Contested Terms and Philosophical Debates
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ABSTRACT: There is a standard set of theoretical options that tend to be proposed in response to putative errors in ordinary thinking about some property. The two main options are forms of either eliminativism or revisionism. Roughly, eliminativism is the denial that the target property exists, and revisionism is the view that the property exists, even if people tend to have false beliefs about it. Recently, Shaun Nichols has proposed a third option: discretionism. Discretionism is the idea that some terms have multiple reference conventions, so that it may be true to say with eliminativists that the property does not exist, and true to say with revisionists (and others) that the property does exist. This article explores the viability of discretionism, and argues that it faces serious difficulties. Even if the difficulties faced by discretionism can be overcome, it is unclear that discretionism secures anything beyond what is already available to standard revisionist views. The article concludes with some reflections about Nichols' account of the bare retributive norm.

<div align="center">1.</div>

Once upon time, there was a group of people who had a practice of ascribing people the status of being *excelsient* or not. The practice of ascribing excelsience was connected to a variety of other notable social practices, at least some of which seemed to have beneficial effects. As a consequence, many people thought that the loss of excelsience practices would be very costly to their form of life.[1]

One day a group called the Sticklers began to deny the reality of excelsience, claiming that excelsience ascriptions presupposed the existence of something manifestly implausible: *liberons*. Whatever

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[1] There are various ways these details could be filled out. For example, on one version of this story, excelsience practices help agents resist pressures to favor immediate gratification, while also discouraging people's toleration for abuse and mistreatment. Or, excelsience practices could enable prediction and coordination among psychologically complex agents. Or, excelsience practices could encourage efforts at moral repair, and foster pro-social cooperative behavior that would otherwise quickly degrade (for a version of this, see Nichols 2015, 158, 161).

the real, human, tangible benefits were to excelsience practices, the Sticklers insisted that excelsience itself was an illusion.

But the practices premised on excelsience were not so easily dismissed. A group called the Fixers took up the dispute. They acknowledged that lots of people believed in liberons, but held that this was neither here nor there. The Fixers maintained that liberons were neither conceptually nor pragmatically central to the rational integrity of actual excelsience practices. So, they allowed that people should acknowledge the Stickler insight about liberons. However, the Fixers held that this left untouched the beneficial (and maybe unavoidable) excelsient practices, now stripped of that dubious liberon stuff.

Stickler reactions to the proposal of the Fixers diverged. Some Sticklers insisted that any practice lacking tacit appeal to liberons could not be true, genuine, or ultimate excelsience. Others conceded that there were many senses of excelsience that could and did persist, but that Sticklers were only interested in contesting a particular notion, characterized in a special way. Yet other Sticklers—ones especially optimistic about the possibility of high theory transforming daily living—mostly ignored these debates and instead insisted that people could live without all that excelsience business, and indeed, that it would be a splendid thing to be free of those burdens.

But the Fixers were a pesky bunch. Their cause was aided when it turned out that the replacement features invoked by optimistic Sticklers were insufficient for securing excelsience-characteristic effects. Opinions differed about why this was so. Some thought it was that the Stickler replacement picture proved to be motivationally feeble. Others held that the replacement notions lacked the necessary cognitive commitment to structure practices in the relevant ways. Whatever the details, Fixers thought they were gaining ground.

Before matters could be fully resolved, though, a new party arrived—the Discretionists. They offered a putative detente between the eliminativism-minded Sticklers and the preservationism-minded Fixers. Their insight was this: both Sticklers and Fixers were right. According to Discretionists, the long-standing disagreement between Sticklers and Fixers was itself illusory. Their apparent disagreement was actually a product of two distinct but equally legitimate reference conventions for the term "excelsience."

Under one convention, talk of excelsience referred, and thus, the Fixers were right. Under a different convention, talk of excelsience failed to refer, so the Sticklers were right, too.

