Eliciting An Emotional Response: An Analysis of Revenge and the Criminal Justice System

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INTRODUCTION

Revenge. The mere mention of the word conjures images of those who have done wrong and have received what, presumably, they deserved in retaliation. As such, the concept of revenge is an abstract idea to which anyone can relate. Revenge is as old as history and has been discussed and illustrated throughout literature, film, and conversation. Surely, the phrases “an eye for an eye,” “hell hath no fury like a woman scorned,” and “revenge is a dish best served cold” are not unfamiliar notions. As long as the idea of revenge has existed, it remains as popular a motif in today’s society as it has always been. Perhaps one of the best-known examples of revenge can be seen in the Judeo-Christian Bible and the story of Samson. At his wedding, Samson gives a riddle to his groomsmen and promises to provide garments upon their solution of it. The riddle is quite difficult, so the groomsmen threaten Samson’s wife to get the answer out of Samson, thus swindling him. Upon receiving the threats, Samson’s wife tells them the answer and they proceed to win the bet. Samson is so outraged that he goes to Ashkelon, kills the thirty men, and takes their belongings, leaving the garments he promised. Then, he “gives” his wife to a friend, thereby excluding her from his life. A second and, perhaps, more justifiable example of Samson’s revenge is shown in his destruction of the Temple of Dagon. After falling prey to another woman, Delilah, Samson is handed over to his enemies who gouge out his eyes and take him captive. While being paraded as a captive in front of his enemies, Samson asks God to strengthen him so “that he may be at once avenged of the Philistines for his two eyes.” He then manages to kill everyone in the temple, including himself, which is a sum greater than any he had ever killed prior.

The story of Samson is instructive because it shows a society in which revenge was not only normal, but also condoned. Samson’s story, like others to be illustrated later, shows
revenge could be exacted for a relatively minor offense like cheating to win a bet or an act as major as avenging the gouging of eyes and subsequent enslavement. Further, Samson’s actions illustrate the fact that the contemplated vengeance is not always exacted in proportion to the perceived crime. Clearly, the criminal justice system is proper in that it prevents this type of disproportionate punishment. However, stories like Samson’s are indicative of a startling problem with the criminal justice system. Those who make law and advocate are disconnected from the true issues revolving around the desire for revenge. Those policymakers are not in touch with the psychological effects the desire for retribution has on a potential vigilante. The effects on a person like Samson, his family, or any of the other victims portrayed in this story are not thoroughly considered or reflected in the law. The laws are written only as though a crime was perpetrated against the state. The state does not deal with the unrequited emotions of the victims. This raw emotion is seen throughout Samson’s story, yet is seemingly unnoticed by policymakers, both in his time and today. For this reason, the study of literature in conjunction with the study of law is an invaluable asset in analyzing whether the government is taking the proper approach with victims and, if not, what could possibly be done better.

However, in spite of the story of Samson and the lessons it demonstrates, revenge has, for the most part, become a highly romanticized idea in today’s culture. This glamorized idea is especially prevalent in social contract societies where revenge is not allowed and the government administers justice. Movies especially have a penchant for creating societal heroes out of characters who seek vigilante justice against those who have done them wrong. As a prime example, dozens of films have been made about Wyatt Earp, the famous Western frontier lawman, none more prominent than 1993’s *Tombstone* or 1994’s *Wyatt Earp*. The general storyline of both movies is the same. Wyatt relocates to Tombstone, Arizona, with his brothers
to escape the life of a lawman and to attempt to stake his claim and make his fortune. He and his brothers soon find themselves thrust back into the lifestyle of lawmen. Their decision comes when a lawless gang headed by The Clantons and Johnny Ringo begin to wreak havoc. The elements of the law and lawlessness set the stage for the inevitable confrontation: the infamous shootout at the O.K. Corral. The Earps and Doc Holliday win the fight, either killing or injuring several of the gang members. In order to regain control of the town and retaliate, the gang attacks Virgil and Morgan Earp, injuring the former and slaying the latter. The final portion of both movies depicts Wyatt Earp and his friends seeking revenge against the remaining members of the gang with great success.

The various Wyatt Earp films and countless other revenge plot films demonstrate one of the greatest fallacies the idea of revenge perpetuates. In these stories, a hero, against whom a wrong has been committed, is always the focal point and he or she embarks on a quest to "make it right." As an added factor, the law is usually unable to aid the hero for some reason. Usually, the problem is a due process concern for the wrongdoer or there simply is not a law on point for that issue. For instance, in Wyatt Earp, Kevin Costner’s Earp saddles up his horse to begin his quest for vengeance. When confronted about the justice of his quest, Earp scowls, “If those men think they can hide behind those laws then they’ve missed their guess.” The law Earp is referring to was a court ruling earlier in the movie that determined there could not be a murder without a witness. The fallacy in this simplistic storyline assumes that all crimes can be portrayed in this black and white manner. The wronged hero must exact his own justice because the law has failed him. The constitutional prohibition against cruel and unusual punishment is never considered. This prohibition certainly could be applied to the excessive punishment of tracking down and eliminating an entire group to avenge the death of one person. Further, the
protections of due process of the law are never contemplated.iii This is especially problematic in the context of Tombstone and Wyatt Earp considering Earp was a lawman meant to ensure due process.

This romanticized idea of vengeance should be most interesting to those who undertake legal scholarship. Through the world of literature, a legal scholar, judge, or advocate can better understand the gray area that truly encompasses the essence of vengeance. Reprisal is not black and white like Tombstone or Wyatt Earp would lead their viewers to believe. Studying characters throughout literature and applying the lessons they provide to legal scholarship illuminate the various emotions of the victim vigilante. Legal professionals, just like any other group, can easily fall into the romanticized portrait of black and white when considering a crime. Even those who perpetuate legal doctrine do not always consider the effects such a viewpoint of crime and retribution can have on the people the system is set to influence.

