

REVENGE AND RESPONSIBILITY  
IN CONTEMPORARY WAR CRIMES AND COURTS-MARTIAL

A Thesis

by

APRIL SHARON GARCIA

Submitted to the Office of Graduate Studies of  
Texas A&M University  
in partial fulfillment of the requirements for the degree of

MASTER OF SCIENCE

December 2011

Major Subject: Sociology

Revenge and Responsibility in Contemporary War Crimes and Courts-Martial

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Approved by:

Chair of Committee,	Stjepan Gabriel Meštrović
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## ABSTRACT

Revenge and Responsibility in Contemporary

War Crimes and Courts-Martial. (December 2011)

April Sharon Garcia, B.A.A.S., Texas A&M University - Kingsville

Chair of Advisory Committee: Dr. Stjepan Gabriel Meštrović

This thesis seeks to address the recurring theme of revenge within war as exhibited in the recent upsurge of war crimes within the past ten years. To begin, I present an overview of Emile Durkheim's perspective on punishment from *The Division of Labor in Society*. I argue that contemporary punishment is still primitive in nature and maintains a retributive form. This synopsis opens the discussion of two key factors within punishment: revenge and responsibility. To analyze these key elements, I conduct a content analysis utilizing courts-martial transcripts not readily available to the public for the recent cases of Operation Iron Triangle, the Baghdad Canal Killings and the Afghan Kill Team murders. As an historical comparative to the latest war crimes, I also analyze the My Lai case from Vietnam, using documentary transcripts with veterans involved in that operation. Throughout the analyses of all four cases, I employ the work of Paul Fauconnet's *Responsibility* which further develops Durkheim's ideology of revenge and augments our own understanding of collective and individual responsibility in society. I close this thesis with a discussion on Fauconnet's "law of war" and its implications for soldiers enlisted in war time.

DEDICATION

To my mother and my daughter

## ACKNOWLEDGEMENTS

I would like to thank my committee chair, Dr. Meštrović, for granting me access to his invaluable transcripts and insight, and my committee members, Dr. Sáenz and Dr. McIntosh, for their guidance and support throughout the course of this research.

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## ABBREVIATIONS

1 <sup>ST</sup> LT	First Lieutenant
1 <sup>ST</sup> SGT	First Sergeant
A32	Record of Article 32 Hearing
AKT	Afghan Kill Team
BCK	Baghdad Canal Killings
LT	Lieutenant
MJ	Military Judge
OIT	Operation Iron Triangle
ROE	Rules of Engagement
ROT	Record of Trial
SGT	Sergeant
SPC	Specialist
UCMJ	Uniform Code of Military Justice

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## CHAPTER I

### INTRODUCTION

#### *Context and Thesis Statement*

As we approach the 10<sup>th</sup> anniversary of what experts are projecting will be the longest war in American history, we have cause to examine its properties and what those properties mean for the men and women fighting in it, as well as American society. For many years now, we have watched news reports on suicide bombings, ambushes by insurgents, soldiers dying in combat and much more. These media reports are typical of any war in general. However, what is of particular interest is the reappearance of crimes, clearly marked as war crimes, which have been reported since this latest war has begun. In order to better understand this resurgence of war crimes, we must examine the two components constantly present in war: revenge and responsibility. To accomplish the task of explaining the function of revenge and responsibility in this phenomenon I will utilize the works of Paul Fauconnet and his predecessor, the first professor of sociology, Emile Durkheim.

#### *Background*

This project began in a graduate seminar aptly titled War Crimes. Critical analysis of numerous transcripts from various courts martial revealed a series of themes developing throughout. The theme most prominent in the transcripts and various other resources on war crimes was punishment. Being a criminological and budding

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This thesis follows the style of *Sociological Theory*.

Durkheimian scholar, I realized that Durkheim's work on punishment was most relevant and applicable to all the cases. Little work has been done in the development of Durkheim's position on punishment within criminology (Cladis 1999; Breathnach 2002; Vold, Bernard and Snipes 2002), in general and especially with regard to war crimes. This project will expand on the prior work by contributing an analysis of Durkheim's perspective on punishment within the context of war crimes.

### *Methodology*

The purpose of this project is to explore the functionality of two key elements in punishment, which are revenge and responsibility, by conducting a content analysis of various courts-martial transcripts. The War Crimes graduate lecture series found here <http://itunes.apple.com/WebObjects/MZStore.woa/wa/viewiTunesUCollection?id=394384077> provides valuable commentary pertinent to the transcripts of three of the most current cases in this project. The transcripts themselves are significant for the completion of this project as access to them in hard copy form is difficult. This is because there is no central repository of the transcripts from war crimes courts-martial, even though the transcripts are considered to be public records. The other case which will be used as an historical comparative is the My Lai case from Vietnam. The content analysis portion of this case is provided by the transcripts from the PBS documentary *American Experience: My Lai* (2010) and the short film documentary *Interviews with My Lai Veterans* by Joseph Strick (1970). Durkheim's *Division of Labor* (1984) provides the basis for the implication of revenge in punishment and Fauconnet's *Responsibility: A Study in*

*Sociology* translated by William Jeffrey, Jr. (1978) provides the foundation for the application of revenge and the implication of responsibility in punishment. This translated version of *Responsibility* by Jeffrey, Jr. is invaluable to this undertaking as it is the only English translation available in the world and as of this date has not been published. In addition to using Durkheim's *Division of Labor*, I will also look to Seamus Breathnach's work, *Emile Durkheim on Crime and Punishment (An Exegesis)* (2002) to assist in the establishment of punishment as revenge.

### *Punishment*

What is punishment? To begin to understand punishment, we must first understand that "punishment constitutes an emotional response" and this "passionate response [is] graduated in intensity" (Durkheim 1984: 44, 47). Durkheim expanded on this by stating "we need only observe how punishment operates in the law-courts to acknowledge that its motivating force is entirely emotional. For it is to the emotions that both prosecuting and defending counsel address themselves (1984: 47). On this point, Breathnach elaborates that the "defense counsel seeks to excite sympathy for the defendant and the prosecution evokes the social sentiments that the accused has violated (2002: 26). Indeed in the transcripts used for this project, the closing arguments for the defense and the prosecution are replete with emotional suggestions in an effort to sway the jury either in favor of the defendant or in favor of the prosecution.

Durkheim further explained that punishment "is still an act of vengeance, since it is an expiation. What we are avenging, and what the criminal is expiating, is the outrage to morality" (1984: 47). This *outrage* is the emotional response expressed by "we," the

society, which has taken over the private acts of vengeance (Durkheim 1984: 49). This is so because as Durkheim described, “since the penal law cannot have changed its nature through this simple transfer, there is thus nothing peculiarly social about it. If society appears to play a predominant role it is only as a substitute for individuals” (1984: 49). In other words, if in primitive society individuals undertook the task of private acts of vengeance, and *now* society, being a substitute for individuals, undertakes said acts, then we are still operating in a primitive form of punishment. This argument by Durkheim is important in understanding the nature of punishment within our criminal justice system, be it civilian or military. The cases presented in this work, primarily the current cases resulting from the war in Iraq and in Afghanistan, are revolving around the passions evoked by the most emotionally charged accusation, that of premeditated murder. Because premeditated murder requires one to have thought about all the elements of the murder prior to committing it, it is in essence, very cold and calculated. It leaves the accused appearing devoid of any humanity whatsoever, and thus deserving of the harshest penalty applicable.

