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Crime and the metaphysical animal

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ABSTRACT

This essay considers how we talk in moral terms about crime and punishment using a framework that comes from psychoanalysis. The idea of the human as a metaphysical animal, an animal that thinks and loves, is given a naturalistic explanation in Freudian metapsychology as it was developed by Melanie Klein and Hans Loewald. While the former helps us understand the desire to punish as the enjoyable return of pain for pain, the latter indicates how mature human beings seek to pursue a sense of wholeness. This understanding of moral psychology is applied to thinking about criminal justice where three ethical stances are identified, the vindictive, the vindicative and the validatory. The vindictive and the vindicative represent a compromise formation in law which excludes a broader validatory process aimed at truthful human reconciliation.

KEYWORDS

Metaphysical animals;
criminal justice; Melanie
Klein; Hans Loewald;
vindictive/ vindicative
complex; reconciliation

Writing about crime

Western societies have always been fascinated with crime stories. From Victor Hugo to Dostoyevsky down through Daphne du Maurier, Raymond Chandler and Agatha Christie to a range of modern novelists, crime and its detection appears to meet an important need amongst modern readers. The current obsession with 'Scandi-noir' is only the most recent fascination and bookshops are full of such novels. Most of this material is read for its gripping narrative and its pay off revelation of 'who did it'. They are 'page turners', though we sometimes are left to wonder what we really learned, if anything, once the pages have been turned. Yet crime stories do reflect more broadly on our world and this essay attempts to explore what they tell us. All this writing reveals a metaphysics of one kind or another. Usually, it is about the restoration of a status quo ante in which 'the good' overcomes 'the bad' in a rather simplistic way, while the reader is entertained by the quirks and dissatisfactions of the detective or by the relationship in a range of 'odd couple' partnerships. The best writing, however, is more thoughtful, telling us something about the human condition, and about how our criminal justice system works or does not work. It is these kinds of questions I will address here.

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Many emotions are reflected in the crime novel's account of the criminal process. These are emotions both of the negative and the positive variety. On the one hand, pain, hate and anger are present, on the other love and a desire for truth, justice and redemption. Here, I will suggest that two core elements of moral psychology are at stake in the handling of a crime: the vindictive and the vindicative. The reader wants to see the perpetrator get their comeuppance and to be punished (the vindictive) and wants to see this happen in a way that sees the truth out and justice to be done (the vindicative). In this regard the crime story is no different from the way society understands criminal justice to work in real life. Rendering suffering to the perpetrator and upholding a sense of right and wrong broadly covers how the system is taken to work. This essay will consider whether this is true and whether the criminal justice system delivers what it (and we) think it does.

I approach the topic by exploring the human metaphysics that inform both the crime story and the criminal justice system, leading to the interplay of the vindictive and the vindicative. I argue that the human 'metaphysical animal' has real psychological powers which are actualised in crime settings, and these are explored by crime novelists at their best. I will explain what I mean by these powers and how these fit with the idea of the metaphysical animal by focusing on two works. First, I will draw on what I believe to have been a pivotal crime writer in the development of modern noir fiction to make my case. The writer in question is William McIlvanney, the 'father of Scottish noir'. McIlvanney was an award-winning novelist who wrote a trilogy of crime stories concerning an alienated police detective in Glasgow called Laidlaw.¹ These stories are replete with existential and metaphysical questions about crime and the moral universe in which it occurs. They also importantly reflect the real experience of suffering crime as I will show, second, by examining a memoir, Marian Partington's *If You Sit Very Still* (Partington 2016). This takes us into a victim's actual experience of victimhood and the criminal justice system, while reflecting themes found in McIlvanney. Partington's sister Lucy was a victim of the Gloucester serial killers Fred and Rose West and her account movingly describes how she came to terms with her sister's death. My overall aim is to locate these accounts, one fictional, the other real, in an understanding of the metaphysical animal and love, and the central relationship in criminal justice thinking between the vindictive and the vindicative.² What is the strange pull that the resolution of accounts of extreme violation have upon the modern human mind? What kind of satisfaction do these provide, and are we really satisfied by them?

The vindictive, the vindicative, the validatory

Let me begin by exploring what I mean by the vindictive and the vindicative, and indicating a move that goes beyond them and their evident opposition. I call this 'the validatory'. The vindictive is the 'will to punish', to hurt, to impart fear, to 'pay back', just because a wrong has been done. The vindicative is the demand to make right, to uphold a victim against a violation, to censure morally a wrongdoer, to declare a wrong has been done. While the two words possess a common stem, they point in different directions, the one to the punitive for its own sake, or for revenge (albeit within law), the other to upholding the morally right. We could say broadly in traditional moral language that the one is consequentialist (seeking to hurt, to deter), the other deontological (seeking a morally

valid outcome). Perhaps alternatively, we could say that the vindictive represents a moral psychology of the negative emotions, the vindicative one of the positive emotions. The point is that we see both positions reflected in modern debate, and I would like from a critical point of view to try to understand how they sit together in criminal justice talk.

In criminal justice theory, there are broadly two schools of thought. The first is the normative liberal approach, which generally considers crime and punishment to possess some ethical value. While it may be subject to all sorts of criticism as to how it works in practice, there is some quality in the system that is vindicative, in terms of upholding rights or values, respecting individuals and protecting communities, or upholding the social contract. The second approach is that of critics who see criminal justice as a way in which a dominant social class organizes its power, polices an underclass and maintains social control. Power is reproduced through crime and law and order politics and punishment takes the form of practices designed to be punitive, to hurt, persecute and dehumanize the majority of those designated criminals, who come from generally poor backgrounds and from racial minorities. In this approach, it is the vindictive not the vindicative that is ever present in criminal justice practice; indeed from the critical point of view, the thought that crime might be vindicative would be seen as one of the ways in which power is legitimated. From the liberal normative point of view, the critic may be right to point out all the defects in criminal justice practice, but ultimately, there is something in the political normative theory that is worth holding onto, and that is how punishment vindicates.