The legal scholar needs to understand both the positive and negative dynamics that affect the victim turned revenge seeker. However, an analysis of the individual alone is not a sufficient way to examine the system as a whole. The scholar must then look at societies that still have vigilante justice and have not converted to a social contract status. This analysis is important to show why the government needs to have a system that provides for the victims of crime. The need for this system is crucial so victims do not feel that the law is not doing enough to issue justice to those who deserve it. Finally, the legal scholar must ask what the system must do to provide a justifiable return to merit the power it has been given.xiii

THE POSITIVITY OF REVENGE

In the romanticized version of exacting revenge, the vigilante is portrayed as being somewhat at peace after taking action. The audience is left with a sense that he or she can now
leave the atrocity behind. Creative license and exaggerations aside, the idea that the revenge taker experiences certain positive emotions after attaining his or her revenge is somewhat meritorious. To fully understand this theory, it is important to look at a society free from all the moral dilemmas of exacting revenge. External influences, like religion and law, have become so intertwined in social contract societies that they have made an in depth analysis of the positive effects of revenge nearly impossible. For this reason, Jared Diamond’s article *Vengence is Ours?* is especially useful. Diamond’s article examines tribal relations in Papua New Guinea, which is not a “social contract state” for the purposes of this paper in that justice is not entrusted to the government. While the government does provide a police force, crimes like murder generally go unreported. Instead, the tribes have a revenge-based system of justice.

The article focuses on Daniel Wemp’s quest for revenge against Henep Isum, members of two warring tribes. Isum had organized a public fight, which is a battle in open fields between a number of warriors. During the battle, Daniel’s uncle, Soll, was killed. Since the government is not entrusted to exact revenge, this duty fell on Daniel, as he was the closest relative to Soll who was able to organize the revenge plot. Since no one knew who killed Soll, the liability fell on Isum since he organized the battle. After several years, Daniel finally organized his battle plan and started another public fight. During the fight, Isum was paralyzed. The tribes deem paralysis to be worse than death because not only would Isum be left to suffer, but also anyone who sees him knows why he is confined to a wheelchair. Diamond interviewed Daniel about his feelings about exacting his revenge. Daniel felt both satisfied and justified in his actions.

During his interview of Daniel, Diamond asked why he had not turned the matter over to the police. Daniel’s reply is illustrative of the satisfaction of exacting revenge. He replied, "If I had let the police do it, I wouldn’t have felt satisfaction. I wanted to obtain vengeance myself, even if it were to cost me my own life. I had to ask myself, how could
I live through my anger over Soll’s death for the rest of my life? The answer was that the best way to deal with my anger was to exact the vengeance myself.”

Daniel further expressed his own satisfaction by talking of his interactions with Isum since the battle. Without fail, each time Daniel sees Isum, he walks over and speaks with him telling him how sorry he feels for him. While this may seem like a moment of regret, Daniel quickly points out that it is not. He seems to take pride in the fact that people see Isum suffering because they remember how he was before the injury: an able man and future leader of his tribe. If there was any doubt about Daniel’s lack of remorse he quickly crushed that notion. When asked by Diamond, Daniel states, “By getting Isum paralyzed, I gained appropriate revenge for the killing of my tall and handsome uncle, who had been very good to me, and who would have become a leader.”

The usefulness of Daniel’s story of emotions in a social contract society is debatable. Daniel’s thoughts on revenge are not influenced by laws prohibiting such actions or religious teachings of revenge being immoral. However, what Daniel’s experience exemplifies is that at the core of human emotion, a person looks to exact revenge for wrongs perpetrated against him or her. Just as Hollywood would portray, there seems to be a satisfaction that comes from knowing justice has been served and those who have done wrong have been punished.

Exacting revenge for satisfaction seemingly has a positive effect on the psyche of the revenge taker, but may be somewhat difficult to understand. The desire for satisfaction is a selfish ideal. There are other, selfless motives and positive effects for a revenge seeker. Ethics and Restorative Justice scholar Charles Barton points out families and friends of murder victims experience feelings of anger, humiliation, and resentment. Anger is the most understandable emotion. After the initial shock of learning a loved one has been senselessly murdered, the sense of anger that washes over the survivor is not hard to imagine. Perceiving the resentment the
family member or friend, who in a way is a survivor of the crime, feels towards the perpetrator of
the act is not difficult. The humiliation is a more complicated concept to grapple with for most
who have not experienced this type of situation. As the legal process wears on and the lives of
both the victim and the perpetrator are on full display for the public through various media
outlets, the skeletons in the closet are unleashed. The unwanted attention can lead to
embarrassment for those who are just as innocent in the ordeal as the victim. The desire for
relief can be overwhelming. Logically, an emotional survivor may want to seek vengeance and
get relief from not only their own emotions but also from the scrutiny that has been thrust upon
them. Barton postulates that if a survivor were to exact revenge he or she would experience a
reduction of these “intense and taxing emotions”, and thus experience relief since they are no
longer burdened by them.xx

Further still, Barton postulates the revenge seeker feels a sense of security upon
accomplishing his or her goal.xxii After the crime, the survivor may feel as though he or she is
unsafe. The idea of death is fresh in his or her mind and the cruelties of the world are cast upon
him or her in full force. Understandably, some survivors may feel as though they could be next.
Additionally, the survivor is, in some ways, victimized by the system set in place to protect him
or her. Until the conclusion of the trial and a guilty verdict is handed down, the possibility that
this person will not be convicted is plausible. Further, even if convicted, there is the possibility
the sentence will be lighter than the survivor would have liked, and the fear of future crime could
be rekindled. Barton writes, “By exacting revenge, the victim will feel a sense of empowerment
and, if victimized again in the future, will know that he or she is able to defend himself or
herself.”xxiii Barton elaborates by writing that this empowerment stems from a sense of equality
experienced by the victims. xxiii This victim would be spared the role of being the helpless
Robert Solomon believed that when a vigilante realizes revenge he or she would also feel a sense of justice like the world was put back into balance. In a vacuum, if it is known that the person the vigilante is acting against is guilty of the crime, the act of seeking revenge could provide a sense of security.