## CHAPTER II

### THE ROLE OF REVENGE IN WAR

#### *What Is Revenge?*

When one thinks of revenge, one can also call to mind vengeance, retribution, payback, retaliation, reprisal, avenging, and vendetta. In the previous chapter I demonstrated how Durkheim described punishment as taking the structure of vengeance and that punishment remains primitive in nature. Fauconnet, being a student of Durkheim, continued to study vengeance as a form of punishment. The following sections in this chapter will expand upon the concept of retaliation and punishment as a primal characteristic in war.

#### *Revenge in Vietnam*

The first public case of wartime revenge that I present here took place in the Vietnamese village of My Lai in 1968. Soldiers involved in this massacre have made public their versions of how the operation was relayed to them by their commander, Captain (CPT) Ernest Medina. In a documentary titled “Interviews with My Lai Veterans”, directed by Joseph Strick in 1970, one of the interviewees is Gary Garfalo. Here is an excerpt from the interview:

Interviewer: On the night before the attack your company commander gave a talk to the men. What did he say?

Gary Garfalo: Well he ran down the operation to us. He told us that we were getting a chance, there was gonna be a mission, and that we were gonna be lifted in by helicopters, and there was gonna be security and that we were gonna go in there in to the Pinkville and we had a chance to get back for some of the guys that we'd lost in that area. That there was supposed to be Vietcong in there. At that time the intelligence report said that they are in there and that they were

gonna be there. And that when we landed that when at the time of the operation there wasn't gonna be any villagers in the area that were innocent. They were gonna go to the market or go out in the fields. You know the people that should be working that work every day are gonna be out in the fields. The people that go to the market are gonna be at the market. And if there's any VC in there, they're gonna be there then.

We can see that within the statement given by CPT Medina to his troops over the operation based on intelligence, there is an insertion of play on emotions by CPT Medina. Most times, directives are given as a matter of fact without the addition of emotion inducing characteristics. In Garfalo's recollection of CPT Medina's speech, he states "we had a chance to get back for some of the guys that we'd lost in that area" (Strick 1970). Garfalo later explains that the speech revved up the soldiers into a fighting mode and they became excited to go out and fight this enemy that had claimed some of their men. Similarly, in the documentary by PBS in 2010 titled "American Experience: My Lai", soldiers involved tell of the same type of sentiment felt amongst them prior to learning of the plan for the operation.

**Joe Grimes, Squad Leader:** I believe that the month of February was our most devastating month for Charlie Company. It drove us to the ground. It's just like if you had a wound, and they would stick something in that wound and go a little bit deeper. Every time somebody else got killed, and it was like that wound, and it would go a little deeper. And the hurt never stopped.

**Lawrence La Croix, Squad Leader:** They know where the mines and booby traps are, they have to or they can't work in the fields, they can't move between villages, you know. So they know where everything is. But they're not gonna tell you. They're gonna let you blow your leg off. You begin to hate and the hatred becomes very intense and very real (Goodman 2010).

Here we can see how the feelings of resentment toward the residents of My Lai were rapidly and dangerously building toward revenge.

**Michael Bilton, Writer:** By the time it got to the fifteenth of March, Charlie Company were pretty well wound up. They were told that there was a very good opportunity the next day that they would meet the enemy head on. There was a lot of talk about a battalion, the 48th VC infantry battalion. They were thought to be a pretty crack outfit, and they were said to be housed in and around the My Lai area. The brigade commander, a man called Colonel Oran Henderson, wanted his battalions to be much more aggressive with the enemy. And it's fair to say Henderson wound up Medina, and Medina wound up Charlie Company.

**Voice of Captain Ernest Medina (Archival) :** I told them this would give them a chance to engage the 48th VC battalion, that the 48th VC Battalion was the one that we had been chasing around the Task Force Barker area of operation, and that we would finally get a chance to destroy the 48th VC Battalion.

**Fred Widmer, Radio Operator:** Medina was psyched because here's our chance to confront the enemy. We're getting our revenge on you. We're going to tear your ass apart for what you've done to us (Goodman 2010).

This last statement by Widmer speaks volumes of what the atmosphere was like prior to what took place in My Lai. The soldiers themselves were like ticking time bombs ready to explode and all they needed was a legitimate reason to do so.

### *Revenge in Iraq*

The next case exhibiting revenge in war is from the Iraq War and involves a pep talk by Colonel (COL) Michael Steele that is very similar in nature to that given by CPT Medina in the My Lai case. COL Steele, like CPT Medina, also played on the emotions of the soldiers by reminding them of the events that occurred on September 11, 2001.

Here is an excerpt of COL Steele's speech given before the start of Operation Iron Triangle (OIT) in 2006 (Meštrović 2009: 21):

Here are the things I want you to know. Number One, anytime you fight, *anytime you fight*, you always kill the other son-of-a-bitch. Always. *Do not let him live today, so he will fight you tomorrow.* Kill him today. They'll make more of them, they're out there damn everywhere, there's plenty of them. Kill him today. Don't let him live.



So, I want to be very clear. If you go out and somebody presents a lethal threat to you, then you shoot him. Do not feel bad and think *that you should have brought him back* because I didn't want to talk to him. Then when you walk out that gate, fly out that gate, drive out that gate, I expect you to look like a killer. I have been in more third world countries than anybody in this room, and I tell you most of them do not speak English. They all speak food chain. And from the time you set foot in their country, they're checking you out, from top to bottom. They've figured out where you are on the food chain. Because if you look like prey, what happens? You get eaten. If you stand there and look people dead in the eye, you have your weapon at ready, and don't you flinch. You look like you're not scared. Even if you are scared, you look like you're not scared. You send the message that *I am the dominant predator on this street, and if you mess with me I will eat you*. We are not going to be driving around Iraq raping, bartering, pillaging, being undisciplined. That's not what I'm talking about. I'm talking about the moment of truth, when you're about to kill the other son-of-a-bitch; I do not want you to choke down that pipe when thinking, man that's a pretty nice looking car he's driving, just shoot the damn car. Four years and two days ago, this flag was hanging over building number 7 World Trade Center, and a police officer, a good friend of mine, after they got everybody out of the building, went back to check one more time as he was leaving, just then, he saw the flag, went back and recovered the flag, got out, 10-15 minutes later what was left of the tower came down. This flag was where the fight started. I think it is very appropriate to take a piece of the World Trade Center back where they started it, and we're going to finish it. Our history's in this flag. And I wanted you to know what this flag means if you come to the headquarters and you see it down there. *Man, it's time to go hunting. And that's exactly the attitude I expect you to have. Every time you walk out that gate, you are hunting. You are the hunter, you are the predator, you are looking for the prey, and that's all.*

COL Steele's speech implicitly states that with this mission the soldiers are to seek revenge for what happened at the World Trade Center. The emotional trauma that the country suffered because of the 9/11 attacks was being used as a tool to incite the soldiers to become the predators that COL Steele needed them to be in order to kill without regret. Another example of revenge within COL Steele's speech comes at the end of his speech when he tells his men that "it's time to go hunting...you are hunting. You are the hunter, you are the predator, you are looking for the prey." Hunting in this sense, is not like the type of hunting where one hunts deer, quail, et cetera. For even in

animal hunting as a sport, it is difficult to find the revenge factor against the animals, since the animals will most likely be killed for consumption. Hunting, as COL Steele is using it, is more like the vendetta type of “headhunting” that Fauconnet describes occurred “in the Philippines and among nearly all the Malaysian peoples” (1978: IV-15). The similarities between CPT Medina’s and COL Steele’s speeches for the purpose of inciting the soldiers to attack the enemy, though 30 plus years apart, exhibit a prevalent pattern of revenge not generally accepted in explicit form by the public.