There is an impasse here and I do not want to take one side or the other, but to find a way of understanding the impasse itself and how it is possible. This is an essentially critical realist move because it takes the two positions, finds an underlying ground, and then recasts the opposition in a new setting and light. What we have here is a TINA ('there is no alternative') compromise formation (Bhaskar 1993). This is a way of organizing knowledge and practice in a particular social setting so that it can be maintained in practice while it lacks theoretical coherence. Something is lacking that is both necessary and excluded. What would the underlying element be that is both invoked by the vindictive-vindicative complex and excluded by it? In this setting there is an underlying ethical element that operates as an absent presence that I will designate overall as 'the validator'. This has three specific elements which constitute a moral process. The first is *the validator* in a narrow sense. It represents a moral and social claim that something was valid and should be upheld. Second, there is *the veridical*, which explains that what is established as valid represent a moral truth for a person or persons, is something they need morally to have acknowledged, or to own, in terms of their moral psychology. Third, there is the element of *the reconciliatory* which indicates the substance of the outcome that is aimed at through validation of a moral truth. So validation as a whole starts from vindication and then involves validating a moral truth in the light of which a reconciliation becomes possible. My argument will be that criminal justice involves the pairing of vindictive and vindicative elements, but it lacks an underlying validator ground that would be required were it to work well as an ethical process.

Why should we talk in these terms? Why should I claim that beyond the terms of debate about crime and punishment there lies a third term that sets the existing practical terms in a further context and illuminates them accordingly? The answer to these questions lies in understanding human moral psychology, and the idea of the metaphysical animal.

The metaphysical animal

I have in recent work written about human ontology as involving understanding the ‘animal that thinks and loves’ (Norrie 2018a). I use the term ‘the metaphysical animal’ to reflect this usage, drawing it from a recent book about Oxford women philosophers after the Second World War (Mac Cumhaill and Wiseman 2022). I develop my own interest in the term to include a link to psychoanalytic thinking in the following discussion, but let me begin with Mac Cumhaill and Wiseman. In their book, they write of the philosophers Mary Midgely and Iris Murdoch as students leaving Oxford:

Mary and Iris were heading south. A pair of metaphysical animals on their way to Westminster. (Mac Cumhaill and Wiseman 2022, 98)

These warm and evocative sentences depict Midgely and Murdoch as two of the four women who were to pursue a new direction in Oxford philosophy against the analytical thought of the time. Alongside Elizabeth Anscombe and Philippa Foot, Mac Cumhaill and Wiseman describe four rather different trajectories, but there is an underlying commonality in that all four could be described as metaphysical animals. What did this mean? In three different passages, Mac Cumhaill and Wiseman bring out different elements. First, it was an influential Oxford theologian, Donald MacKinnon, who first used the phrase in his own writings. In the following passage, to which they refer, the metaphysical animal is located in commitments to God and a mysterious universe:

The discipline of metaphysical thinking thrusts upon us every aspect of the situation in which the human individual is involved *For we are metaphysical animals*, naturally curious, with minds open to comprehend the analogy of our being with that of our Creator. Philosophy will rob us of our arrogance by making more sure our necessarily unclear vision We cannot make sense of our history, or rather ... in the moment that we make sense of it, we realize that it is senseless. (MacKinnon 1941, 14; emphasis added)

In the following passages, the specifically religious dimension drops out. Mac Cumhaill and Wiseman sketch the broad range of resources for the metaphysician, going beyond theology and closer to the ethical and aesthetic experiences of human life:

metaphysics is ... an attempt to understand the transcendent background to human life, against which individual propositions may be verified by observation and scientific investigation. We have different methods for this study of the form of reality, its complexity, its patterns and their interrelation. Poetry, art, religion, history, literature and comedy are all the metaphysician’s tools. *They are how metaphysical animals explore, discover and describe what is real ...*. (Mac Cumhaill and Wiseman, 2022, 229; emphasis added)

This is a more accessible account of what it means to be a metaphysical animal, but it still remains in a sense ‘at a distance’ from human beings. We may make use of cultural artefacts such as poetry, art and the others, but may perhaps also miss out on these. This third quote shows how metaphysical experience is a part of *every* human life:

But we humans are metaphysical animals. We dwell in the past as well as the present. ‘You should be ashamed’. ‘We are very proud of you’, ‘What you did was brave’, ‘You must say sorry’. Specialised descriptions – ‘humiliating’, ‘courageous’, ‘disrespectful’ – orientate us towards the world and to each other. We make promises and imagine our futures. It is part of our nature to question. (Mac Cumhaill and Wiseman, 2022, 282)

This conception of the metaphysical animal reflects the personal quality of a human life with its ethical commitments together with its sense of how moral judgments reach into the past and towards the future against a backdrop of the transcendent-as-immanent.

It is in this fuller sense that I want to draw on the idea of the metaphysical animal as being relevant to thinking about the nature of human reactions to violations which are understood in the terms of crime and punishment. However, before I turn to that, I want to push the analysis further of what we mean if we talk about a human *animal*. It is not clear from the above why Mac Cumhail and Wiseman find MacKinnon's initial conception of the metaphysical *animal* relevant to their argument, or indeed what MacKinnon himself meant by using the term. One thin conception would be simply to say that humans are differentiated from other animals in terms of their metaphysical capacities. Humans have an ability to reflect on eternity and their internal commitments in a way that dogs or geese do not. This seems not especially helpful in that it lacks an account of the specific nature of human animality such that it grounds metaphysical experience. What *kind of animal* is able to have such experiences, or, put slightly differently, what must the human animal be like to be metaphysically able? To answer that question, I will turn to reflection on the mind–body problem provided by psychoanalytic thinking.