The positive effects on the psyche of a revenge taker should be a goal of the criminal justice system. Undoubtedly, punishment of those who commit these heinous crimes is the main goal of the system. For reasons to be discussed in further detail, the system is the best way to accomplish this goal. A secondary concern should be helping the survivors, who are just as innocent as the victims themselves, experience some of the positive effects that revenge could offer them.

While these emotions are attributed to action, inaction may cause an emotional response, most notably in the form of regret. The theory is when a potential vigilante is confronted with an opportunity for revenge and fails to act, he or she will begin to feel a sense of remorse. Diamond’s article demonstrates this when he speaks of his father-in-law, Jozef. Jozef lived during World War II, and his father was taken by the Gestapo to be transported to a concentration camp. Jozef himself had been put in a concentration camp in the Soviet Union when it invaded Poland. He was later impressed into the military and fought on the eastern front. After the war was over, Jozef learned about his father’s fate. He also learned the Gestapo had stopped their transport train on the way to the concentration camp and had shot all of those who were unable to do manual labor. Jozef’s father, who was sixty years old, would have been one of the people shot and buried in a mass grave. Jozef then returned to his father’s village and learned his mother, sister and niece had gone into hiding before being taken. They were eventually discovered, put to death, and buried in a shallow grave. Jozef forced the villagers
to bring the man responsible to him. When confronted with the man, Jozef could not exact his revenge. He turned him over to authorities and the man was sent to prison, only to be released one year later. Jozef later would lament that decision. Nearly sixty years later, “Jozef remained tormented by regret and guilt—guilt that he had not been able to protect his parents, and regret that he had failed in his responsibility to take vengeance.”

Jozef’s story illustrates an interesting proposition. It indicates if Jozef had taken action, he would not have been consumed with the guilt and regret of his inaction. He felt the criminal justice system had failed him and his family because the killer was barely punished. The criminal justice system regularly “lightly” punishes criminals, and the victims’ families are left to suffer. The suffering can be in the form of regret and guilt due to inaction, as it was for Jozef.

**THE NEGATIVITY OF REVENGE**

In all situations, just as there is a positive effect, the negative consequences persist as well. It is safe to postulate that a vigilante would experience a wide gambit of emotions, not all of them positive. Literature illuminates the negative toll exacting revenge can take on the actor.

Foremost of the negative effects on the vigilante is the depreciation of his or her capacity for human emotion. The sole goal in that person’s life becomes his or her desire for revenge. The vigilante has no concern over the consequences of his or her actions on anyone else. One of the best examples of this comes from one of the most famous revenge stories ever written, *The Count of Monte Cristo*.

In the Alexandre Dumas classic, Edmond Dantes, the protagonist, sees all his dreams come true just before an ensemble of envious onlookers sabotage him. He is sent to prison for a crime he did not commit and is left to be forgotten. While in prison, Dantes befriends a fellow prisoner and priest, Abbe Faria. Together they plot to escape the prison and in exchange for his
help, Faria offers to teach Dantes a variety of subjects including critical thinking and logic. During one of these lessons Faria and Dantes are recounting the events that led to Dantes’s imprisonment, and Faria helps Dantes uncover the truth about his incarceration. Prior to this, Dantes had felt that his incarceration was an unfortunate mistake and he was a victim of bad circumstances. However, upon concluding he had ultimately been set up, Dantes becomes enraged and immediately wants vengeance. Faria laments his decision to help Dantes uncover the truth. He tells Dantes, “I regret now, having helped you in your late inquiries, or having given you the information I did.”

When Dantes probes him further as to why he would have such a feeling, Faria continues, “Because it has instilled a new passion in your heart – that of vengeance.” Faria knows Dantes will never be able to enjoy his life in the way he had before the betrayal. From that point forward, Faria’s prophetic vision is confirmed. Dantes’s every action and thought is consumed with achieving his potential revenge. When he manages to escape from prison and acquires an unimaginable treasure using a map Faria gave him, he begins to set his plan for revenge in motion. He spends every day either plotting ways to take the things most dear from those who have wronged him or actually doing it.

What can only be described as his lack of humanity is shown fully in his interaction with the Morrel family in chapter fifty-one of the novel. Earlier in the story, Dantes had visited them and had left a large diamond to help them escape the poverty that had overcome them. Dantes visits them again on a social visit as The Count of Monte Cristo. He is completely overwhelmed by their happiness. The Morrels are deeply grateful for their benefactor, whom they do not know to be Dantes himself. His responses are counterintuitive to normal human behavior. He responds to positivity in a way that suggests it deeply disturbs him. During the Morrels’ recounting of the tale of their benefactor, Dantes becomes “pale as death, pressing one hand on
his heart to still its throbings."xxxii This reaction would be much more fitting for some great sadness or terrible tragedy. However, Dantes’s obsession with revenge has transformed him into someone who cannot understand happiness and gratitude.

