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# The Tragedy of Punishment: An Insight into Why Doing Something Good Feels Bad

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Tragedy of Punishment

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Running Title: Tragedy of Punishment

The Tragedy of Punishment:  
An Insight into Why Doing Something Good Feels Bad

By

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Submitted in partial fulfillment  
of the requirements for  
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*“The paradox of punishment is that a penal institution somewhat similar to that in use in our society seems from a moral point of view to be both required and unjustified. Usually such a statement would be a confused way of saying that the practice is a necessary evil, hence it is justified, all things considered. But in the case of punishment this reduction does not appear so simple...”~ Alan Goldman<sup>1</sup>*

### **Setting the Stage: Memories and Reflections on Punishment**

My motivation for writing on what I have come to call “the tragedy of punishment” is the seemingly paradoxical state of affairs associated with punishment. The first state of affairs is the general understanding that punishment is not just a necessary practice but also a morally good one that serves not only to give criminals their just deserts but also generally benefit society and those in it. The second state of affairs is the realization that, despite the understanding that punishment is painted as a moral good, when thinking about all the harm caused by punishment one cannot help but feel badly about it. The problem arises with the obvious conclusion that these two state of affairs seem at the very least problematically counterintuitive. How can it be that doing a moral good ends up leaving us feeling bad? In fact, many cases in which a morally good action is committed are cause for celebration but not so for punishment. What then makes punishment different from the other cases in which the result is supposed to be a good? It is an answer to this question that motivates the rest of the paper.

I began to realize the paradoxical nature of the conflict between the justification and response to punishment throughout my upbringing as I found myself becoming more and more familiar with punishment, its effects, causes and justifications. Not to mention some excellent philosophy courses, this motivation has been further fueled by a desire to

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<sup>1</sup> Quote taken from Goldman’s *“The Paradox of Punishment”*(1979)

suggest ways in which to make viable positive change to the way punishment is conducted by presenting an alternative that does not leave us with such a counterintuitive response.

If nothing else, through this philosophical exploration of punishment and the way it is carried out, I mean to shed some light on why encounters with punishment, such as those I had in my childhood, had room for the intuition that something tragic was going on in punishment. The consequences, then, for this disturbing but perhaps diagnostic intuition are feelings of remorse that run concomitant with harm caused by punishment. While it may not, at least initially, seem surprising that punishment - which at its core involves the infliction of suffering on others - is remorseful in some sense, the interesting questions arise when we consider that there is no room for remorse in other cases in which individuals get what they deserve. Furthermore, as remorse is generally an emotional response to one's own actions, as I will address later, there is an interesting question as to how remorse could be an appropriate response to someone else's punishment. Before I begin with my arguments as for how there could possibly be room for remorse in cases of seemingly "deserved punishment," I believe an explanation of some of personal experiences will help further outline the issue at hand by presenting a small, but compelling, image of exactly the type of counteractive state of affairs our societal commitment to punishment has caused.

Beginning at a young age, I was exposed to numerous instances in which punishment counterintuitively succeeded in causing a disproportionate amount of harm. This might not initially seem particularly concerning because problems of balancing the cost with the benefits of punishment is not, by any means, a novel problem. However, the

harm I'm referring to in these instances goes beyond the traditional sense of harm that is associated with punishment i.e. the suffering caused by incarcerating a person and thus curtailing certain fundamental rights or the suffering caused when a misbehaving child is sent to bed without supper. During the most sensitive stages of my early childhood development I was, just like most children, insulated to a certain degree from these traditional or expected harmful elements of punishment. While, as I explore later, there is indeed room for remorse in the traditional suffering caused by punishment, it was the lack of positive change that came as a result of punishment that initially caught my attention from a very early age. What I mean by lack of positive change is that, at least in these particular encounters with it, punishment resulted neither in the betterment of society or the accused. Furthermore, beyond that, in these cases punishment also instead served as a catalyst in compounding the issues that caused the wrongdoing in the first place such as poverty or feelings of societal marginalization.