Before I do so, however, I turn to consider how metaphysical thinking enters into human life with regard to violation and the criminal justice system. In the next section, I consider a work of crime fiction and what it can tell us about this.

The metaphysical animal and violation: 'maybe just another love story'

McIlvanney's trilogy of crime novels concerned a troubled and alienated detective named Laidlaw. In each of the novels, strongly ethical observations emerge as a crime is addressed then solved. I will focus on one passage towards the end of the first novel. It involves a dialogue between Laidlaw and his deputy Harkness, concerning the murder of a teenage girl by her boyfriend in circumstances that are not fully known but which involve confused sexuality and violence. Laidlaw starts by speaking about his role in a criminal justice system:

(Laidlaw) 'You don't solve crimes,' he said. 'You inter them in facts, don't you?'

(Harkness) 'How do you mean?'

'A crime you're trying to solve is a temporary mystery. Solved, it's permanent. What can the courts do with this then? Who knows what it is? It's maybe just another love story.'

'What? I'd like to hear somebody trying to tell you that if you were the girl's father.'

'No way, I agree. I'm sure I'd be in the Bud Lawson [the girl's father] stakes if it happened to one of my girls. But that wouldn't make it right. I'm never very clear exactly what the law's for. But that's one thing it can do – it can protect the relatives of the victim from atavism. It can pull the knot on all those primitive impulses by taking over responsibility for them. Until we get them into balance again.'

'It's still a long way from a love story.'

'I don't know. It's maybe Romeo and Juliet upside down. I mean she really fancied him. And he loved her. He said it himself. And I suppose her father tried to love her the way he could ... And his mother.'

'You really believe that?'

'I don't know. But what I do know is that more folk than two were present at that murder. And what charges do you bring against the others? Against Bud Lawson. He's made a clenched fist of his head all his life. Sadie Lawson's [the girl's mother] more submissive than the world can afford anybody to be. John Rhodes [a local gangster]. Because he's very handy, he's going to play at Nero with a boy's life ... Then there's you with your deodorised attitudes. And me. Hiding in suburbia. What's so clever about any of us that we can afford to be flip about other people? We only get our lives on tick for so long. Every so often it's got to be divvied up ... I mean – what happened in that park?'

'But', [Harkness] said. 'Take it far enough and it's all just an act of God.'

'So maybe we should find out where He is and book Him.' (McIlvanney 2013, 273–274)

What do I take from this as regards the metaphysics of criminal justice? First, Laidlaw notes his ambivalence about the system. Law crystallises an event, gives it a name, but not a meaning. It renders permanent an event in its own terms but does not relate it to underlying ethical questions. Laidlaw does not say that it serves no purpose, but that it serves a very limited one. It meets violation with violation (pain for pain), so that it accesses an 'atavistic', 'primitive impulse' to hit back, taking that impulse away from people and locating it in a state institution. It is better held there, but this is a superficial solution, against which Laidlaw wants to push back. He wants to relate what has occurred to a corruption of love and desire ('just another love story'), and he wants to think about how what happens comes out of a whole setting, which includes others who are otherwise regarded as innocent: the parents and surrounding actors, including himself and his sidekick ('deodorised attitudes'/'in suburbia'). Ultimately, down this road, when pressed, he suggests God be called in for questioning.

In my terms, I would say that the law's 'primitive' response reflects what I called the vindictive in the vindictive-vindicative complex. What about the vindicative? To a limited extent, that is there too. The law takes the angry reaction away from the family and vests it in the state. The state plays a punitive, 'atavistic', role but also makes a declaration of right and condemns the wrong. What about the validatory? That is left hanging. There is a broad metaphysic of responsibility, partially sketched out, which sketches the underlying moral connections between the parties (the love story, the family background and pressures that led to the fateful liaison, the role of the broader society). In Laidlaw's terms, a violation has occurred, it has a broad moral truth to it. Laidlaw's disenchantment comes from his sense that the legal process in which he participates will never get to this underlying truth. The picture in the novel is made up of vindictive law, a suggestion perhaps of a vindicative element, and an underlying, unaccessed, validatory metaphysic.

At this point, we might be led to think that Laidlaw's (and McIlvanney's) disillusionment is mannered, an author's privilege in writing a fictional work which may strike an overly negative note. It is one thing to reach for a detective novel to explain the metaphysics of criminal justice, but this cannot take us so far. In the next section, I am going to support Laidlaw's view in a real life setting.

The metaphysics of violation: 'my truth, our truth'

My discussion in this section is of Marian Partington's *If You Sit Very Still*, which takes us into a victim's actual experience of the criminal justice system, while reflecting themes found in *Laidlaw*. Partington's sister Lucy was a victim of the Gloucester serial killers Fred and Rose West. For two decades she had to live with her sister's disappearance and once her remains were found had to come to terms with how she had been murdered by the Wests. The following passage reflects McIlvanney's description of the limits of what criminal justice can achieve:

The 'facts of the case' and ... the trial were only small aspects of the truth ... [T]here was a need for understanding of the intricate context of human relationships within our society ... a need for meaning, resolution and healing. The later trial and the sentence did not answer my need to know the truth of what happened to Lucy. Human justice is mostly focused on retribution, causing more pain. Our human potential is not enlarged by this punitive process. Healing is imprisoned. (Partington 2016, 52)