The third case of revenge in wartime is from another instance in the Iraq War. This case is that of the Baghdad Canal Killings (BCK) which took place in 2007 and is somewhat different from the two examples above in that the BCK did not have an officially authorized speech delivered prior to the act of violence that took place. Below are several excerpts from various BCK transcripts.

SGT Michael P. Leahy: When we got back to the COP, First Sergeant Hatley pulled the whole patrol over by the clearing barrels and said that, you know, “We went out and we took care of these guys. What was done was done for Sergeant Soto, who had been killed, Sergeant Guerrero, who had been killed, and for all the motherfuckers that think that they can shoot us and get away with it.”

(Meštrović 2010: Hatley ROT 503)

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TC: “First Sergeant Hatley said to all of us what happened, happened, that was for Guerrero, Sergeant Soto, and Sergeant Stevenson.”

SPC Jonathon A. Shaffer: Yes, sir.

TC: “He said that it should never leave that group, never talk about things along that line.” Is that correct?

SPC Shaffer: Yes, sir. (Meštrović 2010: A32 Mayo 148)

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SPC Humberto Navarro: We drove up to the COP and then we pulled up to the clearing barrel; and as I was clearing my weapon, that is when First Sergeant came up and he is just like, “Hey,” you know “This was for Soto and Guerrero and Sergeant Steve.” And he is just like, “If anybody has got anything to talk about, tell them to come and talk to me.” (Meštrović 2010: A32 Mayo 166)

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TC: And what happened when you got back to the COP?

SFC Joseph P. Mayo: All the soldiers were brought in, and First Sergeant said that this was for our fallen soldiers.

TC: And did he elaborate on that?

SFC Mayo: He just said, “This is for our fallen soldiers”; if anyone had an issue or if someone to talk about this, to direct him to the first sergeant.

(Meštrović 2010: Hatley ROT 599)

The preceding selections are all in reference to First Sergeant (1<sup>ST</sup> SGT) John E.

Hatley’s justification of the killings which occurred in the canal. The witness testimonies explicitly show a personal vendetta as the basis for the shooting deaths of the Iraqi men.

Unlike the vengeance sought in My Lai or OIT, which were ordered directives in which

official meetings were held and operations were named, the vengeance in BCK was similar in nature to that of street justice or more appropriately, curbside justice.

Street justice is commonly known as seeking retribution in a manner that is not legally approved of. We see it occur in crime ridden areas where gangs are prevalent. For instance, if a gang member is killed, the gang with which the deceased member was associated seeks revenge on the rival gang without going to the police or other legal entity charged with seeking justice. Oftentimes this form of reprisal comes about because of a lack of respect for the legal authorities charged with punishing the initial act of wrongdoing. The BCK was just such an instance. In a telephonic interview of First Lieutenant (1<sup>ST</sup> LT) David Nelsonfischer by James T. Hill, 1<sup>ST</sup> LT Nelsonfischer states:

The witness stated that there was a feeling down range that you are “dammed if you do, dammed if you don’t”. For example, there were several instances when soldiers followed the proper procedures, proper ROE, and shot at enemy forces – than being relieved or reprimanded for their actions. PSGs, Squad Leaders, were being relieved even though they followed the rules. The witness emphasized that even if you do everything right down range you can get screwed (Meštrović 2010).

The above statements illustrate the sentiments that 1<sup>ST</sup> SGT Hatley and his crew of soldiers were most likely experiencing prior to the BCK. If following the proper and legal protocol were getting 1<sup>ST</sup> SGT Hatley and his men nowhere then it makes sense that they would take matters in to their own hands. An additional statement from 1<sup>ST</sup> LT Nelsonfischer in the same interview conveys this very sentiment:

...that in his view these soldiers acted in ‘pre-emptive self defense.’ The witness elaborated “when you believe the system protects ‘them’ and not ‘you’, that provokes a total lack of respect for that system.” The witness was explaining that everything downrange is designed to protect the insurgents, not the soldiers (Meštrović 2010).

This passage is revelatory of the emotions that 1<sup>ST</sup> SGT Hatley and his crew were experiencing when the BCK occurred. Although, the actions carried out by 1<sup>ST</sup> SGT Hatley and his men are illustrative of vengeance in war, according to Durkheim, these actions are not entirely replete with cruelty. I will come back to Durkheim's point of view in the next chapter when I discuss the role of responsibility in these cases.

*Revenge in Afghanistan*

The last and most recent case to be presented here is that of the Afghan Kill Team (AKT) which took place in 2010. This case came about as a result of an investigation into the deaths of several Afghani men which were believed to be unlawful. The following excerpt is from the court-martial of Specialist (SPC) Jeremy N. Morlock.

MJ: And have you talked with your lawyers about heat of passion?

SPC Morlock: Yes, sir.

MJ: You're on a battlefield, I mean, your unit came under fire --

SPC Morlock: Yes, sir.

MJ: From real enemies of the United States?

SPC Morlock: Yes, sir.

MJ: And did your platoon lose anybody?

SPC Morlock: No, sir. We had some -- few fellows lose some limbs, sir, in my direct platoon, but no lives were lost in my platoon, sir.

MJ: So, you had some serious casualties?

SPC Morlock: Yes, sir.

MJ: Were any of these discussions or decisions to kill people made kind of in the heat of that situation, or were they all things where you were calm, you were cool, you were thinking about it, and you decided, “we’re going to kill people who are not our enemies”?

SPC Morlock: It might have been used for fuel at that point in time, sir, it was, you know, maybe exacting some revenge, but at the end of it, sir, everyone knew that it was just kind of to go out and kill someone, sir. (Meštrović 2010: Morlock ROT 34)

If you recall from Chapter I, Durkheim stated that punishment is an emotional response, graduated in intensity; and we know that punishment for Durkheim is vengeful in its nature. The line of questioning from the MJ appears to be an attempt at getting SPC Morlock to admit feelings of a punishing nature by using terms such as “heat of passion,” “under fire,” “real enemies,” “lose,” and “serious casualties” to describe the environment in which SPC Morlock and the others were situated. SPC Morlock seems to have immediately understood what the MJ was getting at and frankly responded that while those emotions were present which would have resulted in “exacting some revenge” the anticipated act was simply “to go out and kill someone.” Now the guilt or innocence of SPC Morlock or the reasoning behind the killings is not what is at issue here. The purpose of this excerpt was to illustrate Durkheim’s theory of passion and intensity within the realm of punishment

## CHAPTER III

## THE ROLE OF RESPONSIBILITY IN REVENGE

*What Is Responsibility?*

Fauconnet wrote that “in every accusation or punishment, we principally seek an example” (1978: I-16). I take this to mean that we are seeking to *make* an example out of someone or something, which means that we must be able to place responsibility upon this someone or something. Consider the following passage from Fauconnet in which he elaborates on the seeking out of examples:

When the setting of an “example” is deemed to be necessary, selection of the sanctionee is a mere trifle. In the army, or in the schools, it happens that the authorities arbitrarily hold someone responsible, as an “example”. In war, an invader secures the submission of a people by means of “examples,” without bothering to discover the actual authors of those deeds whose recurrence he intends to prevent. One could not claim that such “examples” are useless; would one say they are unjust? But on what condition is an “exemplary” punishment just? On the condition that the sanctionee be held to be “responsible”. We return to the conclusion to which we were earlier led by our analysis of the principle of expiation: some rules of responsibility may be added to the principle or exemplarity, for the purpose of restricting and settling its application, but these rules are not derived from the principle (1978: III-24-25).