My intention by sharing these experiences are by no means some mere literary exercise in storytelling. Furthermore, I am by no means naïve enough to assert that my personal experiences with punishment are *necessarily* indicative of the consequences of punishment in general, though it is precisely my worry that they are. In other words, though I will base the core of my thesis on facts and arguments independent of my personal experience, the real concern is that my experiences were merely a microcosm of a much broader state of affairs which I will eventually show is the case. However, at this point, all I am claiming is that even at a young age my intuitions made it painfully clear that there was something paradoxical about punishment that left room for feelings of remorse.

Exactly how I came to the conclusion that my negative experiences with punishment were likely not that unique from the experiences of many others was in the realization that my upbringing was not particularly extraordinary. I grew up, went to school, played with friends just like countless other children. Though many of the specifics may vary, I realized that the end result was likely not that unique. Therefore, if it was indeed true that my experience reflected a more broad state of affairs - as I had begun to suspect was the case - then the fact that there was such room for remorse in punishment due to disproportionate harm involved could even be described as a tragedy especially when we consider the grand scope punishment encompasses.

Furthermore, I do not have any delusions as to what extent this paper will succeed in producing the kind of positive changes I am suggesting in order to curb our regret. The problems of balancing the harms and benefits of punishment have been around for centuries. Instead, at the very least, I only hope to contribute to the academic conversation concerning the philosophical justifications for punishment and the subsequent arguments for the best way punishment should be carried out.

So then the obvious follow up question would be what childhood experiences could have motivated me so strongly and how could they be relevant in framing such a broad issue. As a child, I distinctly recall watching friends and family members destroyed and corrupted by the drastic imbalance in the amount of harm produced by punishment, a practice that was portrayed to be good. Growing up in a small but diverse town in upstate New York, I was exposed to a veritable panoply of people. There were rich people, poor people, black people, white people, Hispanic people, Chinese people, middle class people, and pretty much everything in between. As a result of this diversity, I was, therefore,

exposed to people with all kinds of criminal histories and also to peers with varying dispositions for criminal activity.

While a notable amount of people I knew in some capacity had deleterious run-ins with the law, the one that had the greatest impact on me involved my cousin, whom I will here call Derrick. To put it lightly, Derrick grew up in a hostile environment at home. His mother and father fought regularly, until they eventually had an ugly divorce, when Derrick was in his early teen years.

I realize that many people have been the victims of childhood divorce, inadequate parenting and even abuse and did not end up like Derrick did. However, given the kind of person that Derrick was and the kind of support he craved, his convoluted relationship with his parents was particularly detrimental to him, especially at such an impressionable age. By his own admission, all Derrick really ever wanted was to get the respect, love, and attention from his parents he saw his friends and sister receive. Because, unlike his sister, he was not able to succeed without lots of encouragement and support from his parents, he floundered and became angry and rebellious. Now, in retrospect, he can trace his desire to rebel and act out to his base desire to get any kind of attention from his parents, either positive or negative.<sup>2</sup>

While in many cases innocuous, the problem with Derrick's desire for attention was that, unfortunately for him, attention was not readily available in Derrick's

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<sup>2</sup> There might be a concern about the ability of an individual to correctly identify the source of their problems even in retrospect. I acknowledge this possibility but add that, now after being separated from this situation for a number of years as well as having consulted professional opinion, I have reason to believe Derrick's conclusion not to mention my own observations. In addition, even if he was mistaken this example can still legitimately act as one of my motivations to write on this topic because it would be very easy to imagine a case where this was indeed true and in that case my assertions as to its tragic nature would still hold.



household. The lack of attention from his father, a young professional obsessed with making his way through medical school, and his mother, a woman with no choice but to work more than full time to pick up the slack, caused problems even at a young age. For example, at the age of ten he stole a hundred dollars from an envelope on my mother's kitchen table so that he could buy the Walkman tape player to impress his friends in another attempt to get attention. While, in this case, all that resulted was an admonishment about the wrongs of stealing followed by a tearful apology, unfortunately this incident was only the beginning of a lifetime of problems fueled by a desire for attention and support.