Partington's words are those of a victim who looks for something that the criminal justice system cannot provide: healing in place of punishment. Her concern was not with those actors in the system with whom she dealt. The police, her counsel and the judge were generally respectful and solicitous. She nonetheless sought something else and underwent a profound process of coming to address her experience, to investigate its internal truth, and then to reconcile herself to it. She writes of finding that an

attitude of insight and compassion ... , able to love my enemies ... is waiting to be known ... beyond that which is 'right' or 'wrong' To be able to live from ... profound interconnection ... to experience the reality of non-duality and the universal nature of being alive, offers the most creative ... way forward This is ... the territory of true justice. (Partington 2016, 137)

Such an attitude, expressed in profoundly metaphysical terms, finding a 'territory of true justice', permits Partington eventually to accept Rose West as herself a victim who then victimised her sister:

I thought of Rosemary West. She was fifteen ... when she was abducted from a bus stop and raped. Her pleas ... were not answered during the years of sexual abuse ... from her father and brother. Her ... traumatised, toxic patterns attracted another violent abuser ... , Frederick West. She was nineteen ... when Lucy ... was gagged ... , raped, tortured and killed or left to die There was a moment of insight into the complex cage of the fear, rage, shame, guilt and unresolved grief of [West's] mind ... a searing feeling of her isolation and shame. (Partington 2016, 139)

At the end of this process, Partington wrote to West in jail, stating that she forgave her, but received no reply. Again, as with the fictional *Laidlaw*, we see a fundamental gap between the punitive metaphysic of the criminal justice system, and what a victim needs. Pain for pain gives us the vindictive, that is the punishment of the perpetrator, while addressing and locating a victim in relation to an underlying sense of the truth of what happened takes us somewhere else. In both the fiction and the real memoir we find an underlying reality: love and its tragicomedy; anger and the need to mourn; addressing and coming to terms with violation; moving forward with it; the need for a deeper reconciliation with what happened, and why. Here we find individual agency in

its social context, and we reach out towards broader issues of social responsibility. In the following passage, Partington expresses the truth of universal responsibility and her place in it. This is a difficult and a broken truth because she lives in a socially broken world:

My truth, our truth. Not just us as sisters but us as women in search of meaning with common family roots in a culture which seethes with all that we would prefer to edit out: paedophilia, serial killing, trafficking of women, drug and alcohol abuse, greed, poverty and a hypocritical veneer of democracy. (Partington 2016, 86)

What we see in Partington's moving account is the same as in McIlvanney's fiction. The law is able to detect, to try and find guilty, and then to punish. Is this vindictive or vindicative? Primarily it is the former. Fred and Rose West will go to prison and be punished for their crime, while Partington's connection to the criminal justice system will terminate. If Partington had been tempted to take revenge on these people, she is preempted from doing so. Is there vindication for her in this process? Perhaps, for the wrong has been declared. The case and the trial, however, 'were only small aspects of the truth' which did not provide 'understanding of the intricate context of human relationships within our society'. They did not help with 'meaning, resolution and healing' or the 'need to know the truth of what happened to Lucy'. Legal punishment (retribution) caused 'more pain' while healing was 'imprisoned.' What is missing through the legal process is the broader human validation for which Partington reaches.

Thus far we have examined two accounts of responding to crime (violation), one in fiction, the other in fact. The vindictive and the vindicative are catered for in the law, the validatory is present, but outside it. Given these images of a process in fiction and in real life understood in terms of the vindictive, the vindicative and the validatory, what does this tell us about the practices of criminal justice?

The psychology of the metaphysical animal

Before we address the question head on, I return to our metaphysical animal as it descends upon Westminster. What kind of animal is the human being, and how is it capable of bridging the gap between mammalian existence and reflection of an existential, aesthetic, ethical and metaphysical kind such that we are able to call it a metaphysical being? How do we hold these things together in one conception? One way of thinking the metaphysical is through a theological understanding, where a conception of a universal force such as divine love is viewed as ingredient in the world and therefore immanent in human life. As I have said above, however, this may give us a strong sense of the metaphysical, but it gives us a correspondingly weak sense of the animal. If we had a stronger sense of the human as a metaphysical *animal*, we would have also a stronger sense of how it is a part of human nature to be attentive to metaphysical issues in both thought and action. One way to explore this is to conceive of the human as the animal that thinks and loves, and this takes us to themes explored in Freudian metapsychology around the relationship between love and psychological development.

More specifically it draws upon the work of Hans Loewald in the United States and the debate in the United Kingdom concerning 'object relations' between Melanie Klein and Donald Winnicott. I consider the latter in the next section. My starting point here is the idea of primary narcissism first identified by Freud but elaborated by Loewald. At first

sight, this may seem unpromising. Joel Whitebook has recently declared that ‘With one exception, I don’t know of anybody today who defends the notion of primary narcissism as Freud originally formulated it Freud’s theory of primary narcissism has been rejected’ (Honneth and Whitebook 2016, 171). But the key here is the phrase ‘as Freud originally formulated it’. In his recent biography of Freud, Whitebook identifies two positions in Freud, an official and unofficial one, concerning primary narcissism. The former is identified with the infant and the father and involves seeing the start of life as involving a ‘self-enclosed psychic monad confronting an external object’ (Whitebook 2017, 163). This is a widely repudiated view because it relies on a solipsistic ‘mini-me’ which finds it hard to see ‘how the infant can break out of its monad and establish a relation with the object’ (Whitebook 2017, 163). The latter, however, which is identified with infant-mother relations, ‘begins with unity, and separation emerges out of it’ (Whitebook 2017, 164). Whitebook draws here on the work of Margaret Mahler, who wrote of the mother-child unit as a dual unity, and what Loewald called the initial ‘mother child matrix’. In Loewald’s description:

The relatedness between ego and reality, or objects, does not develop from an originally unrelated coexistence of two separate entities . . . , but on the contrary from a unitary whole that differentiates into distinct parts. Mother and baby do not get together and develop a relationship, but the baby is born, becomes detached from the mother, and thus a relatedness between two parts that originally were one becomes possible. (Loewald 1980, 11)

The significance of this earliest phase of non-differentiation between mother and child is that it represents a place of wholeness and plenitude where every need is met. It is as if, from the infant’s point of view, this occurs magically in an environment which is not yet an environment but a part of itself. The initial joined mother and child state is ‘an all-embracing feeling of intimate connection’, a ‘unitary feeling of the primary, unlimited narcissism of the newborn, where mouth and mother’s breast are still one and the same’ (Loewald 1980, 5). This is what he means by ‘a unitary whole that differentiates into distinct parts’ and ‘a relatedness between two parts that originally were one’.