Only after he exacts all his revenge and puts his plot behind him is he able to fall in love with Haydee and live a life of happiness again. This is illustrated fully when Morrel sees Dantes again for the first time after their interaction in their Paris home. Morrel delightedly tells him that he “is not the same . . . as he is in Paris.”xxxiii He notices this change because, as he put it, “here you laugh.”xxxiv While these words may seem simplistic it is important to show just how much Dantes has changed after letting go of his quest for revenge. The simple act of his laughter shows how much happier he is, and further demonstrates Dantes can encompass all the other emotions that had been foreign to him while seeking revenge.

The analysis applicable to Edmond Dantes can be applied in the real world situation of Daniel Wemp. Diamond describes Daniel as being “unapologetically positive” about Isum’s paralysis.xxxv Diamond elaborates by writing that Daniel felt “a mixture of exhilaration and pleasure in expressing aggression.”xxxvi Daniel was almost euphoric in his expressions and gestures.xxxvii Daniel, much like Dantes, is completely devoid of sympathy for Isum’s condition or the consequences of his revenge plot. He feels completely justified in his actions and cannot see any contrary viewpoint. Now that the revenge had been accomplished, a sense of relief washes over both the fictional Dantes and the real Daniel Wemp. Both seem to be happy in spite of their actions. However, for the period of time when they were exacting their revenge, neither experienced happiness. They were both one-track personalities that could not be derailed from accomplishing the goal that was consuming their lives. If anything, both serve as a cautionary tale for potential vigilantes. The quest for revenge will dominate every thought, feeling, and
emotion until it is accomplished or dismissed. The vigilante will not be able to spare a moment for anything else, and empathy will cease to exist.

A sense of relief and even happiness can result upon exacting revenge. However, often something will trigger regret in the vigilante. Diamond’s article on Daniel does not seem consistent with this idea. The most likely cause for this is because Daniel is human and is talking to a stranger who cannot truly understand his situation. Just as most people are who talk with strangers, Daniel was probably a bit guarded in his conversations with Diamond. Even if he did feel them, he would not portray his regrets. He wouldn’t want it to get out if he has regrets about injuring Isum. Daniel would not want his tribe to see him as sympathizing with the enemy and lose respect for him. He also would not want his tribe members to think that he may not have the ability to take action again if necessary. Daniel may or may not have felt any of those things. It is plausible that Daniel really is cold hearted enough to believe the things he told Diamond. This would be consistent with the perceived ideals of the culture in which he lives. Nevertheless, it seems highly unlikely that he feels no compassion for Isum considering his thoughts on the Western criminal justice system, which shall be addressed later in this analysis.

People like Daniel exemplify situations where literature becomes particularly useful. Through the characters in novels, legal scholars are able to understand the overwhelming sense of regret that can overcome a vigilante. The characters in these stories are, perhaps, a way for the author to reveal their own feelings of regret while remaining distant. Whatever the reason, the characters in literature give us an insight that is less likely to come from a conversation with a person in real life.

At the end of The Count of Monte Cristo, even Edmond Dantes, who has fallen in love and is truly happy for the first time since his incarceration, has regrets for his actions. This regret
is particularly manifested in his method of taking revenge on Villefort. Dantes seeks revenge on Villefort because he is the man who sent him to prison knowing he was innocent. Dantes had a letter from Napoleon Bonaparte that he was meant to deliver. Unbeknownst to Dantes, the letter would have incriminated Villefort’s father, so Villefort burned the letter and sent Dantes to prison to protect his own ambitions. Since Villefort was an agent of the new government, having a father who supported Napoleon could destroy his political aspirations. In order to repay this act, Dantes strikes a friendly relationship with Madam Villefort, who has a desire to acquire the inheritance of Villefort’s father for her son. He shares his knowledge of poisons with her to allow her to poison both Villefort’s daughter and father, leaving Edward as the sole heir. This would also accomplish Dantes’s goal of punishing Villefort. Dantes ends up having a change of heart, deciding that Valentine, the daughter, need not die for her father’s transgressions. He helps them catch Madam Villefort in the act and after being caught she commits suicide with the poison and also poisons her son. Edward’s death is the first irreversible unintended consequence of Dantes’s actions, and at this point he realizes what he is doing is wrong. Upon learning of the boy’s death, “Monte Cristo became pale at this horrible sight; he felt he had passed beyond the bounds of vengeance, and that he could no longer say, ‘God is for and with me.’” He realizes he is not capable of giving out punishment without the risk of harming innocent lives. While it is obvious he is stating this because he is mortal and not God, this idea can be applied to the governmental system. The government is a system of helping the greater good, and the only person punished through its actions is the evildoer. It may hurt the evildoer’s family, but his actions cannot go unpunished for the greater good. With vigilante justice, the consequences can be more widespread and unpredictable. Nevertheless, this scene demonstrates Dantes’s insufferable pangs of guilt for the loss of an innocent life for which he feels responsible.
The same motif is present in William Shakespeare’s *Hamlet*. In his quest for vengeance against his uncle, King Claudius, Hamlet unsheathes his sword and inadvertently kills Polonius, the king’s chief counselor. Laertes, Polonius’s son, becomes angered when Claudius informs him of Hamlet’s actions. As a result of his anger and the prodding of Claudius, he decides to seek revenge on Hamlet. Laertes and Claudius develop an elaborate plan whereby Hamlet and Laertes will engage in a fencing match. Prior to the match Laertes puts poison on his sword so that if he scores a point the poison will be introduced into Hamlet’s bloodstream thereby killing him. During the match, a scuffle between Laertes and Hamlet occurs and they switch rapiers.\(^{xxxix}\) Hamlet then wounds Laertes, thus poisoning him. After this, Laertes, certain of his death, expresses regret for his decision to attempt revenge for his father and sister. While it can be argued his regret is only because he is about to die, such an argument would not be entirely accurate. Laertes states, “I am justly killed with mine own treachery.”\(^{xl}\) He then asks Hamlet for forgiveness before dying. The statements reveal that Laertes knew what he was doing was wrong, yet he did it anyway. In fact, before the climax of their fight, in an aside, Laertes states this course of conduct is “almost gainst my conscience.”\(^{xli}\) He feels his punishment of death is appropriate and just. Even though Laertes blames Hamlet for the death of his father, he still feels guilt for trying to seek revenge.