The above segment describes just how an example is chosen. Fauconnet explains that picking the sanctionee is a “mere trifle.” I take this to mean that picking a sanctionee is in essence, no big deal. In other words, someone needs to become an example and it does not matter who. We can see this trifling “picking” happen in the civilian criminal justice system, especially during the sentencing phase. For instance, if the courts are seeing a rise in the number of drunken driving cases, the prosecutor may pick out one of the cases to apply the maximum charge in order to obtain the maximum sentence to

make an example of that particular accused. The legal reasoning behind this move is “that the fear of punishment may give pause to the evilly inclined” (Durkheim 1984: 44). Durkheim’s statement is interpreted as the doctrine of deterrence in which others are discouraged from committing the same offense for which the “example” has been punished (Breathnach 2002: 27). In the sections that follow, I will elaborate my discussion of Fauconnet’s passage.

*The “Responsibles” in War*

In the previous section, I began examining a selection from Fauconnet concerning punishment and examples. One of the lines in the selection states “In war, an invader secures the submission of a people by means of “examples,” without bothering to discover the actual authors of those deeds whose recurrence he intends to prevent” (Fauconnet 1978: III-24-25). The plurality of the term “examples” is indicative of collective responsibility. On the topic of collective responsibility, Fauconnet writes:

The recipient of sanction is not always an individual. It may be a social group, a collectivity. The notion of collective responsibility often remains very indeterminate....vendetta is practiced indifferently on the “first comer.”... In its meaning as we use the term in this book, collective responsibility exists when an organized society, notably a family, a political or a territorial group, considered as an indivisible unity, is struck by a sanction.....Nevertheless, responsibility remains collective, even though the sanction reaches only one person in the society, because that person is struck as a member of the group, and not as an individual.....Collective subjects are appropriate for responsibility, whether this be vendetta or punishment. In vendetta, collective responsibility is the rule. Only exceptionally does vendetta strike exclusively the sole author of the sanctioned act (1978: I-37-38).

The preceding quotation beautifully describes the essence of collective responsibility in punishment, particularly, in wartime. The way in which Fauconnet links collective responsibility to the vendetta makes for a very powerful statement when discussing



revenge and sanctions. We can better understand how Fauconnet's collective responsibility works when we explore the sanctionees of revenge in the cases from Chapter II.

In the Vietnam War case of the My Lai massacre, collective responsibility was placed on the Vietcong. Let us reflect on the following statements from soldiers involved at My Lai:

**Greg Olsen, Machine Gunner:** I remember him telling us that the villagers have been warned out. There shouldn't be any innocents there and I think there was even questions asked is 'how would we know if they're innocent or not?' He said something to the effect, if they're there; you've got to assume they're the enemy.

**Lawrence La Croix, Squad Leader:** There were no civilians. You see, that is the crux of what was told to us. There are no civilians, you know, these are Vietcong, Vietcong sympathizers, it's a Vietcong stronghold, they are all Vietcong.

**Michael Bilton, Writer:** Medina, I believe was very clear that they were facing the 48<sup>th</sup> Vietcong infantry battalion. That was the intelligence he had been given, and had no reason to question it (Goodman 2010).

These statements when examined closely help us to recognize the role of collective responsibility. The original speech made by CPT Medina to the soldiers, as recalled by the soldiers here, stated that Vietcong was going to be present in the village. Bilton's statement strongly confirms the expected presence of Vietcong because of his reference back to the intelligence report which CPT Medina used when giving his speech. The use of the terms "innocents" and "civilians" by Olsen and LaCroix and the belief associated with those terms in this context, which is one of expected absence, conveys to us that anyone or anything else left behind would have to be as LaCroix stated "all Vietcong" or as Olsen stated, assumed to be the enemy. If you recall from Chapter II, the My Lai

massacre was ultimately the result of the soldiers taking revenge out on the Vietcong that were supposed to be in the village. The Vietcong in this context was what Fauconnet termed above “an organized society,” “a political or a territorial group,” and “an indivisible unity, struck by a sanction;” the sanction of revenge.

Another example of collective responsibility can be found in the case of Operation Iron Triangle. Content analysis of the speech given by COL Steele brings to light the message that Fauconnet was communicating to us in the above passage on collective responsibility. First, COL Steele’s speech contains three instances of the pronoun “them,” two instances each of “they” and “they’re” and one instance each of “they’ll” and “they’ve.” However, it is unclear, in the entire speech, specifically *who all* it is COL Steele is referring to when using these plural pronouns. This ambiguity in the blaming process for COL Steele is supportive of Fauconnet’s philosophy that “the notion of collective responsibility often remains very indeterminate.” Second, the ambiguity continues even when COL Steele makes reference to individuals in the singular form in his speech. For example, COL Steele mentions the term “the other son-of-a-bitch” twice, uses the singular pronoun “him” seven times, “somebody” once, and finally two variations of the singular pronoun “he.” Again, COL Steele lacks specificity in all these instances as to *whom* it is these terms are referring. And yet again, Fauconnet’s words ring true, when he states that ‘responsibility remains collective, even though the sanction reaches only one person in the society, because that person is struck as a member of the group, and not as an individual.’”

Third, COL Steele expresses in his speech that his soldiers are to “kill the other son-of-a-bitch” “*anytime you fight.*” When punishing within the realm of collective responsibility, Fauconnet wrote that the “vendetta is practiced indifferently on the “first comer”.” Regarding this “first comer” Fauconnet wrote the following:

In this case, however, there is no question of designation; it does not matter who is killed - - any “first comer,” with the exception of members of the group to which the avengers belong and its allied groups. The risk of encounter is what orients vendetta. “Every man belonging to a foreign tribe, with whom they do not maintain friendly relations, is miserable, if he has the misfortune to encounter the avengers” (1978: IV-16).

COL Steele also relayed to his soldiers that “If you go out and somebody presents a lethal threat to you, then you shoot him.” Given that the context in which this speech was delivered was during wartime and the environment was hostile we can presume that COL Steele’s soldiers were on heightened alert for any enemy encounters and were thus always ready to fight. This being the case, any “first comer” who came across COL Steele’s men was sure to fall victim to their vengeance indiscriminately. This scenario corroborates Fauconnet’s suggestion that a “first comer” even as an individual is subject to collective responsibility in vendettas.