The Discretionist insight struck some parties as a step sideways, away from the threshold of a resolution. First, familiar disputes about the preferred metaphysics of excelsience were mostly transformed into debates about the preferred reference convention. Existence disputes in metaphysics became comparative existence disputes about the metaphysics that followed from each reference convention. Disputes about explanatory power became disputes about the explanatory powers of excelsience under different reference conventions. And so on. Second, Fixers could not make out how discretionism secured anything not already achieved by Fixers. In the words of one Fixer, "Once we recognize Discretionist considerations in favor of keeping the practice, why wouldn't we want to keep our excelsient judgments and vocabulary, too? And once we have all of this, haven't you just conceded everything to us Fixers?"

By Fixer lights, if excelsience practices were in good stead (as Discretionists insisted), then the Fixers had everything they ever wanted. This fact didn't change just because Discretionist sometimes spoke with Sticklers, denying the existence of excelsience. Nor did this fact change because sometimes it was psychologically useful to remind oneself that liberons did not exist. Thus, the Fixers concluded, Discretionism was either the Fixer view by some other name, or else it did not smell so sweet.

2.

The foregoing story, especially the early parts, will have a familiar ring to philosophers in a variety of subfields. The story replicates a familiar structure of debates about, for example, race, gender, folk psychological attitudes, free will, and moral responsibility. For each of these subjects, the origin of many debates can be traced to changing views regarding some putatively essential property or metaphysical commitment implicit in the concept. So, for example, it seems to have struck some as innocuous to claim that the concept of race is biological, or that free will requires *causa sui*, or that marriage involves a man and a woman. However, once the not-so-innocent claim about what was central or essential to the thing in question is baldly stated, a familiar philosophical dialectic tends to unfold. That is, someone comes

along and argues that the invoked property is impossible or unlikely to exist, and thus, that instances of the considered thing do not exist. For example, over the 20th century it was increasingly common for philosophers to accept that mental states must refer to brain states. So, pain must be a brain state. However, nothing in our brain states seems to correspond precisely to all the things we thought about pain. Eliminative materialism was conceived in the thought that pain must not exist if there is nothing in the brain that could perform all the various roles we associate with pain (or, for that matter, any other folk psychological state). So, pain must not exist.

However, like some entirely too-neat Hegelian dialectic, radical eliminativist views tend to produce successor views of their own, views that are considerably more conciliatory. That is, eliminativist views tend give rise to deflationary or ameliorative accounts. On these revisionary views, the target phenomenon does exist, but with a different and less problematic nature than we naively supposed at the outset of theorizing.

Call this the NER dialectic: naive actualism, eliminativism, and revisionism. A number of philosophers have noticed that something like this pattern appears in a variety of philosophical domains.[2] Race was thought to be a real, essentially biological thing that could be found in the actual world. Some then replied that it must not exist. Others then replied that race exists as a social construct even if not as a biological kind. Or, to take a different case, some have thought that free will actually exists, and that it requires undetermined action. This view has been contested, with some replying that because we do not have agency of that sort, free will does not exist. Still other responded that we have it, albeit not like some initially thought.

The first half of the story in section one presents the general outlines of the NER pattern. The second half of the story presents a twist to the familiar story. The twist is discretionism, or the idea that at least some contested terms have multiple legitimate reference conventions. Discretionism promises the

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[2] For some examples, see Hurley (2000), Vargas (2011, 156-57) and Vargas (2013, 73-78), as well as Nichols (2015, 56-59). For claims that something like this pattern across philosophical domains is evidence of human cognitive shortcomings, see McGinn (1993) and van Inwagen (1996).

possibility that we can strategically select between eliminativism and revisionism in a way that provides us with more resources than are available to either on their own.

The idea of discretionism has been recently developed by Shaun Nichols, building on some work with collaborators (Nichols 2015; Nichols et al. forthcoming). In the next section, I argue that discretionism is no advance over revisionist alternatives, and indeed, in the form Nichols' deploys it—at least in the context of debates about free will and moral responsibility—discretionism is, at best, a nuanced form of revisionism. To coin an ungainly phrase, the proposed NERD dialectic may be one D too many.

3.