In the postnatal world in contrast, complete unity cannot be maintained for there are times when the infant is left alone and experiences a sense of its separation from the mother-child matrix. It must develop itself by developing a sense of itself, beginning to organize itself in the form of an ego. Where the ‘infant’s repeated experience that something, in his original feeling a part of him, is not always available, this repeated experience of separateness leads to the development of an ego which has to organize, mediate, unify’ (Loewald 1980, 5). Whitebook describes primary narcissism as involving a ‘plenum-like existence of the ‘primal psychical situation’ which is ‘devoid of otherness, privation, and negativity’ and as defining perfection (Whitebook 2017, 164). It is a state that initiates life as magical, enchanted and whole and establishes a place to which the infant, who must break away from it if she is to become herself, is always drawn back in a ‘lifelong striving to recapture its perfection in one form or another’ (Whitebook 2017, 164). This is important because the contradictory pulls towards separation and back to loving completeness represent the core of the human condition, programming this animal that thinks and loves with the psychological desire to make sense of the differentiated world into which it steps once it leaves, as it must, the mother-child union. Here

‘making sense’ means finding a unity or wholeness in the differentiation that lies beyond the mother–child matrix. The creation of an ego is a way in which the infant (and the adult) manages itself in the world while feeding back the original experience of unity and wholeness onto a newly differentiated environment:

The ego mediates, unifies, integrates because it is of its essence to maintain, on more and more complex levels of differentiation and objectivation of reality, the original unity. To maintain or constantly re-establish this unity in the face of growing separation ... is part of the activity of the ego ... (Loewald 1980, 11–12)

What do we get from Loewald and this development of Freud’s ‘unofficial’ theory in terms of exploring the sense of the metaphysical animal? In the ‘official’ theory, the human animal is driven by its instincts and meets reality as something with which it must clash, repressing or sublimating its wishes. It possesses as its original point the potential to be the ego that it will go on to become, an independent self in the making. In the ‘unofficial’ theory, loving unity sits at the core of initial human experience and remains the constant lodestone in human life. Even as the necessary separation occurs, a search for wholeness is transferred into forward developmental activity as the human animal tries to make sense of the world. This is the ‘unifying conatus in psychic life’ which Freud introduced by ‘the concept of *eros* in the 1920s’ (Whitebook 2017, 165). Thus from Loewald, we get a sense of underlying love, completeness and universality from the primary narcissistic experience of wholeness. Of course, nothing in life is plain sailing, and there is no easy path in channelling early experience into human growth. Freudian science is an engagement precisely with the various ways in which such experience goes awry, is shaped and misshaped by trials, tribulations and vicissitudes. Nonetheless, in the Freudian ‘unofficial’ account, this is the root of becoming a metaphysical animal. Humans are a particular kind of mammal which has an unusual potential for cerebral development. It thrives on love and is able to develop the potential to think. In the beginning of each life, humans are given a sense of wholeness that they never lose and try to remake in the world. Herein lies the animal root of our metaphysical capacities. Was this not what Iris and Mary sought as they travelled from Oxford to London?

How then do we get from here to thinking about crime and punishment? I suggest that the specific ethical experience of dealing with violation, of guilt, shame, mourning, forgiveness and coming to terms, involves a complex process negotiating the pains of violation either as a perpetrator or a victim. Such complex and painful forms of violation, loss and separation represent powerful experiences with which a creature able to love and reflect has to deal. This is the metaphysical animal at work in the way described by Mac Cumhaill and Wiseman: a metaphysics of moral and psychological experience in action as people reflect and work through what has happened to them. At root, crime as violation leads people to reflect not just on the wrong done and its effects, but on the deeper well springs of moral feeling. They look for the underlying unity that has been broken and needs to be restored.

With Marian Partington, we see mourning as a desire to process loss in the light of love. What happened to Lucy and by extension to herself, and how to make sense of an environment in which loss occurred, lie at the heart of her desire for wholeness as this is manifested in eventual forgiveness and reconciliation. Yet, such wholeness and reconciliation remains hard to achieve where violation is systematic and repetitive. How did the

world come to contain such cruelty manifested in the deeds of other human beings, and how should Partington relate to them? Where women seek meaning 'in a culture which seethes with ... paedophilia, serial killing, [sex-]trafficking ... , drug and alcohol abuse, greed, poverty and a hypocritical veneer of democracy' (Partington 2016, 86), individual acts of violation are reinterpreted and a perpetrator like Rosemary West turns into a victim in her own right. With the fictional Laidlaw, how should he relate to the horrid crime with a murdered girl that he must investigate? On the one hand a dreadful act and a damage wreaked on the innocent; on the other hand, a broader understanding of the vicissitudes of love taken to the extreme and gone horribly wrong. There were, says Laidlaw, 'more folk than two ... present at that murder'. In both settings, the metaphysical questions are at heart questions about love, and love is a human experience grounded in human animality, developed from human mind-body capacities.³

Grounding human metaphysical experience in what it means to be a human animal takes us to the place where the experience of violation must, whatever the criminal justice processes and practices in play, eventually be validated. Validation after violation reflects the ethical truth of experience and leads to questions of reconciliation, but how can a mundane criminal process address it? The question returns us to the nature of the vindictive and the vindicative.