The third case of the BCK displays a different facet of collective responsibility. As previously mentioned, testimony was given stating that 1<sup>ST</sup> SGT Hatley was seeking revenge particularly for his fallen soldiers: Sergeants Soto, Guerrero and Stevenson. It was mentioned in the testimony that for the BCK, those responsible for the deaths of Soto, Guerrero, and Stevenson were a “drive-by sniper attack,” “a sniper,” respectively, and for Stevenson the culprit was not mentioned (A32 Mayo: 54-55). Again, we look to Fauconnet to tie together how it came about that the sanctionees in the BCK were chosen

by 1<sup>ST</sup> SGT Hatley and his men. Fauconnet accurately described what he called “Responsibility by resemblance” in the subsequent passage:

The conceptualized images of the crime and the “responsible” sustain a relationship of similitude in the social consciousness which judges. To this type belong principally the following facts of responsibility: A. Responsibility of corporeal resemblance; (1) Responsibility of effigies; (2) responsibility of expiatory victims; B. Responsibility by “spiritual” resemblance; C. Collective responsibility of organized groups in vendetta as well as in punishment properly so called. . . . Collective responsibility is easily explained by the strong integration of social groups and the slight individualization of their members. Although this explanation is inadequate to account for the whole phenomenon, it has in it an element of truth. When individuals are only slightly differentiated, they resemble one another psychologically and even physically, because they diverge only very slightly from a common type - - the collective type. In primitive societies, it has been said, solidarity stems from similarities. Collective responsibility also stems from similarities. To think of one of the members is to think of the entire group. – D. Responsibility of affective resemblance. There is a ready presumption against persons who are not liked. The judgments of opinion and of the crowd are what supremely govern affective resemblance. When a crime, or even a catastrophe or crisis whose criminal character is not established, moves them, crowds are driven to affirm, without inquiry or on insignificant indicia, the responsibility of persons or groups whom they hate or despise (1978: V-18-21).

I find that the piece above contains valuable information regarding the selection of sanctionees within collective responsibility. The way in which Fauconnet describes how resemblances are perceived by the wronged is incredible. For instance, not only are the “responsibles” similar in resemblance of body, but also of mind! However, in the case of the BCK, the physical resemblances are what were important for 1<sup>ST</sup> SGT Hatley and his men because the “responsibles” in this case, the snipers, could only be held responsible by replacing them with other actors of similar appearance or character.

The last example in which we see aspects of collective responsibility is in the AKT case. This case has elements of collective responsibility similar to those found in

OIT and BCK. Let us now look at some selections from the transcripts which depict these elements.

MJ: Was it crystal clear to both of you that this person that you guys had just agreed to shoot was not a legitimate target, that this was going to be an unlawful killing?

SPC Morlock: Yes, sir. He did not present a direct threat, sir. (Meštrović 2010: Morlock ROT 49)

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MJ: So while your lieutenant was questioning this other person, this person just presented themselves?

SPC Morlock: Yes, sir.

MJ: And again, any intelligence or other reason to believe this person presented a threat?

SPC Morlock: Not directly, sir, no.

MJ: And you say, "not directly." What, if anything?

SPC Morlock: Just the dynamic of the battlefield, sir. It's a warzone, so anyone perceivably could've been a threat.

MJ: Okay.

SPC Morlock: So, directly we did not feel threatened by this individual at the time that it had happened.

MJ: When you first saw him, what was he doing?

SPC Morlock: He had been brought out of his compound by Staff Sergeant Gibbs, so, he was just walking along with Staff Sergeant Gibbs.

MJ: It was clear to you and from what Staff Sergeant Gibbs had told you that he had kind of selected this guy at random, that he was not a target or a threat of any legitimate, you know, military operation? (Meštrović 2010: Morlock ROT 52-53)

The excerpts above take us back to Fauconnet's statement that "collective responsibility often remains very indeterminate" and that "vendetta is practiced indifferently on the "first comer"" (1978: I-37-38). Very similarly to OIT, the Afghani man that this section of transcript is referring to is himself referred to as "he" and "this person" several times over, which indicates that he has not been formally identified as an author of any sanctioned act. Additionally, the arbitrary way in which he was chosen to be the sanctionee, the "example," is signified by the MJ's phrases "just presented themselves" and "selected...at random."

This last passage by Fauconnet neatly ties together all the cases presented in this section pertaining to collective responsibility. In each case, we were able to see the similarities in how the sanctionees were chosen; even if the cases were decades apart. In addition to describing how it is that sanctionees were selected in these cases, the passage opens the floor to allow for discussion on other topics, such as race relations during wartime, both for those fighting in the war and those that are not.

### *The "Responsibles" in War Crimes*

We have taken a look at how responsibility falls upon a collective group when

avenging a wrong in war. Now we will look at how responsibility falls upon an individual accused in a war crime. I will begin once again with the My Lai massacre in Vietnam.

Following the My Lai massacre, CPT Medina and those involved in the operation were accused of war crimes. Pictures had been sold to the media depicting villagers being killed including women and children. This caused an outrage with the American public. There were Americans who sided with the soldiers, claiming that during wartime anything goes. Then there were other Americans who sided with the Vietnamese and called the soldiers “baby killers” (AE). During the scandal that ensued, only one man actually ended up being charged and convicted with the war crime. He became the “example.”

As you may recall from Chapter II, CPT Medina had held a meeting where he gave a speech regarding the upcoming operation which included a verbal order as to what was to take place during the operation at My Lai. However, whether verbal or written, the men are trained to believe that any order given to them is to be obeyed. In other words, it does not matter *how* the order was given but that it simply was given and that is all that matters. Again, I emphasize that the combat soldiers are not always, if they are ever, directly involved in constructing orders for operations. Consequently, it is assumed on our part and theirs that those who do construct the orders are responsible for putting them together and knowing what is legal or illegal about the order. The soldier being given the order should only be responsible for carrying out that order. This adds to the efficiency of a successful operation in which resources for checking the legality of

the order or sufficient time necessary to question such an order are not always a possibility. Lieutenant (LT) William Calley, like those soldiers ranking beneath him at My Lai, believed himself to be following direct orders to the best of his ability.

**Voice of Lieutenant William Calley (Archival):** I felt then and I still do that I acted as I was directed, and I carried out the orders that I was given, and I do not feel wrong in doing so, Sir.

**Aubrey Daniel, Army Prosecutor:** If the orders for that operation included unarmed, unresisting men, women, children and babies, it was illegal. And a soldier has a duty to disobey such an order (Goodman 2010).

The prosecutor for the My Lai case made the claim that the order that LT Calley followed was illegal. But if we go back and look at what CPT Medina said to the soldiers because of what was believed to be accurate information in the intelligence report, then we can presume that the order was legal. The order was to kill everything in the village in an effort to rid the village of all Vietcong and its sympathizers. Anything that could assist the Vietcong in surviving including clean water to drink and animals to eat was to be destroyed. And while the human element in us wants to believe that children are completely innocent victims, in the event that those children grow up to be Vietcong or sympathizers themselves, then to destroy them aids in the effort of total destruction of the Vietcong. This ideology goes back to Fauconnet's writings about collective responsibility. Regarding the role of children in collective responsibility, Fauconnet wrote:

The collective responsibility of the family involved the responsibility of the children; death, banishment, civic degradation, and confiscation extended to them as well as to adults. Since the specific purpose of collective capital punishment was to extinguish a family line and terminate its domestic cult, children of any age were necessarily put to death (1978: I-4).