As time passed, things at home continued to decline with ever-increasing fights. He was put on medication for his ADHD but it did nothing for problems caused by the lack of stability in his life, so he continued to misbehave. By his teenage years he was already well involved with the wrong crowd and it was then that he started to experiment with marijuana, cigarettes and alcohol. His increasingly hostile home environment naturally started to affect his school work and his dealings with authority figures. As one might expect, he was in detention more often than not and had been suspended on numerous occasions. Still the root of the problem, his relationship with his parents, had not been addressed.

At the age of fifteen, Derrick had his first real encounter with the law. One day, just like any other, he went with his friends after school to hang out. On this day, however, his friends had slightly different plans. His closest friend, the unofficial leader of the group, decided he was going to take some money belonging to his grandfather that he had stashed away under the bed. Upon arriving to the house, Derrick was told to wait

outside and keep watch. Within moments the police arrived having been tipped off by a neighbor and so started Derrick's long and tangled relationship with the law.

Despite his mother's and his defense team's attempt to appeal to his turbulent home situation, impressionable age and lack of life experience in making appropriate moral judgments to recommend counseling or some other means to address his troubled relationship with his parents, he was sent to a boy's home. In fact, he languished in this boy home for almost two years. Here, his quality of education was even worse than before as was his motivation to strive for success. Furthermore, day after day he was exposed to dozens of other angry and troubled youths whose bitterness and resentment at the system only served to compound his own conflicted feelings. At the core of it all, the cause of his misbehavior, his self-admitted frustrated and desperate attempt to get his parent's affection, remained unaddressed.

This was not Derrick's last stint in a "correctional facility". After that, he spent an additional 10 years in prison for crimes that came out of yet further drama with his mother who, despite a tremendous amount of love, support and effort, had no idea how to help her son. To this day his relationship with his mother remains tenuous and he is not on speaking terms with his father. As a result of the residual friction, not surprisingly, Derrick continues to have some minor run-ins with the law. However, as his relationships with his parents have stabilized and as he has sought a regimented consoling schedule to deal with residual feelings he has been able to avoid any further major issues with the criminal justice system.

Importantly, Derrick and anyone familiar with the case will be the first to admit it was not the criminal justice system that helped him. In fact, he once told me the only way

he got through it was with a lot of love and deference from his loved ones. For Derrick, the criminal justice system has only succeeded in producing another resentful and unemployable young man. I will also add that this young man, who despite his problems, showed a great aptitude for applied sciences such as automotive technology. Unfortunately, he was never able to capitalize on his aptitude due to his incarcerations and criminal record.

However, there is much more to punishment and its tragic elements than punishment that the state is involved in. In fact, the worry of disproportional harm does not only extend to those instances in our criminal justice system but, in my experience, also included parental punishment carried out in the seclusion of friends' homes, and especially punishment given by schools. It is no secret and neither is it contested that our education plays a vital role in our ability to achieve future success. Therefore, when we consider this inexorable role that school and, more broadly, our education has on our success, it is easy to see how reckless punishment on the part of schools can drastically affect a student's future. In essence, if a student has an educational experience that suffers as a result of disproportionately harmful punishment, deserved or otherwise, it is easy to see how it would be much harder for that student to overcome these obstacles and go on to achieve success.

Beyond what happened to my cousin, I recall watching as my fellow students found themselves caught up in endless successions of detentions and in school and even out of school suspensions. While it would be imprudent to explain my specific reasoning for coming to this conclusion in each of these cases, what I will say is having witnessed what happened with Derrick and listening to the reasons given by these students to

explain their behavior, in many of these cases the cause of the misbehavior remained unaddressed.

