I do not mean to assert that the static concept of hell is impossible, or even that it is morally unjustifiable, for we have examined but one aspect of hell--punishment. Aside from the limitations of our discussion, there remains the possibility that divine moral justification is

⁴⁷ Lucas, p. 139.

⁴⁸ Hick, p. 244.

accounted for in different terms; that is to say, it may prove inappropriate or even useless to attempt to define hell in terms of temporal terminology -- there may exist other, superior forms of justice which we as human beings are unable to distinguish. Within the context of this discussion however, the dynamic concept of hell, as opposed to the static model, is seemingly much more appropriate as reckoned in terms of temporal moral justification.

Moral concept
or justification

*** I would like to extend my sincere apologies to all members of the Philosophy department for any and all inconveniences which may have arisen due to my absence last Monday. It was, unfortunately, unavoidable, although I am aware that I should have notified the Department.

**** On my honor, I have neither given nor received any unacknowledged aid on this Honors Thesis.

Joseph B. Amsbary