Some of the legal systems we have examined - - probably the Athenian law, the law of the Twelve Tables, the Germanic law - - attest that private vengeance, whose traces they preserved, must have reached the child. Moreover, the responsibility of the child in vendetta has been directly observed. (1978: I-8).

Again, the human element in us wants us to believe that children should be spared, but Fauconnet was able to find support that this is often not the case. Nonetheless, because we believe that we are a modern people and that killing children during war is primitive, soldiers like LT Calley often get charged with war crimes even if they were following direct orders. Once more, we are reminded of Fauconnet's statement on the subject of seeking out examples in punishment.

Another instance, in which soldiers were subsequently tried for following orders, was during OIT. In this case, Specialist (SPC) William B. Hunsaker had been charged with premeditated murder as per the Uniform Code of Military Justice (UCMJ), but pled down to a lesser charge of conspiracy to commit premeditated murder. Here is an excerpt from SPC Hunsaker's trial transcript with the original charge of premeditated murder as read by the presiding Military Judge:

MJ: All right. Let's look at The Specifications of Charge III, which represent violations of Article 118 of the Uniform Code of Military Justice. The elements of those offenses, called premeditated murder, are the same except as I will describe. The elements are:

One, that as alleged in each specification, a military detainee of apparent Middle-Eastern descent, whose identity is unknown, but for ease of reference, the stipulation of fact identifies them as MD1 and MD2, are dead;

Two, that their deaths resulted from your act of shooting them with a firearm, on or about 9 May 2006, at or near Muthana Chemical Complex, Iraq;

Three, that the killing of MD1 and MD2 by you was unlawful;

And four, that at the time of the killing, you had a premeditated design to kill MD1 and MD2.

A killing of a human being is unlawful when done without legal justification or excuse.

“Premeditated design to kill” means the formation of a specific intent to kill and consideration of that act intended to bring about death.

The premeditated design to kill does not have to exist for any measurable or particular length of time. The only requirement is that it must precede the killing (Meštrović 2010: Hunsaker ROT 199).

The charge of premeditated murder is heavily loaded with negative implications. Adding to the negativity is the fact that the identity was unknown for those that were killed. This gives the appearance that the killing was indeed random and without purpose. However, if you recall the speech given by COL Steele, he explicitly stated, “Kill him today...Kill him today. Don’t let him live.” And as I explained earlier, the use of the pronoun “him” in COL Steele’s speech implies a lack of specificity, which allowed for the order to kill to apply to anyone in general and no one in particular. In addition, testimony was given in the Article 32 for those involved in this case in which the Rules of Engagement (ROE) for OIT were to “kill all military aged males.” And similar to the case of My Lai, it was reported to those charged in the case that everyone on the island were terrorists:

LT Wehrheim.: We were told by Captain Hart through Colonel Steele that everybody on the island identified as a military aged male was, in fact, a confirmed member of Al Qaida in Iraq by high level intelligence. (Meštrović 2010: A32 OIT 501). [emphasis added]

With this trial excerpt, we have another example of how *intelligence* was used to order an operation that somehow failed and now was the responsibility of individual soldiers. We can look to Durkheim for explanation of this phenomenon. Durkheim stated that “the vendetta is clearly a punishment that society recognizes as legitimate, but leaves to individuals the task of carrying out” (1984: 50). In the case of My Lai and OIT, *intelligence* was the driving force behind the operations. This intelligence came about by way of a society of military executives who orchestrated the vendetta, i.e. operation. The execution of the vendetta, however, was delegated to the soldiers to perform. And *here* is where the individual responsibility takes over in war crimes.

Fauconnet wrote that “Collective and communicable in primitive societies, responsibility is, in principle, strictly personal in the most civilized societies” (1978: VIII-1). If you ask the average American if he believes he lives in a civilized society as compared to Iraq, he would probably answer yes. America is portrayed as a first-world country whereas Iraq is viewed as a third-world country. For most people, third-world means undeveloped or worse, backward. Keeping in this line of thinking, I argue that Fauconnet’s words about responsibility becoming personal in civilized societies are still true to this day. Given the stigma that is associated with third-world countries, it makes sense that the society of the United States Army would seek to quickly rectify any

primitive type actions that may have taken place on their behalf. The Army, being so highly structured and charged with protecting the superpower of the world, cannot be associated with actions of a such a regressive nature as that of a third-world country. Thus, to separate itself and stand above the rest, the Army found it necessary to hold the soldiers, low-ranking soldiers, personally responsible and make examples out of each and every one of them individually.

The third case in which the “responsibles” were individual soldiers was in the case of the BCK. 1<sup>ST</sup> SGT Hatley and his crew, like SPC Hunsaker and the others from OIT, were charged with premeditated murder, as per the UCMJ, for the deaths of “four male detainees of apparent Middle-Eastern descent whose names are unknown by means of shooting them with firearms” (Meštrović 2010: A32 Mayo 4). If you recall from Chapter II, testimony was given that 1<sup>ST</sup> SGT Hatley stated explicitly that the reason for shooting and killing these men was for retaliation. In this case there was no *intelligence* or executive order calling for the deaths of these four men. According to the witnesses it was 1<sup>ST</sup> SGT Hatley’s lone decision to move forward with the execution of the detainees. The statement from 1<sup>ST</sup> LT Nelsonfischer in his interview over the incident also gave insight to the environment and immediate circumstances in which 1<sup>ST</sup> SGT Hatley and his crew were working. But because 1<sup>ST</sup> SGT Hatley was alleged to have blatantly acted with the intention of retribution *only* premeditated murder seems like a just charge. However, according to Durkheim, the charge is faulty.

I have established Durkheim's position on punishment as revenge. But Durkheim asked us to view revenge as more than just an act of vengeance when he stated the following:

It would indeed be mistaken to believe that vengeance is mere wanton cruelty. It may very possibly constitute by itself an automatic, purposeless reaction, an emotional and senseless impulse, and an unreasoned compulsion to destroy. But in fact what it tends to destroy was a threat to us. Therefore in reality it constitutes a veritable act of defence, albeit instinctive and unreflecting. We wreak vengeance only upon what has done us harm, and what has done us harm is always dangerous. The instinct for revenge is, after all, merely a heightened instinct of self-preservation in the face of danger. Thus it is far from true that vengeance has played in human history the negative and sterile role attributed to it. It is a weapon of defence, which has its own value – only it is a rough and ready weapon. As it has no conception of the services that it automatically renders it cannot consequently be regulated. It strikes somewhat at random, a prey to the unseeing forces that urge it on, and with nothing to curb its accesses of rage (1984: 45). [emphasis added]

Durkheim's stance on vengeance as self-defense, I argue, is what 1<sup>ST</sup> SGT Hatley and his men were trying to accomplish when they took it upon themselves to kill the four Iraqi men. In fact, SGT Leahy himself testified that he believed the Iraqis were a danger to himself and the rest of the men.

Q: Did you go along with taking care of the detainees?

SGT Leahy: Yes, sir.

Q: And why'd you do that?

SGT Leahy: Because I believed these guys were a threat to us, sir. I believed that, if what happened didn't happen, we would have lost more soldiers or other units would have lost soldiers, because I honestly feel—and still feel—that these were bad guys that were trying to kill us, and it was something that we did, I believe, to save lives, sir (Meštrović 2010: Hatley ROT 503).