Feelings of insufferable guilt attributed to revenge are easily exemplified by the short story *Killings* in Andre Dubus’s *In The Bedroom*.\(^{xlii}\) The story revolves around a set of parents’ inconsolable grief at the fact that their son had been murdered. The murder is portrayed as a crime of jealousy. Richard Strout, the murderer, was upset that his soon to be ex-wife has begun a relationship with another man and decides to kill him. As the story progresses, the grief becomes more than the couple can bear. The father, Matt, decides to kill the perpetrator. Up
until the point that the plot is carried out, Strout is portrayed as an unsympathetic murderer who killed a man out of envy. He was so cold hearted that he did not care that his own kids were witnesses to his crime. Matt and Ruth, the mother of the murdered child, on the other hand were portrayed as the grieving victims. However, both are concerned that the system will not punish Strout enough and Matt decides to callously exact revenge. After murdering Strout and burying the body, he returns home. Ruth intuitively knows what Matt has done, though he has never revealed his plan to her. The most interesting point of the story comes after Matt reveals to her that he killed Strout. Ruth is described as “holding him, wanting him.”xliii Ruth is both relieved and desirous of her husband after learning of the retribution. However, Matt’s reaction is much different. “He wished he could make love with her but he could not.”xliv Matt lay thinking of those who were affected by the situation: his son, his son’s girlfriend, and Strout himself. The story closes when Matt “shuddered with a sob he kept silent in his heart.”xlv This scene is powerful and illustrates the negative toll revenge takes on an actor. Ruth, a beneficiary of the retaliation, is perfectly content with the world and even longs for Matt. Alternatively, Matt is overtaken by guilt, haunted by his thoughts and memories of his actions.

Even romanticized heroes like Wyatt Earp undergo a feeling of shame upon exacting revenge. After ending his conquest in Tombstone, Earp reunites with the love of his life, Josephine Marcus. He indirectly expresses remorse for his prior actions immediately after his arrival. He tells her he has “no pride, no dignity,” but he will love her for the rest of her life.xlvi Wyatt is a proud man who knew if he did not exact revenge against the Cowboys, which is the lawless gang that killed his brother, they would go unpunished. Wyatt essentially became a lawless element himself, which is exactly that which he had fought so hard to prevent. He was not proud of what he did, but he did so only because he felt it was necessary. Like Dantes and
Daniel, Wyatt will be able to live a happy life from that point forward, but he will forever have the weight of his actions on his shoulders.

**THE NEGATIVE EFFECT OF REVENGE ON SOCIETY**

As the aforementioned situations portray, a variety of individual problems arise in a society that allows or encourages vigilante justice. Comparatively, the ramifications on society in general are great. The pre-contract society illustrated in Jared Diamond’s article is particularly instructive as to what such a system of justice would mean for the social order. As previously noted, the Diamond article dealt with Daniel Wemp’s revenge for the death of his uncle in a public battle, which was part of a larger war between the Ombal and Handa tribes in Papua New Guinea. As with most long standing blood feuds, the implication is that Daniel does not even know when it began. They will span a number of years, even generations, and will continue until the political climate changes, thus ending it, or one of the tribes is destroyed.

The cause of the Ombal and Handa war is particularly disturbing considering the seemingly minor circumstances. Diamond writes the “original cause of the wars between the Handa and Ombal clans was a pig that ruined a garden.” Pigs are extremely important to the tribes because they are a rich source of protein, which their normal diet lacks. Due to the importance of the pigs, they are kept on farms and domesticated. If able to escape, a pig can ruin a garden relatively quickly. Such was the case in the dispute. Though it was hard to prove ownership of the offending pig, the Ombal man whose garden was ruined believed it to belong to a Handa man, and he demanded the man pay him for the damage. The man refused and a fight broke out. Soon both clans were involved and the minor dispute became a full-fledged blood feud with revenge as the core motivation. It is important to consider the ramifications of
allowing this to happen. Entire generations of people will be at war and will seek to avenge wrongs that began over something as minor as a pig uprooting a garden.

Yet another consideration in these persistent blood feuds in pre-contract societies is that a person is forced to live a life of fear. If a relatively small offense can lead to someone seeking to exact their version of justice for this wrong, then people will be forced to constantly be alert to potential vigilante justice. While Daniel was ultimately able to injure Isum in a public battle, this does not always seem to be the case. In that instance Isum knew of his potential harm. However, Daniel’s prior attempts were much more clandestine. Daniel sought out and hired a mercenary to attack Isum. This further complicates the problem for the target of vigilante justice. As a result, not only would the person have to be vigilant in looking out for the person he or she wronged, but he or she must be aware of any potential threat.

Still further, the vigilante has his or her own concerns over the hiring of a third party. He or she must make sure the mercenary is trustworthy. Daniel explained this foreign concept to Diamond.