Discretionism is the putative third alternative to the revisionist and eliminativist choices we face when we conclude that some concept is committed to an error. Roughly, one is an eliminativist about something if one thinks that the error precludes that thing existing.[3] And roughly, one is a revisionist if one thinks the error is not fatal (either because the error doesn't pollute reference, or because reference is sufficiently flexible to keep discourse in good order).[4] What makes a view discretionist, is that it holds that for some

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[3] I'm setting aside cases where one insists on the inappropriateness or falsity of some ascription, not because it doesn't refer, but because its ongoing usage perpetuates social practices that we wish to disavow or reject. I might, for example, recognize how the term "usury" works and be able to reliable identify cases on which there is widespread convergence that the case counts as usury. However, I might mark my rejection of the social practice by refusing to use the term even when recognizing the referential rules that govern me within my community. See also Nichols' related and insightful discussion on the role of social considerations in settling questions of reference (2015, 67-69).

[4] Preservationism just is revisionism. Here is some inside baseball that may serve as a non-pharmaceutical cure for insomnia. *Pace* Nichols, canonical forms of revisionism in debates about free will and moral responsibility are consistent with all the non-eliminativist options he identifies in his taxonomy (2015, 59). Nichols attributes to me the narrower view that revisionists hold that errors are specified and that a specific revision is offered. That is at odds with the explicit definition of revisionism given in both Vargas (2011) and (2013). So far as I can tell, in the passage he cites from Vargas (2011) as evidence of the "specified error" interpretation (see Nichols 2015, 60 n. 6) is one where I don't rule out "unspecified" revisionist possibilities, i.e., cases in which the error or the particular

contested term, it is true to say X exists under one reference convention, but also true to say X does not exist under a different reference convention. In Nichols' words, this "pluralist approach yields a pacifistic answer to the metaphysical debate over the existence of free will" (2015, 66).

Does discretionism succeed in moving matters forward? Here are five reasons to be doubtful, several of which were prefigured in the story told at the outset of this article.

First, the discretionist proposal makes use of a dubious *presumption of equal footing*. Nichols seems to think that if we can identify different operative reference conventions, then we should assume that both are legitimate, and that both have equal standing to speak to the metaphysics of things. But why think that? Why not think that one of these conventions is better than the other, or that one enjoys some privilege in light of our practical interests? Notice that one way there might be a privileged convention is that one convention is correct, or better in some to-be-specified sense. That is, why not think that any purported cases of discretionism just are cases in which one (or both) parties are simply making a mistake about the preferred, privileged, or most widely accepted convention?

Second, there is a difficulty concerning *indiscernibility*. That is, even if we grant that discretionism can aptly characterize some cases of contested claims, it is not clear what the basis is for deciding that X is a case where there are multiple equally good reference conventions, but that Y is a case where one reference convention has privilege (e.g., that one convention is better or correct). In either case, the accessible phenomena look the same. So, what reason is there for us to think that any given case is an instance of X as opposed to an instance of Y?

Third, and relatedly, there is a problem of *discretionist warrant*. That is, Nichols may be right about

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prescription is unidentified. To be sure, my discussion there concerns forms of revisionism that had thus far been salient in the literature on moral responsibility, and those have tended to be specified errors views. A further clarification: my positive account of moral responsibility (Vargas 2013) is neutral between the options Nichols characterizes as "replacement" and "revision." Moreover, Nichols's preferred term—"preservationist"—does not distinguish between those who would preserve the considered term because they find no error and those who would preserve the term despite finding an error. Although these are relatively esoteric terminological disputes, the upshot is simple: there is no reason to avoid characterizing the issue as a dispute between eliminativists and revisionists.

the *possibility* of discretionism in some domain (e.g., free will and moral responsibility). However, this mere theoretical possibility is a far cry from showing the truth of discretionism in that domain. What the discretionist needs is an argument that the substantive metaphysical debate is, in fact, a product of equally good reference conventions, as opposed to a disagreement produced by error among one or more parties to the debate.

Fourth, discretionism appears to be *metaphysically gratuitous*. Suppose we can show that in some domain (a) we know that the fact of different reference conventions obtains, (b) the various reference conventions are on equal footing, and (c) we have a reliable way of demonstrating the foregoing. None of this would block substantive metaphysical debates about the comparative plausibility of property$_1$ for organizing our practices, as opposed to property$_2$. For example, if the term *soul* can pick out an immaterial substance on one convention, and a set of distinctive psychological states on another, then being a discretionist about souls simply postpones the characteristic metaphysical disputes. We will still want to know if we have the relevant property, whether we should regiment talk in one way rather than another, and whether, for example, immortality or persistence over time is secured by the selected property.