Metaphysics and metapsychology: being vindictive

This section deals with the question of the vindictive, and here I turn to the work of Melanie Klein (1998). Klein identified two successive positions in early infancy, the 'paranoid-schizoid' and the 'depressive'. The terms may not be well chosen, the first being melodramatic, the second chosen to represent a state of emerging psychological wholeness. In the latter, the infant is anxious lest its anger in the paranoid-schizoid phase has damaged irrevocably the one it loves. That is why the infant is depressed, but at this point it has progressed to a position in which its core instinct is to relate well to others. Donald Winnicott suggested a better term for this position would be one of concern for another (Winnicott 2018, 22, 176) because its core instinct is to think reparatively.

It is the first position, however, that is significant in thinking through criminal justice's vindictive-vindicative complex, because it gives insight into why humans might possess the desire to hurt, to cause pain, to punish that Laidlaw describes as atavistic. In the 'paranoid-schizoid' phase, the infant has no clear sense of itself, or anything else, as being a whole and complex object. Profound emotions of fear, anger, and love jostle as the infant seeks to survive in a world that can seem empty and hostile. The first object it experiences is the breast, which can be either giving (the so-called 'good breast') or withholding (the 'bad breast'). While the former is a source of nurture, warmth, and security, the latter is experienced as absence of the good generating perplexity, anxiety, and anger. Perceptions of the good and the bad remain unconnected in the infant mind, which deals only in 'part objects', and this is reflected in a psyche that perceives the world as split into either fearful and angry (bad) or loving and nurturing (good) forms. The world is seen as either all good or all bad: when good, it is very good, and when bad, very bad. If the infant could make an overall connection between good and bad parts, so that badness might be seen as a temporary experience in an overall good setting, its

anxiety would be tempered by reassurance. If it cannot, and this is in the nature of the early stage, anxiety is overwhelming, and anger when it comes is all-consuming rage and aggression.

Herein lies the root of a persecutory anger that responds instinctually in a destructive way to objects that are perceived as all bad in Klein's initial, paranoid-schizoid, position. For her, it was connected not only to the developmental difficulties of early life but to a fundamental anxiety which the infant projects:

anxiety arises from the operation of the death instinct ... felt as a fear of annihilation (death) and takes the form of fear of persecution. The fear of the destructive impulse ... is experienced as the fear of an uncontrollable overpowering object. (Klein 1998, 4)

These fears and angers are directed outwards onto others as destructive forces in early infancy. While they are overlaid and adjusted in the depressive position where it is understood that part objects seen in black and white terms are in reality whole objects with light and shade, this development does not leave the paranoid-schizoid position as a simple historical relic. Rather the earlier stage may re-emerge in later life where such life encounters anxiety and emotional difficulty.

A first reaction to Klein's paranoid-schizoid position grounded in the death instinct as the starting point for infant life may be that it seems both melodramatic and unrealistic. Is very early life really so anxious and so savage? Winnicott thought the term a bad one and his criticisms of Klein seem valid: that she reads too much into early infant anger since 'deeper in psychology does not always mean earlier' (Winnicott 2018, 177); and that she did not fully acknowledge the earliest time of fusion between mother and baby and its implications at the start of life for human psychology. This is the situation identified above of primary narcissism when 'it is not possible to describe an infant without describing the mother whom the infant has not yet become able to separate from [to become] a self' (Winnicott 2018, 177). Alongside these criticisms, Winnicott notes that Klein only 'paid lip-service to environmental provision' (Winnicott 2018, 177), indicating a sense of the isolated and monadic nature of early experience for her. Winnicott could also find no value in the idea of the death instinct.⁴ Yet, as a clinical child psychologist with decades of experience, he still found it impossible to ignore the paranoid-schizoid position with its splitting of objects into good and bad, and the unconscious fear of punishment in infants, which he called 'talion dread' (Winnicott 2018, 177).

Even if we accept early infantile Manicheanism, the splitting of things into all good or all bad entities, what has this got to do with punishing adults in modern life? Splitting means that the all bad entity is cast out, or framed as an object without any redeeming qualities, what we generally call 'othering' today. The term points to the connection between the early psychological state and modern social practices. Psychoanalysis argues that what we once experience tends not to go away, though it may be overlaid by other mental states. Since splitting may remerge under conditions of stress, it becomes a possible way of understanding both adult behaviour and social conduct more generally. Jessica Benjamin for example has argued that recent authoritarian political reactions polarizing opinion and threatening democratic process in the United States can be understood as examples of paranoid-schizoid splitting with regard to political opponents. The classical form of authoritarian splitting is to regard the other not as a 'co-doer' but as existing in a 'doer-done to' relationship and she links this to Klein:

splitting as described by Klein in her notion of the paranoid-schizoid position ... is always a part of our psychic make-up ... in which the dominant form is coercion or submission ... [A]ssociated with the doer-done to complementarity is a powerful fantasy, 'Only one can live' ... It informs both the individual and the collective mind, organising [people into] a life and death struggle ... [W]hen certain groups organise around this fantasy, it becomes a dominant structure [with] no exit from the stark alternatives of kill or be killed ... (Benjamin 2017, 5)

With regard to punishment, a similar process of othering occurs whereby the criminal becomes set up as the 'bad guy' or the 'evil one' who gets what he deserves. Fantasies of extreme punishment such as (public) execution or imprisonment and 'throwing away the keys' then become possible. The argument has been made that punishment *pleases*, that it gives satisfaction to see others suffer for the suffering they have caused. There is created through this a hostile solidarity which is productive for social order (Carvalho and Chamberlen 2018; Reeves 2019), and this explains the political persuasiveness of law and order politics. This links to my argument here about the desire to be vindictive. Responding to another by hurting them for the hurt they have caused is rooted in a desire to cast out another, to extract pain for pain within a retributive standpoint.