“You have to make sure that the men you hire as paid killers or allies are real enemies of your target, bearing grievances of their own from years ago. If you make the mistake of hiring a man who actually does not consider your target to be his own enemy, he may seize the chance to kill you, then go to your enemies and claim a reward.”

This is not a light or trifling point to say the least, and the ramifications are widespread. Not only does the target need be worried about any person with whom they come in contact acting as an agent of their enemy, but the vigilante must also share the same concern. A feud between two people could include a third party who, by involving themselves, now has become a potential target for future enemies. A society that allows revenge as an acceptable means of punishment can see the country torn apart by generational wars started over obscure and minor matters. Even more disheartening is, in the case of the Handa and Ombal war, the entire war began over
what, in the United States and other “modern societies” would have been a civil issue, which would not fall into the purview of the criminal justice system.

If a revenge seeker ultimately punishes the actual wrongdoer, the punishment will likely be more severe than the original transgression because the vigilante is too emotionally involved and unable to look at the situation rationally. Particularly expressive of this point is Edgar Allan Poe’s main character in *The Cask of Amontillado*. The story centers around a man named Montressor who seeks revenge on Fortunato for a perceived wrong. The story is told from the point of view of Montressor who, in the first sentence of the story states, “The thousand injuries of Fortunato I had borne as I best could; but when he ventured upon insult, I vowed revenge.” As a means of revenge against Fortunato’s insult, Montressor decides to lure him to his wine cellar under the guise of needing his expert opinion of a cask of wine he has bought. Once there, Montressor traps Fortunato inside a makeshift wall, leaving him to die. Montressor executes this plan with cold precision and the story ends on the depressing note that no one has disturbed the wall that entrapped Fortunato for half a century. Therefore, the story portrays an act of leaving a man to suffer an agonizing death for nothing more than a perceived insult, which would most likely not even rise to the level of slander and so would not even be punishable in a civil court. As such, a self-regulating revenge system would create situations where the most minor offenses could potentially be punished by more extreme measures. The argument that if revenge were to be allowed then punishment should be in proportion is easy to make. However, proportionality is a subjective standard. The framework to decide the depth of the injury would ultimately fall on the adjudicator. In a revenge-based system, the adjudicator is the person who was injured initially. Thus, the revenge would be applied through the vigilante’s own perception of fairness, which could, in turn, lead to a situation like poor Fortunato’s.
Hollywood’s romanticized versions of revenge are quite adept at making their viewers accept disproportionate revenge as just. For instance, in both Wyatt Earp and Tombstone, after the death of Morgan Earp, Wyatt, Doc Holliday, and several others form a posse to bring those responsible to justice. As a result, track down each of them and through a series of shootouts, kill all the remaining members of the gang. Though not presented this way, these actions beg the question as to whether or not this is justice. After all, Wyatt, Doc, and the others track down an entire gang of people and murder them for the death of one lawman and the injuring of another. One can assume a lot of those who were killed probably had no part in the plot to kill Morgan, yet they were punished for being associated with those who did. This is hardly proportional. As legal scholars, it is important not to put too much stock in these films. While the stories are certainly entertaining, the legal scholar should not get lost in the plot and miss the lawlessness of the protagonists’ actions.

Finally, the singular quest for revenge can have catastrophic results on families. While revenge is sometimes justified as a way of protecting a family name or honor, it can have an opposite effect. For instance, Daniel Wemp’s revenge was for the death of his uncle, Soll. However, a fact mentioned but somewhat glossed over in the Diamond article is that Isum, the man against whom Daniel is acting, is also his uncle. In essence, Daniel is choosing the life of one family member over another. The effects of the dual revenge plot in Hamlet are, perhaps, worse. The worst aspect is that the plot not only destroys Hamlet’s family, but also ends the family line of Polonius. Both Polonius and his male heir die by Hamlet’s sword. If that were not bad enough, the female heir, Ophelia, commits suicide because of Hamlet’s accidental slaying of her father. Two prominent families in Denmark, including the royal family, are completely destroyed because of a quest for revenge.
AN ANALYSIS OF THE SYSTEMATIC ANSWER TO REVENGE

After engaging in the foregoing analysis, it seems obvious that, while there is some merit to allowing revenge, the problems such actions would cause are simply too great. Allowing the government to intervene and dole out punishment stabilizes the societies that it regulates. Even Daniel Wemp recognizes the merit in allowing the government to be the adjudicator of disputes. Daniel admits to Diamond the “Western way, of letting the government settle disputes by means of the legal system, is a better way.” He recognizes the manner of solving disputes, a way of life he has utilized, disturbs day-to-day life, which makes comfort impossible. Other legal scholars agree with Daniel in that revenge only creates an endless cycle of violence. The fact that a person so engrained with the culture of revenge killings can recognize the merit of state-administered justice should be dispositive of its merit.

The problem with revenge-based societies is the vigilante is an interested party and his or her judgment is flawed with bias. Further, the fact that he or she is not impartial casts doubt on the justice of the punishment. This, in turn, may lead to blood feuds. The idea has justification considering the emotional bias of the vigilante. Because he or she is unable to separate himself or herself from the situation in a rational manner, the wrong person could be punished, thus sparking the ire of the victims of that crime. Barton points out that even though victims are not disinterested in the outcome of their cases, empirical evidence suggests that they are able to remain impartial and retain a sense of fairness. However, it is important to note that this evidence is based on those victims in systems of state administered justice where they would not have the ability to exact a disproportionate punishment.