Moreover, revisionists in some domains have conceded that, as a matter of diagnosis or going usage, there may be ways of fixing the meanings of terms such that they may not refer. For example, revisionists about free will and moral responsibility have allowed that it may be that no one is free or responsible on a suitably strict theory of reference of the term (Cf. Vargas 2013, 91, 132, 158, 310-311). However, (and this bit is crucial) what is at stake for such revisionists—be it about race, gender, free will, or folk psychological attitudes—is less the descriptive aspect of past usage than the prescriptive question of how we should go forward, given discovery of some error. So long as there are adequate conceptual, empirical, and normative warrants for continuing with the considered practices and terminology, then the revisionist is committed to a kind of referential re-anchoring or a "replacement" strategy (for example, this is one way of understanding Haslanger's (2000) proposal for race and gender). So, the discretionist insight about the possibility of non-referring instances of the usage of terms is simply unresponsive to what separates revisionists and eliminativists.

Further, parties to existing metaphysical disputes can (and sometimes do) use ambiguity-suppressing tools that block the possibility of discretionism. For example, revisionists typically offer an account of *those* things—gesturing at specific practices, attitudes, and judgments—that disambiguate reference. For the responsibility revisionists, the targets can be everyday moral blaming practices. For marriage revisionists, the approach might be to anchor marriage talk in something like a legal standing for specific economic and social benefits. Thus, revisionists typically fix the referent of their theories in a way that blocks the typical sources of reference convention ambiguity. If this is right, then discretionism does not succeed in reshaping the dialectic between revisionists and eliminativists, because revisionists typically identify their subjects in a way that precludes reference ambiguity.

The core issue separating the revisionist and eliminativists concerns how we should go forward in our practices and associated discourse, *given acceptance of an error*. Eliminativists hold that there are no adequate grounds for continuing with our existing practices and terminology. Revisionists hold that there are adequate grounds for continuing with those practices, perhaps with modest adjustments at the margins.[5] The revisionist need not deny the possibility of failed reference of some sense of a term. What the revisionist seeks to defend is the rational integrity of a set of designated practices. The appropriateness of labeling those practices in traditional ways is parasitic on (1) whether there is a rational reconstruction of those practices and (2) that reconstruction being largely continuous with prior forms of that practice.

These thoughts bring us to a fifth, and related concern about the utility of discretionism: *prescriptive irrelevance*. The operative slogan is this: descriptive pluralism does not license *prescriptive* pluralism. That is, even if discretionism helps make sense of actual patterns of usage, in contexts where what is at stake are

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[5] Notice that if one wants to say that eliminativists are talking about something other than the practices, attitudes, and judgments identified by the revisionist, then there is no disagreement between revisionists and eliminativists. But it would also mean that the revisionist proposal is uncontested by eliminativists. Also notice, though, that this is deeply unflattering to eliminativists, for it renders their view such that it turns out that what they are interested in has nothing to do with the everyday judgments, attitudes, and practices of blame that are the subject of revisionist accounts. Thus, any philosophical victory for eliminativists would be remarkably pyrrhic (Hurley 2000; Vargas 2015b, 2668-69).

proposals for prescriptive theories, discretionism doesn't help us adjudicate the debate between eliminativists and revisionists. For discretionism to avoid the charge of prescriptive irrelevance, a discretionist account of *X* would have to demonstrate that it does better than alternatives at providing a prescriptive theory of *X*—a theory of how we ought to think of that thing. And, at least in one context that Nichols points to, there is reason to doubt that a discretionist account does better than alternatives. The case for that conclusion is the subject of the next section.

Before proceeding to that issue, one caveat is worth mentioning. The argument that follows is specific to Nichols's proposal in a particular domain. Nichols does not pretend that there is a master argument that demonstrates that discretionism will always do better than alternative prescriptive accounts. Instead, all that is available to us is the evaluation of particular discretionist proposals. So, in the next section I consider Nichols' discretionist proposal for moral responsibility. I argue that it does no better than existing revisionist accounts. Indeed, my suspicion is that it is most charitably recast as a revisionist account. If that is right, though, the most we can conclude is that in at least one domain discretionism is not the advance that has been advertised.