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Q: If snipers and insurgents are attacking you and then they are being put on the street without you being told about it, you know, weeks to a month later, what psychological effect did that have on you?

SGT Daniel K. Evoy: It, pretty much, scares you because you know that this is a sometimes qualified sniper being put right back out on the streets to, you know, just to do his job, you know, to shoot at us, kill us. So it is not very pleasant news to receive (Meštrović 2010: A32 Mayo 58-59).

These statements from SGTs Leahy and Evoy illustrate what the mindset was for 1<sup>ST</sup> SGT Hatley and his men. For instance, two of 1<sup>ST</sup> SGT Hatley's men had already been killed by snipers and to know that a captured sniper would soon return to the street could only contribute to an increasingly anxious state of mind for these American soldiers. In Durkheim's words, the soldiers were wreaking vengeance only upon what had done them harm, and what had done them harm was, is and would always be dangerous for them (1984: 45). As Durkheim explained, this type of vengeance was far from negative because it served the purpose of self-defense and above all, self-preservation.

The last example of "responsibles" in war crimes comes again from the AKT case. Reminiscent of SPC Hunsaker, SPC Morlock was charged with premeditated murder and conspiracy to commit premeditated murder. And if you recall from Chapter II, SPC Morlock candidly admitted that while the conspiracy may have started as a way of "exacting some revenge" it eventually became only about going out and killing someone, which actually meant killing *anyone*. This stark revelation is what makes this

case different from the others I have presented thus far. This is because in the My Lai and OIT cases, the vendetta was executed on an order and in the BCK case, the vendetta was executed as a “weapon of defence.” However, in the AKT case, the killings that resulted were neither from direct orders in the military chain of command, nor were they from “heightened instinct of self-preservation in the face of danger.” The killings in this case were from an “unoriented vendetta” brought about by lack of choices (Fauconnet 1978: V-22).

So far we have discussed oriented vendettas in which the vendetta is acted out with a purpose, namely to make an example of an individual or a group. However, there is another type of vendetta which Fauconnet described below.

Thus, the orientation of vendetta is in some cases completely undetermined... In the application of punishment, however, such total indeterminacy is never observed. In the case of the vendetta, the society suffering it is distinct from the society exercising it; they are two enemies confronting one another in a war. Nothing except their adversary’s strength limits the avengers in making their choice. The moral forces that can constrain vengeance to limit itself are absent, for between indifferent or hostile strangers, how could there be an extended circle of beings in whom a privilege of irresponsibility would be recognized (1978: IV-20)?

In SPC Morlock’s court-martial, he testified that the victims chosen were unarmed and were made to appear as if they had been armed with what he termed “drop weapons”, thus engaging the American soldiers and requiring the American soldiers to fire in self-defense (Meštrović 2010: Morlock ROT 30). Fauconnet’s statement that “nothing except their adversary’s strength limits the avengers in making their choice” holds true in this case. Because the Afghani men were unarmed, they had no show of strength that would have limited the choices of the American soldiers in making the Afghani men their

victims. For clarification, the choices here of the American soldiers for the unoriented vendetta are not the lack of choices that I mentioned earlier.

The lack of choices mentioned above regarding the unoriented vendetta is important when determining the responsibility of soldiers like SPC Morlock. Below is testimony from Dr. Stjepan Meštrović regarding the lack of choices that the soldiers in the AKT were experiencing:

Q: Taking this back now, again, now to Specialist Morlock. How is he -- I mean, if you take a Soldier from Wasilla High School whose dad was a Vietnam vet, who was a hero in his eyes, and then you put him into a dysfunctional unit, which I presume he has no control over, in Afghanistan in a deployed combat environment, what choice does he have to be able to correct those dysfunctions, or how does he -- is there anything he could've done to protect himself from this dysfunction?

Dr. Meštrović: There are several choices that he and other individuals did not have. They did not choose their brigade commander, they did not choose to be cross-leveled, they did not choose that Gibbs would come in, or that Gibbs had the connections with Colonel Tunnell. They did not choose this ongoing conflict among the commanding generals of Colonel Tunnell and his subordinates. So, both he and others in his situation are caught in a situation which they, as individuals, cannot change (Meštrović 2010: Morlock ROT 144).

The inability to be free to make proper choices that could have changed the situation for SPC Morlock and the other soldiers is crucial here as it denied them the opportunity to



escape the individual responsibility that was now assigned to them. Furthermore, pointing out that SPC Morlock and the other soldiers were in a dysfunctional environment is important in determining responsibility because as Fauconnet explains:

A normal individual, under pressure from abnormal circumstances, may react exceptionally in a crime. Sympathy and the sense of solidarity stop us from harshly judging the human who had to choose between heroism and crime, especially when such a choice was imposed on him (1978: VII-12).

This statement from Fauconnet wonderfully illustrates Dr. Meštrović's testimony about SPC Morlock and the others not having choices. Additionally, this lack of choices in a dysfunctional atmosphere contributed to this otherwise normal individual behaving in such a way that he became charged with premeditated murder. Fauconnet's statement informs us that it is vital that we recognize the limits that are placed on individuals and their choices once they enter into the military.

## CHAPTER IV

### CONCLUSION

#### *Summary*

Revenge in war is only one of many recurrent themes found in war. However, with the addition of Fauconnet's insights, which are derived from Durkheim, it becomes apparent that accountability goes hand in hand with retribution. This is because, in order to enact the concept of retribution, one has to also invoke accountability into the process. And, vice versa, if one begins by invoking accountability on a punishable act, then the next step is to enact the punishment which, I have argued, is still retributive in nature.

#### *Implications*

The implications of this paper are important to the future of current and prospective veterans, especially those who have been or will be exposed to combat.

Consider the following passage from Fauconnet:

The "law of war"- -another facet of "reason of State" - - also necessitates unprecedented judgments of responsibility. The invader assimilates to "crimes" certain hostile activities of the non-belligerent inhabitants of the invaded territory such as, for example, the formation of resistance groups, the concealment of living persons, the destruction of communications systems, etc. Naturally, he regards himself as right in doing so. For the purpose of affirming, in the teeth of the contrary sentiments of the conquered, that these acts are indeed crimes, he decrees sanctions which seem to him to be indispensable. Very frequently, however, the people's silent complicity will not allow him to apply these sanctions to the perpetrators of the forbidden acts. He must then either endure acts which he has condemned, or derogate from the ordinary rules of responsibility in order to ensure repression. Adopting the second alternative, he declares "responsible," in varyingly arbitrary fashion, either the village in whose territory a violation may be committed against him, or the municipal authorities or hostages. Unjust conduct, as viewed by the victims; excusable and even legitimate, as seen from the invader's viewpoint (1978: VI- 2-3).

This selection perfectly describes what it is that American soldiers are up against during war. Let us look at an example from the My Lai case where Fauconnet's words ring true. In Chapter II, I provided a statement from LaCroix, an invader to Vietnam, about the villagers knowing "where the mines and booby traps are." La Croix's detestation of this knowledge is apparent when he stated, "but they're not gonna tell you. They're gonna let you blow your leg off." This is analogous to Fauconnet's description of the invader's assimilating "to 'crimes' certain hostile activities by non-belligerent inhabitants of the invaded territory". Because the villagers in Vietnam were not forthcoming with information to the invaders about how to avoid injuring themselves or worse, dying, soldiers like LaCroix began to build resentment towards them. This resentment finally erupted under what started as a legitimate strategic operation on the village of My Lai, and ended with the court martial and conviction of LT Calley for the illegal killing of villagers.