The destabilizing effect revenge can have on a society is clearly illustrated in *Hamlet*. The dual revenge plots conclude by leaving everyone dead and results in Denmark being
overtaken by the foreigner, Fortinbras. Claudius, who is responding to the threat of retaliation from Hamlet rather than governing the country, pays no attention to the reports that Fortinbras is leading an army towards the country. Claudius’s lapse in attention allows Fortinbras to walk into the castle at the end of the play, perceivably with no opposition.\textsuperscript{lxiv} The upheaval by a foreign leader will certainly cause a great impact in the life for everyone else in the country. While obviously an uncommon circumstance, it illustrates, albeit on a large scale, that society can be unbalanced to such a degree as to cause massive social unrest.

Due to the threatening effect of revenge crimes, the criminal justice system has evolved into a system where the state acts as judge, jury, and, if necessary, executioner.\textsuperscript{lxv} The unfortunate consequence is government has, for the most part, removed the victim from the process entirely. One of the predominant views of the criminal justice system is that murder is a crime against the state and the survivors are irrelevant. This justification is used by many jurisdictions that afford these survivors no special treatment. However, a relatively recent development in the system has occurred with the Supreme Court decision in \textit{Payne v. Tennessee}. In the case, the court ruled that victim impact statements may be allowed by courts during the sentencing phase in capital murder cases.\textsuperscript{lxvi} These statements are meant to be a way for the survivors, who are cast in the light as victims, to speak and demonstrate the effect the crime has had on them. The allowance of victim impact statements is also a way of permitting the victim to get a measure of revenge against the perpetrator.

Victim’s rights were further expanded in the wake of the Oklahoma City bombing. Congress passed the Victim’s Rights Clarification Act of 1997, which helped preserve the rights of victims to observe a murder hearing without forfeiting the right to give a victim impact statement later.\textsuperscript{lxvii} President Clinton stated the central idea behind the passage of the act was
"when someone is a victim, he or she should be at the center of the criminal justice process, not on the outside looking in." lxviii

Cases like *Payne* and laws like the Victim’s Rights Clarification Act are meant to allow victims to have a greater role in the outcome of the case. Such an allowance could provide closure to the survivors of murder victims. One of the prevailing counter-arguments against giving victims more of a voice in trials is that the goals of the criminal justice system do not include pandering to a victim seeking revenge. lxix Some opponents of victim impact statements, or any other form of revenge by the victim through the criminal justice system, harken back to the argument that it is the duty of the state and not the victim to seek retribution from the criminal. lxx Kent Wilson argues the “victim of a crime is too subjectively and emotionally involved to exact a fitting punishment. Were the victim to exact punishment, such would be an act of vengeance rather than an act of punishment.” lxxi

The problem with Wilson’s argument is there is an arbitrary line drawn between vengeance and punishment. He does not clarify why such a distinction must exist. The emotion of which Wilson speaks certainly has no place in the guilt phase of a capital murder trial. During that phase, both the jurors and the judge should be as free from applying their own biases and sympathies as possible. That portion of the trial should be reserved exclusively for the law and the adjudication of the facts by an impartial arbiter. However, the second segment, the sentencing phase, is completely separate from the guilt phase. During this phase the murderer has already been found guilty and the only thing left to do is determine the punishment. Indisputably, some form of punishment will occur; only the severity is in question.

Emotion already predominates the second phase of the trial. During the course of this phase, the defense is allowed to exercise a constitutionally protected right and present what is
known as “mitigation evidence.” This evidence can be anything ranging from the abusiveness of the murderer’s parents as a child to some traumatic event in his or her past that could have started the downward spiral. This type of evidence is emotionally charged and will inevitably elicit a reaction from the jurors. Many have later stated they were overcome with sadness and felt great sympathy for the murderer. Some have even been known to weep in the jury box.\textsuperscript{lxii}

The fact that this type of evidence is allowed during the sentencing phase completely undermines the argument made by opponents of allowing a victim to speak at the trial. What makes mitigation evidence any different from victim impact statements? Both are just as irrelevant to the underlying facts of the case. Any type of mitigation evidence that would be relevant, such as drunkenness, would have been presented during the guilt phase of the trial. The only purpose of mitigation evidence is to cause the jury to sympathize with the defendant and lessen the severity of the punishment to be imposed. However, the mitigation evidence has been tied up in due process claims, so it is admissible.

Even though the victim is not on trial, which means due process is not implicated, why should the converse not also apply? Victims should be able to make statements and present evidence in an attempt to cause the jury to impose a sentence more conducive to their desires. When the survivors are not allowed to do so, the victim simply becomes a name, an abstract idea. The jurors do not relate to him or her as they do the defendant, whom they see each day in court.\textsuperscript{lxiii} Essentially, the defendant is afforded more rights than the person they have murdered. If the court is going to allow one, it should allow the other. The idea that victims are emotional is certainly true. However, the argument that allowing the victim to demonstrate their emotions would change the result from punishment to vengeance is unfounded. The trier of fact would still retain the ability to make the final decision.
If the courts allow victim impact statements as a way to allow the survivor to seek revenge, the question then becomes where the line should be drawn. Professor Susan Bandes admonishes legal scholars to distinguish between victims’ needs and the duties of the legal system. She further elaborates that the criminal justice system is probably not the proper venue for the victim’s needs to be addressed. Eisenstat and others correctly contend, however, that the legal system is the only venue that can provide for a particular type of emotional recovery. This rehabilitation comes in the form of knowing that the criminal is going to be punished for his or her crimes. Further, giving the victim a voice at that time is the only way that he or she can truly attain all of the positive effects that come from exacting revenge.

It is absolutely essential the victim be given a right to be a part of the process. By allowing the victim to have a voice to demand justice, he or she will feel a greater sense of respect for the decision. The victim will not feel as though the court has simply paid lip service to the memory of his or her lost loved one. In essence, by doing this, the court will preserve and strengthen its judicial integrity and leave the victim with a greater sense of closure.