4.

Nichols' *Bound* (2015) develops a powerful case for thinking that the core of our responsibility-characteristic practices are justified, or at least not unjustified. He defends what he calls a "bare retributive norm" and convincingly argues for the widespread pro-social benefits of moral anger, and its relative cognitive isolation from theoretical concerns about determinism and other threats to agency. As a matter of characterizing folk commitments and evaluating the substantive promise of those commitments, Nichols and revisionists about moral responsibility are in broad agreement (Cf., Hurley 2000; Singer 2002; Vargas 2013; McCormick 2013). All parties share a commitment to preservationism about responsibility practices, i.e., that our existing practices are in sufficiently good shape that, whatever we say

about the words, we should hold on to the practices (Nichols 2015, 13).[6] So, given this broad agreement, one might wonder what prescriptive discretionism adds.

The discretionist advantage is apparently located in a distinctive kind of psychological flexibility. According to Nichols, if we are revisionists, we cannot accommodate the fact that moral anger and self-blame can be counterproductive and damaging (Nichols 2015, 166).[7] What discretionism provides is a way to retain the benefits of responsibility practices and attitudes without the full force of the destructive effects of moral anger and self-directed blaming. The added flexibility comes form the fact that the discretionist can say, with eliminativists, that no one is morally responsible, and the ability to strategically think this thought can restrict the corrosive effects of excessive moral anger and self-blame.

If all this is so, the psychological benefits would be a clear advantage for discretionism over revisionism (as well as eliminativism and conventional compatibilism). Nevertheless, Nichols offers little reason to think that revisionists cannot recognize and accommodate suitable limits on moral anger and self-blame. You do not need to be a discretionist to think that excess in blame and self-directed anger is possible. That one is morally responsible for something is always only one fact among many that might be of interest to us, and other values might give us reason to pass up blaming the blameworthy. Resources are plentiful within broadly compatibilist and revisionist frameworks for nuance about blame. For example, we can distinguish between felt blameworthiness and deserved blameworthiness, between being responsible and it being sensible to blame the responsible agent, whether it is fair to blame the blameworthy in a given case, and so on.

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[6] For example, Nichols argues that, "often there are ethical reasons to abandon the incompatibilist commitment rather than give up the attitudes and practices surrounding moral responsibility" (13). He goes on to say that "even if the right view is eliminativism about free will and responsibility, that by itself does not mean that we should instigate a revolution in our *practices,* which is what the revolutionary is urging . . . In the future, our notion of moral responsibility (or a nearby replacement for the notion) might have different features than our current notion of moral responsibility" (157).

[7] In another passage, Nichols writes that "[i]n some contexts, the prevailing practical considerations suggest that we should deny the existence of free will and moral responsibility; in other contexts the practical considerations suggest that we should affirm free will and moral responsibility" (11).

One might grant the foregoing but then reply that discretionism nevertheless offers an additional resource for defusing excess moral anger. However, revisionists are already in a position to proceed in exactly the same way as discretionists. Like discretionist, revisionists can simultaneously think that (1) someone—oneself, even—is blameworthy for some action, while also holding that (2) to fixate on this fact can be unproductive and even unhealthy. Moreover, revisionists can insist that we have already constrained a certain kind of soul-lacerating self-blaming that libertarian conceptions of agency might otherwise encourage. By standard revisionist lights, what is at stake is not a metaphysically extraordinary notion of moral responsibility, for example, culpability of the deserving heaven-or-hell variety. Instead, all that is at stake are everyday practices like ours, i.e., those we find ourselves with in the real world. So, the benefits of reminding ourselves that we are not libertarian agents are already available to revisionists about moral responsibility (Vargas 2015a).