On vindication

To recap on what has been argued, I have explored two ethical responses to violation, the vindictive and the validatory. How do we pull these different threads together? The vindictive is embedded in the negative, punitive desire to condemn and hurt expressed in criminal justice and explained by Klein. It is seen in the tendency to see punishment as returning pain for pain, in getting back at the perpetrator for what he has done. This is what the fictional Laidlaw describes as atavistic and primitive impulses, and the real victim of violence, Marian Partington, saw as 'causing more pain' in which '[h]ealing is imprisoned.' Against this is the need to validate the truth of injury and to come to terms with it, to see it as the love story gone wrong in which we are all implicated (described by Laidlaw) or as the need for an 'attitude of insight and compassion ... , able to love my enemies ... beyond that which is "right" or "wrong"' (described by Partington). Behind this sense of profound interconnection sits the work of Loewald and the 'unofficial Freud'. This generally goes beyond criminal justice in its current forms and takes the form of what I have called here an overall validation of the actors in a situation of violation. These two positions of the vindictive and the validatory are established through a metaphysics of the human animal which reflects both an ethical ('metaphysical') standpoint and its rootedness in a psychoanalytic framework. The crime literature explored here, whether fictional or real, explores what it means to be a metaphysical animal in terms of being vindictive or validatory in how one reacts to crime.

My starting point, however, was that there is a third element to be considered, which sits between the vindictive and the validatory, and this is the vindicative. I suggested that criminal justice thinking is represented by a complex that includes both the vindictive and the vindicative, interlinked, and representing what critical realism calls a TINA compromise formation. Held outside and at a deeper level from this complex is the validatory position. What then of the vindicative, that is also to be placed in this setting? Under various descriptions associated with the retributive theory of punishment, this is regarded

by many theorists of criminal justice as the element which gives it ethical value, the thing which goes beyond hurting for its own sake. It is the point of value in criminal justice which provides its claim to ethical and not merely functional relevance. Beyond being punitive for its own sake, it is punishment for an ethical value. This may be represented for example as standing up for the victim and affirming their position in the face of wrongdoing. Alternatively, it may be seen as giving the perpetrator his just deserts, treating him as a rational being responsible for his actions, and thereby respecting him through the punishment. Vindicative punishment declares that a wrong has occurred and reaffirms a right that has been challenged. In classical terms, this relates to the retributive theories of Kant (1991, 155–159) and Hegel (2008, 96–108), which concern restoring the right to the rational actor. In this regard, punishment is not seen as ‘mere retribution’, but is rather the mark of a civilised society, and it is so because it *vindicates* the rights of *both* perpetrators and victims.⁵

But how, then, does this argument about the role of the vindicative in criminal justice thinking relate to McIlvanney’s fictional detective, or Partington’s actual experience of victimhood? The point here is that neither of them really suggest that the criminal justice system provides vindication. Both see it rather as vindictive, and as incapable of providing a validatory outcome. It is hard to see in their comments much in the sense of the rightful allocation of punishment in favour of the victim and as a matter of punitive desert. Nor of course do they see it as providing the kind of wider ethical truth that a validatory process would require. So why the absence of vindicative possibilities in their accounts?

Here are two ways of thinking about vindication in criminal justice that would reflect their negativity. One follows on from the other. First, the problem may be that upholding the rightfulness of non-violative behaviour and respect for the victim and the perpetrator may be regarded as formalistic or as window-dressing for a nastier practice that in reality dominates. Vindication may be seen as the grand and sonorous words uttered by philosophers and judges with regard to a punitive system which relies in truth upon the dehumanizing practices of the prison and a society’s unhealthy ‘pleasure’ in seeing others suffer (Carvalho and Chamberlen 2018). Vindication is just a legal fiction which neither the rightly cynical literary detective nor the victim of real violence can accept. Criminal justice may affirm a right, but this only leads to dehumanizing punishment, from which no moral good stems. It does not, for example, take the victim, or indeed the perpetrator, into the ethical processing (the metaphysics) of violation. Its proclamations are seen as hollow as it falls back to punitive pain allocation.

A second way of taking the matter would be more analytical and intricate. I said at the beginning of this essay that the validatory has three elements, and I want to see how these may operate differentially in relation to criminal justice. An *overall sense of validation* involves (1) being validatory in a narrow sense; (2) being veridical (truth-seeking); and (3) being reconciliatory. Let me take (2) and (3) first, before returning to (1). The second involves establishing a moral truth for a person or persons caught up in violation, an understanding of what happened in a way that reflects their deeply held ethical experience of the matter. It involves the opportunity to come to terms with an event and to absorb its moral meaning. This can concern either a perpetrator or a victim (Norrie 2018b; 2019a). The third, reconciliatory, element indicates the substantive outcome that is aimed at through validation of the moral truth in the violation. It involves not only grasping the underlying truth of an event but understanding and coming to

terms with it, as best as one can. In matters of serious violation, this does not necessarily imply a full reconciliation in the sense of 'moving on' or 'closure', but it does involve facing what has happened and being able to live with, to survive, it in a way that was not possible before the event was addressed.⁶

That leaves us with the first element in validation. I have called the overall three element process 'the validatory', but there is also a thinner notion of validation contained in the first element. This is about recognizing what happened, which needs to be morally acknowledged by a victim, a perpetrator or a community. It represents a moral and social claim that something happened that was wrong, and is a necessary prelude to exploring the moral truth that lies within the event. Now what I would suggest is that this first step in validation represents the point of overlap between vindication and a deeper validatory process. Vindication in a legal process takes this first early step of validation but does not go further into issues of the veridical (what the deep truth of violation is for the perpetrator and the victim), or the reconciliatory (how a perpetrator and a victim come to terms severally (or jointly) with what has happened). Vindication in the modern criminal justice system opens a door to a deeper moral process, but then shuts it again because, rather than pressing forward into the validatory process, it falls back upon a punitive reaction, thereby becoming hollow by not delivering on its promise. This is no real resolution of the matters at stake, leaving the victim with her experience and the perpetrator of serious crimes locked away in a prison cell.

