

## Luban on war as punishment

### 1 Luban's thesis

I provisionally accept retributivism, but I shall argue that *even for retributivists* punishment through warmaking is morally unacceptable for at least five reasons: (1) It places punishment in the hands of a biased judge, namely the aggrieved party, which (2) makes it more likely to be vengeance than retributive justice. (3) Vengeance does not follow the fundamental condition of just retribution, namely proportionality between punishment and offense. (4) Furthermore, punishment through warmaking punishes the wrong people and (5) it employs the wrong methods. Regardless of the intuitive pull of the punishment theory, modern international law was right to reject it. (Luban 2012, 305)

### 2 The distinction between retribution and revenge

Retribution differs from revenge. Its basis is not aggrieved anger, but rather the moral judgment that a wrongdoer has done something that deserves punishment. Through her action, the wrongdoer has upset a moral balance and has performatively asserted a moral falsehood; she has implicitly devalued her victim or overvalued herself (or both). Retribution reasserts moral truth by administering an *expressive defeat* to the wrongdoer, and—as Hampton puts it—it annuls the evidence of the victim's diminished worth that the wrongdoing creates. The process of retribution is cognitive through and through: it requires an impartial moral judgment of the nature and magnitude of the wrongful act, an assessment of the damage it has inflicted on the victim (including damage to the victim's self-respect), and a careful calibration of how much punishment must be administered to plant the flag of moral truth. (Luban 2012, 321–22)

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**Source**

Luban, David. 2012. "War as Punishment." *Philosophy and Public Affairs* 39 (4): 299-330.