To be sure, philosophers do not always share the revisionist preoccupation with ordinary practices. One can, for example, identify some other phenomenon by appealing to conceptual commitments one regards as reference-determining, e.g., "basic desert" or "*causa sui*" or "causal ultimacy." In doing so, one might aspire to fix reference on properties that are potentially of philosophical interest, without necessarily anchoring the phenomenon in ordinary practices. However, much of the interest in such accounts arises from the fact that they purport to tell us something about those practices that are the touchstone of revisionist theorizing. Whether the putative conceptual commitment (e.g., basic desert, *causa sui*, or causal ultimacy) is somehow embedded in or presumed by our practices, and what such claims really mean, will be a contested matter. The point here is just that everyone already has tools for expunging referential ambiguity, and these tools are at least sometimes explicitly deployed. Even so, substantive debates persist. Thus, it is hard to see how the discretionist idea buys us a detente on the substantive disagreements, much less the peace Nichols promises.

Nichols claims that it can be to our advantage to be revisionist compatibilists during the day and eliminativists at night (2015, 166). Perhaps the idea is not just that discretionists (along with revisionists and conventional compatibilists) can form the thought that it is unlikely that libertarian accounts of

agency are true. Perhaps the thought is that discretionism allows us to shuck the culpability-imputing dispositions of the responsibility-affirming revisionist, the same practices he seeks to defend. That is, perhaps the discretionist seeks to weaken the grip of responsibility practices on our psychology. If that is the view, it is at odds with other ideas in Nichols's account.

The very considerations that Nichols advances on behalf of preservationist views—including the social benefits of responsibility practices—seem to depend on internalization of the blaming norms and a firm, even unreflective commitment to the appropriateness of the norms in daily life. It is not obvious how one could suitably internalize the norms and patterns of reaction that undergird the social practices Nichols identifies, yet readily dispense with them when their burdens become too great. Faced with Nichols' worries about excess blame, typical revisionists will simply appeal to the familiar compatibilist resources for how and why our norms already have resources for mitigating some of those burdens. If discretionism is supposed to enable something more, then it is not clear how the benefits of norm internalization can be preserved if they can be so readily abandoned when convenient.

For Nichols, a dilemma looms. One horn suggests that either revisionist compatibilists already have the resources to restrain unhealthy forms of blame—at which point there is no reason to favor discretionism over revisionism, at least as a matter of regimenting our future discourse and practices. The other horn of the dilemma grants that management of our psychologies cannot be accommodated with familiar compatibilist resources, and holds that this fact is most plausibly explained as a psychological fact about what is required to be a fully invested participant in moral responsibility practices. If that is the proposal, then we need to know how it is possible to retain the relevant automatic, motivating force of responsibility judgments in everyday life if at night we can readily drop these automatic, motivating thoughts. In sum, either there is no problem that requires discretionism, or discretionism can only constrain blame on pain of losing the systematic benefits of blame.

Recall the tale at the outset of this article. Discretionists were charged with having a puzzling view about excelsience, because Discretionists agreed that the practices the Fixers focused on were in good stead. Given that those practices just are what the revisionist seeks to vindicate, discretionism seems to

collapse into a form of revisionism. That is, at night, Nichols' discretionist is a revisionist who wants to change the topic, thinking about something other than the norms and practices about which both the Fixers and Sticklers are disagreeing.

Let's take stock. Discretionism can be understood as a proposal to amend the familiar NER dialectic, i.e., the pattern of philosophical moves that begins with naive actualism, followed by proposals for eliminativism and revisionism. This structure seems present in a variety of disputes, including philosophical accounts of race, folk psychological attitudes, free will, and moral responsibility. Nichols' idea is that a new position—discretionism—can allow us to escape the familiar pattern, at least in the context of debates about free will and moral responsibility. I have argued that the position is not stable and in its most plausible form, it amounts to a species of revisionism.

If this is correct, then perhaps there is a generalizable lesson for debates about contested terms. Given a plausible candidate for error, the real work always begins when we have to sort out whether there is more reason to be eliminativist than revisionist, and whether we have a good candidate for a reference shift, even if our old ways of talking were indeed intolerant of error. On this latter point, it bears reminding that everyone needs a theory of reference that (1) tolerates some false beliefs and (2) allows for the possibility of change in reference and/or meaning. As a consequence, though, eliminativism must be earned. Mere discovery of an error is insufficient for favoring eliminativism, and revisionist alternatives will remain difficult to dispatch. If discretionism helps us see that, then this is an important payoff.

5.