Fauconnet's "law of war" is also fitting to the BCK case. For instance, if you recall from Chapter III, 1<sup>ST</sup> SGT Hatley and his soldiers were charged in a military court for the deaths of four Iraqi men. These Iraqi men were killed as payback for the deaths of some of 1<sup>ST</sup> SGT Hatley's crew. As I explained, however, although the act of vengeance was charged as illegal by the military court, Durkheim's words transformed the act into one of self-defense rather than just cruelty for the sake suffering. If we agree with Durkheim that what 1<sup>ST</sup> SGT Hatley and his soldiers carried out was an act of self-defense, can we not also agree with Fauconnet that what the Iraqi snipers were doing was also an act of self-defense? After all, the Iraqis, like Americans, have the right to

defend their territory against invaders. In this case, however, the sentiments on 1<sup>ST</sup> SGT Hatley's part run much deeper and are not as clear-cut as just plain old self-defense. 1<sup>ST</sup> SGT Hatley's choices in the matter here were to either A: endure acts which he has condemned, which in this case were the deaths of his soldiers by sniper fire; or B: derogate from the ordinary rules of responsibility in order to ensure repression, which was to kill the "alleged" soon-to-be-free snipers. And while this appeared to be unjust conduct to the victims, 1<sup>ST</sup> SGT Hatley and his crew of invaders believed it to be excusable and, yes, even legitimate. This also takes us back to Fauconnet's statement in Chapter III about having "to choose between heroism and crime." For in this instance, had 1<sup>ST</sup> SGT Hatley died as a result of letting the Iraqi men go free, then he would have been a hero. But since 1<sup>ST</sup> SGT Hatley did not go that route, he was now charged with a crime.

It is a horribly unfortunate circumstance that soldiers sign up to be in a constant state of Catch-22 situations should they have to participate in war as part of their military duty. For then, not only are they required to seek revenge upon those responsible for the war, as determined by the society of military executives, but they are also subject to expiation themselves by the very same society that compelled them to act. Regarding this same sentiment, Fauconnet wrote:

We should not forget, however, that vendetta is a war: those who wage it and those against whom it is waged are equal in strength. Vendetta involves risks for the avengers, for its unlimited pursuit would lead to their own self-sacrifice, and their deaths would thereupon require new vendettas....Vendetta follows the line of least resistance. In the absence of an association of truly restraining ideas, vendetta must make its attack on the least-feared or the most-hated group (1978: VIII-2-3). [emphasis added]

These words are true whether it is the United States v. Vietnam, the United States v. Iraq, the United States v. Afghanistan or the United States v. Lieutenant William Calley, Specialist William B. Hunsaker, First Sergeant John E. Hatley and all the other soldiers not mentioned here that have been court-martialed or are awaiting courts-martial. Vendetta, as Fauconnet stated, involved risks for all these soldiers, the avengers, as the unlimited pursuit led to their self-sacrifices of becoming “examples” by the prosecution. And as we saw from the BCK case, the deaths of SGTs Soto and Guerrero did indeed require new vendettas, which 1<sup>ST</sup> SGT Hatley and his soldiers partook in. And here the cycle began again, for had it not been for the deaths that the original vendetta produced, 1<sup>ST</sup> SGT Hatley and his soldiers might not have been in the position of being tried for the deaths of the Iraqi men. The concept of vendetta, however, becomes lost or rather disguised, when trying the soldiers for war crimes, because as Fauconnet wrote:

Because we are now discussing a matter of crime and public punishment, and are no longer discussing vendetta, the “responsible” is a member of the very society which aims at his punishment. Like the crime, therefore, he is the object of a collective conceptualized image freighted with sentiments all of which dictate an attitude regarding him. . . . Societies strain to punish, but they also resist inculcation (1978: VII-2).

This passage is telling us, that yes, because LT Calley and the others are *American* soldiers, they are members of the society, *American* society, which aims at their punishment and holds them to be the “responsibles” in these cases. And like the crime, LT Calley and the others all become objects of the collective conceptualized image freighted with sentiments all of which dictate an attitude regarding them. In other words, because they are *Americans*, society places the accused in these cases alongside the crime and imposes a collective identity on them, so that if the crime was of a horrendous

nature, then so too must the accused be of horrendous character. And this sentiment goes against the beliefs that as citizens of a first-world country and superpower of the world, they could be capable of partaking in such atrocities. And so, it is at this point that society separates itself from those accused as *it* refuses to be subjected to the same collective identity that has befallen *them*.

If you recall in Chapter I, Durkheim told us that the nature of punishment has not changed and is still primitive, which means that it is still for the purpose of seeking revenge. In a more recent passage, we are reminded by Fauconnet, that vendetta follows the line of least resistance and must make its attack on the least-feared. This makes sense when you take into account that those accused in the cases presented here, and others of similar kind not mentioned in this piece, have been low-ranking soldiers, for they are the ones less likely to resist, which makes them easier to accuse, and the ones that are least-feared in a reprisal. In none of the transcripts that I analyzed for the My Lai case or the OIT case, did I find anything suggesting that an investigation into the intelligence reports used and relayed to the soldiers to inform them on the operations were going to be conducted. An investigation would be crucial, for if the intelligence was incorrect and the operations were illegal from the beginning then this would release those accused from any guilt in the matter. However, if those accused were released from their guilt, then someone else would have to become accountable and this then becomes problematic. The case of LT Calley from the My Lai massacre is just such an example. LT Calley was eventually pardoned for his role in the operation because of public outrage which called for the society of military executives, including civilians in higher

echelons, to be held responsible as well, as the prevailing sentiment was that LT Calley was just following orders. However, in the case of Operation Iron Triangle, COL Steele managed to escape prosecution for his role in the incitement of the soldiers and his unlawful ROE. Dr. Meštrović pointed out this same sentiment in his testimony during SPC Morlock's court-martial.

Dr. Meštrović: In sociology, we do have a notion of collective responsibility, and a notion of individual responsibility, and they offset each other. I'm not sure how -- I don't know anything about the law, I'm not sure how that would fit, I'm going to speak as a sociologist, it's my opinion based on my sociological understanding that to the extent that the responsibility falls on the brigade. And the dysfunctional climate, which the Army could have corrected, several generals knew about it, they could have taken steps to prevent it and correct it. But that does ameliorate Corporal Morlock's individual responsibility. That's speaking as a sociological theorist (Meštrović 2010: Morlock ROT 145).

And the public's attitude in both the OIT and AKT cases, decades later from the Vietnam era, was satisfaction or rather, indifference, to the charges and convictions of the low-ranking soldiers involved. Perhaps, further study regarding the civilian outlook on war crimes would be warranted considering the amount of war crimes that have resulted from this nearly decade long war. Until then, we have Fauconnet's words to ponder on how it is that society comes to inject itself into wars, straining to punish the other, and yet resist the inculcation which results (1978: VII-2).

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