Conclusion

Within the penal complex, vindication of the victim against the perpetrator is limited by the linking of vindication to state punishment. Vindication is held out as a possibility, but the cycle of violence (retribution or pain for pain) is maintained. Vindication as moral condemnation of an act in support of a victim and against a perpetrator is linked to the vindictive reflex in punishment, and limited by that connection. That is why a morally and metaphysically serious victim like Marian Partington can have a relatively good experience of the criminal justice system but still think that the real work of validatory change for both herself and Rose West has not really begun. It is reflected also in Mcllvaney's Laidlaw, who juxtaposes and cannot reconcile what he does as a policeman and what he thinks about a world of tragic encounters in metaphysical terms. The criminal justice process cannot push into the work of truthful reconciliation because all that is on offer after vindication is an action, a punishment, that is unrelated to it.⁷ Repetition of a vindictive outcome blocks reconciliation. The vindictive/ vindicative complex as law's Tina compromise formation repeats the cycle of violation and stops short of what humans, perpetrators and victims, would need to be truthful and to reconcile with what has occurred.

Notes

1. The three novels were originally published as Mcllvaney 1977; 1983; 1991. All three were republished in 2013. Quotations below are taken from the Mcllvaney 2013, the recent edition of Mcllvaney 1977.
2. This essay was delivered as a plenary lecture at the annual IACR conference held in The Hague in summer 2022. It was aimed at critical realists, but I sought to make it accessible to a broad and non-specialist audience. For those interested in the underlying thought process, it may

be helpful to outline briefly how it links with critical realist interests. In recent work, I have written about human ontology as involving the ‘animal that thinks and loves’ (Norrie 2018a; Reeves, Norrie and Carvalho 2019), and in a sequence of essays in this Journal have developed this theme to produce a critical realist exploration of the metaphysics of love and justice ethics (Norrie 2016; 2018; 2018b; 2019b; 2020). The underlying issue that has emerged involves how critical realist ontology identifies and develops the link between itself as a philosophy of and for human emancipation and the more substantive scientific claims of Freudian metapsychology as to the nature of human love and freedom. In a piece specifically focusing on this issue (Norrie 2020), I indicated how a naturalist reading of Freud drawing on Hans Loewald (1980) and Jonathan Lear (1990) could show how mind and matter are connected concretely. I argued that this provides a substantive elaboration of what critical realism formally conceives as ‘Synchronic Emergent Powers Materialism’ (Bhaskar 1993). This could then provide the basis for an ethical naturalism and metaphysics rooted in the specific nature of human metapsychology. In this essay, I use this position to think through the modern human fascination for stories of crime, especially where these involve extreme violation.

3. Here it is necessary to acknowledge specific human powers and capacities which stem from evolutionary processes of body-mind development. Love can take the metaphysical form it does because human beings are equipped with ‘innate developmental potentialities’ (Whitebook 2017, 164). In this way love sits as the missing link between body and mind, the way in which ‘the flesh becomes word’ as Jonathan Lear puts it (Lear 1990, xii), and becomes an important naturalistic element in the critical realist understanding of human being; Norrie 2020.
4. On the death instinct and whether it exists Klein’s position can be contrasted with Winnicott’s. For those like Loewald and Lear who see Freud’s later theory of ego and superego formation as stemming from the new importance he gave to Eros, the life or love force, the death instinct is related to his older, more mechanical, understanding of an end state in which all tension is lost, the so-called Nirvana principle (Lear 1998, ch 6). Yet, Loewald accepts the death instinct as part of the ‘primitive stage of primary narcissism and primary aggression’ (Loewald 1980, 265). Lear, however, questions the need to identify such a drive and suggests it may get in the way of a fuller psychological understanding of human aggression: see Lear 1998, 143–147 and Lear 2015, 162–163.
5. For modern versions of retributivism adopting a vindictive approach, see e.g. Duff 2003; Murphy 2012. For a modern vindictive approach to retributivism, see Moore 1997. For a set piece argument between a vindictive and a vindicative approach, see Murphy and Hampton 1988.
6. The idea of reconciliation between a victim and a perpetrator can seem naïve, but the following letter to Marian Partington (working on a restorative justice prison project) indicates what may occur: ‘thank you for coming to Horfield prison to talk to us about how victims of crime feel. It made me look deep into my heart about the effect my drug problem was having on people, mostly the victims . . . your visit opened my eyes. I started putting faces to my crimes . . . Women and children, I had taken away their sense of security . . . I’ve been searching all my life to feel good about myself and not feel like a reject . . . I’m starting to love myself and others around me’ (quoted in Partington 2016, 147). Of course, Partington herself sought reconciliation with Rose West, but this was declined by West. See also Cantacuzino 2015. For a moving depiction of how victims process past violation, sometimes many years previously, see Patrizio Guzman’s film ‘Nostalgia for the Light’ (2010), discussed in Norrie 2019b.
7. Only in the exceptional case does the penal system push beyond the vindictive/ vindicative complex towards overall validatory commitments. One such case I have discussed elsewhere is the use of a therapeutic community approach developed at Barlinnie Special Unit in Glasgow in the early 1970s. Its fate, to be marginalised and eventually closed down despite its successes, was indicative of the punitive limits of the penal system. See Norrie 2022.

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