This concludes the discussion of methodological matters. In what follows, I offer an extended aside on a mostly disconnected issue in Nichols' account of moral responsibility.

One feature of Nichols' account that is particularly distinctive is his rejection of justificatory demands on accepting a retributive norm. He writes that the *bare retributive norm* is "a norm that wrongdoers should be punished because (and only because) of their past wrongdoing" (120). As Nichols sees it, this is a normative and psychological primitive.

The significance of this claim is partly connected to Nichols's defense of existing responsibility practices. Nichols does not think a bare retributive norm needs special defense, even in the face of eliminativist pressures. So long as the norm is not a product of some debunked psychological process, and so long as it is *entrenched*, it is in good stead. To say that some norm is entrenched is to say that it is widespread, inferentially basic, and rooted in human emotion (134).

Nichols characterizes a norm as inferentially basic if it is "not the product of consciously available inferences from other norms or facts" (126). Elsewhere, he characterizes basic-ness in terms of not being "inferentially dependent on other norms or facts" (134).[8] So, the picture is this: because it is entrenched and not debunked, the bare retributive norm is resilient in the face of skepticism about libertarian agency.

Consider another case of a norm that Nichols characterizes as inferentially basic: the anti-incest norm.[9] Interestingly, this norm appears to be parasitic on other psychological processes. Plausibly, it is mediated by disgust reactions. It is also clearly subject to modulation from cognitions about the propriety of the norm. For example, some people are (eventually) prepared to tolerate incest practices, and they do so for complex reasons. At least among philosophers who have written about these things, there is a fair amount of willingness to abandon a strict anti-incest norm (Bergelson 2013; Farrelly 2008; Sebo 2006).

Importantly, the flexibility of the anti-incest norm is greater than would be suggested by cultures that tolerated incest—say, the Incas, pre-Conquest. They seemed to accept an anti-incest norm in general, but as a solution to dynastic crises they endorsed a pro-incest norm in the case of royals. So, perhaps, Incan flexibility about incest was a case of retaining a bare anti-incest norm, but one trumped by dynastic benefits. However, incest-tolerating philosophers seem like a different case. They reject the bare anti-

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[8] Whether these two characterizations are coextensive is not obvious. Consider the possibility of norms that start off not being the product of consciously available inferences from other norms or fact (so, not inferentially basic in the first characterization), but which come to be inferentially dependent on other norms or facts (so, inferentially basic in the second characterization).

[9] I depart from Nichols's terminology—he calls it the "incest norm."

incest norm and its legitimacy in the first place.[10] If Nichols is right that the anti-incest norm is inferentially basic, the way the norm actually functions suggests there may be a lurking difficulty for his account.

To see the difficulty, return to the matter of retribution. First, as with incest, the relevant norm seems to be mediated by disgust reactions (Capestany and Harris 2014). Second, the norm is clearly subject to modulations from cognitions about the propriety of the norm. Famously, it is a norm of punishment that many philosophers, legal theorists, and people of conscience are prepared to disavow, despite its impressive historical pedigree.

If all of this is right, then Nichols faces a challenge from both eliminativists and justification-minded revisionists. If the norm can be pruned away, as some philosophers seem to think it can be, then why doesn't this possibility make legitimate the eliminativist demand for justification for keeping the norm? And, if the norm does admit of justification that does not go through appeal to libertarianism, why isn't this just revisionism about moral responsibility of the familiar (and appealing) sort?

My suspicion is that there is something more to what Nichols has in mind about the notion of an inferentially basic norm. Indeed, perhaps the bare retributive norm is not in need of any defense, as Nichols says. If Nichols is right about this, then this is undoubtedly an important contribution. It would not be the least contribution he has made in defense of a broadly revisionist approach to moral responsibility.[11]

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[10] Among Incan royals, perhaps it wasn't that the anti-incest norm was present but trumped, but instead, that they had entirely abandoned it. If so, then those Incans were living out the moral permissions defended by incest-allowing philosophers.

[11] Thanks to Rebecca Mason, Shaun Nichols, Jay Odenbaugh, and Daniel Speak for discussion about some of the material in this papers. Thanks, too, to audience members at the 2015 Pacific Division Meeting of the American Philosophical Association.

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