CONCLUSION

As has been stated numerous times throughout this essay, the criminal justice system is a necessity. The system must be the judge, jury, and executioner in order to avoid the unrest a revenge-based system of government would cause. However, this does not mean the system should take all power from the victim. Murder trials are even divided in such a manner that easily promotes the theory that both vengeance and punishment are possible. The guilt phase, free from any victim influence or emotional mitigation evidence is where the state determines if punishment is appropriate. If it is deemed proper, then the sentencing phase commences. This
stage is the perfect venue for a victim to seek his or her retribution. It would be highly illogical and unconscionable to allow any of this evidence during the guilt phase of the trial.

Currently, the criminal justice system either does not allow the victim to speak at all or, in states that allow such, give very limited speeches. Victims are not allowed to suggest what penalty should be given. The lack of victims’ rights stands in stark contrast to the defense, which may ask for mercy in only penalizing the murderer with life in prison. The state is able to ask for death: however, often the victim does not have a voice in that decision. This is the most egregious misgiving of the system. Allowing the victim to demand a sentence is not absolute, just as the defense’s plea for leniency is not a binding request.

By allowing the victim to take part in the process and exact his or her revenge, the system will be able to achieve all the positive effects of revenge that have been discussed in this paper without conceding any of the negatives. This new voice will give the victim a chance to demand justice, not simply ask for it. Getting the chance to go to court and confront the person who wronged him or her and demanding a sentence will at least give the victim the satisfaction of knowing his or her voice was heard. The revenge seeker will still feel the same security and relief when the criminal is sentenced. The argument can be made that this may be lessened if the jury does not choose to implement the sentence he or she feels appropriate. Nonetheless, the victim can take solace in that he or she had a chance to be a part of the punishment and was not ignored. Additionally, if the person is found innocent then the victim will not feel that, if given an opportunity to participate, the outcome may have been different.

This paper has attempted to demonstrate that there are various advantages and disadvantages to consider when thinking about revenge in the criminal justice system. Through the use of literature and film, legal scholars can get a broader understanding of these diverse
feelings and emotions that would otherwise be unavailable. Literature is a reliable source because, for the most part, it is free from the biases that would be present otherwise. A conversation with a person may be veiled, as it was with Daniel, or will be influenced by his or her own emotions. Literature is perhaps more objective and abstract.

The important next step is to apply these lessons to the criminal justice system. By not allowing the victims a chance to seek revenge in the sentencing phase, the criminal justice system completely ignores all the advantages that could come from that. The disadvantages are going to be avoided either way since the government is the arbiter. The system would be more encompassing if it sought to incorporate both the goals of punishment and allowing for closure.

No system, whether state-administered or revenge-based, will be perfect. Jozef’s situation is an excellent example. There are always going to be criminals who slip through the cracks and get a far less severe punishment than they deserve. If victims are given the chance to testify, the jurors may be more likely to impose a proper sentence. By shutting people out of the system, the courts simply allow for a greater number of victims to suffer through the type of anguish Jozef experienced.

The criminal justice system is not necessarily broken; it simply needs to be tweaked. If the literature discussed throughout this article has illustrated nothing else, it has at least demonstrated there are a number of complexities in the human psyche with regards to revenge. As those who change the system, legal scholars have a duty to try to make the system do what it was designed to do: punish those who deserve it while attempting to make the victims whole again. The idea of attempting to make a person whole again, of getting them as close to where they would have been if the wrong had not occurred, is nothing new to law; it is applied often in civil law. Perhaps it is time criminal law caught up.
Johnson graduated from the Florida State University College of Law in May 2011 with a Juris Doctor degree. This analytical look at the role the idea of revenge, especially that of victim impact statements, should play in the criminal justice system was written as an Upper Level Writing course for graduation. The paper was written for the Law and Literature course taught by Professor Susan Bandes in the Fall of 2010.

Judges 14:12 (King James).

Id. at 14:15-17.

Id. at 14:19-20.

Id. at 16:21.

Id. at 16:28-30.

Tombstone was released in 1993 by Buena Vista. It stars Kurt Russell, Val Kilmer, and Sam Elliott.

Wyatt Earp was released in 1994 by Warner Brothers. It stars Kevin Costner, Dennis Quaid, and Gene Hackman.

Wyatt Earp (Warner Brothers 1994).

Tombstone (Buena Vista 1993).

U.S. Const. amend. XIII

For the purposes of this analysis, the scope of this paper will be limited to a discussion of revenge in regards to cases involving a murder and/or the death penalty. This is not to say that this analysis could not be applied to other crimes; however, such a discussion is beyond the scope of this essay.

Jared Diamond, Vengeance is Ours?, The New Yorker, Apr. 21, 2008, at 74.

The merit of Mr. Diamond’s article is questionable as the subjects have brought a lawsuit against him alleging his article is not factual. There have been several articles written alleging the same. Since the lawsuit is pending, this paper will take Mr. Diamond’s article on its face as being factual.


Diamond, supra note xiii, at 79.

Id.

Id. at 82.

Id.


Id.

Id. at 681.

Id. at 1450.

Id.

Diamond, supra note xiii, at 79.

Id.

Id.

Dumas, supra note xxvii, at 1403.

William Shakespeare, Hamlet act 5, sc. 2.
ANDRE DUBUS, IN THE BEDROOM 1 (2002).

Id. at 23.

Id.

Tombstone (Buena Vista 1993).

Diamond, supra note xiii, at 75.

Id.

Id.

Id. at 77.

Id.

Id. at 77.

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