In particular, what I witnessed was the consequence of the school's perceived need to punish misbehaving students to maintain their authority combined with the inability to address the root cause of the misbehavior. This perceived need to punish misbehaving students invariably led to a sad but inevitable cycle in which these students, due to their disruptive behavior, had to be separated from the other students. However, by being separated from other students, they were also separated from the standard learning environment. While in principle it might not be a bad thing to separate bad students in favor of a different educational environment, the problem came as result of the way this was executed. Instead of being placed in an alternative but equally educational environment, these students were expected to complete their classwork in a completely uncondusive learning environment filled with other unruly students. Furthermore, together these students were taught by a small separate group of teachers whose expertise was not in teaching the required course materials but rather in wrangling rowdy children thus leading to a substandard educational experience.

I can say from personal experience, the educational outcomes were far different for these children than for those who, for whatever reason, did not have the same debilitating dispositions for mischief. In fact, most of these students did not go to college and some didn't even graduate high school. Others are currently serving jail time for drug offenses. Some have children and work at minimum wage jobs. Very few went to college or currently live above the poverty line.

I can also say from personal experience that these sad outcomes are far different from the other students who did not have behavior problems, most of whom went to college and now have full time employment. While I can make no definitive claim that it was a direct consequence of their negative experiences with school punishment that led to their shortcomings, the correlation seemed too strong to ignore.

Now, where my experiences becomes relevant to the general issue of punishment I'm trying to outline here is in the worry that my educational experience is only a microcosm of a broader issue. In other words, if it turned out to be the case that my educational experience was indicative of a larger trend in how punishment is handled in our schools, that would present us with a state of affairs in which there is lots of room for both tragedy and remorse in the way punishment is conducted in our schools. Again, as it would not be particularly interesting to simply point out that badly executed punishment is tragic in some sense, the interesting questions arise when we consider the fact that this punishment is not undeserved. These kids really did misbehave and become disruptive. That being said, then the question at hand is if all that is happening here are students getting what they deserve, then why is there room for an element of remorse that is not present when say a student is given an equally deserved A on test.

Furthermore, because school punishment falls under the purview of private punishment,<sup>3</sup> what this suggests is that, even in private punishment, there is room for tragedy. Beyond that, it is easy to imagine how in other forms of private punishment such as a parent punishing a child or even a friend punishing a friend for a perceived slight there may also be room for remorse. Given that, it would seem that there is something

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<sup>3</sup> Punishment that is not carried out by the state and includes punishment handed out by parents, teachers, friends etc...

just about punishment in general that makes room for remorse where there is not in other matters of desert.

For much of my life I did not know what to make of these experiences and observations. I've always felt there was something tragic about punishment but, at the same time, I couldn't put my finger on exactly what that was. For a while, I resolved that it must just be some squeamishness on my part at the thought of other people suffering that provoked me into seeing tragedy and feeling remorse when there was no need. After all, I was convinced that the punishment was both a matter of just deserts and doing what was necessary for the preservation of society. As I searched for a rational or justifiable reason to explain my discontent I was always faced, time and time again, with the same conundrum: why is it that there is room for remorse in deserved punishment but not seemingly in other cases of getting what one deserves? It is my attempt to answer this question and my subsequent attempt to quiet this concern that will occupy the majority of the remainder of this paper.

### **Paradigm cases and Punishment**

Beyond particular cases, such as those described in the above chapter, that serve to illustrate how punishment paradoxically leaves so much room for remorse as a response to harm it causes, there is a more general question as to what distinguishes punishment from other scenarios in which individuals get what they deserve. It would seem almost a tautology that doing a morally good thing for a good reason to people who deserve it is an action that should produce no remorse<sup>4</sup>. If we define remorse on even the most rudimentary terms, it would involve some deep feelings of regret or guilt for a perceived mistake or wrongdoing. Even with this most basic understanding of remorse, it does not make sense to feel remorse in cases in which, not only is there no wrongdoing, but something morally good has been accomplished. In fact, I would go so far as to claim that not only is there no need for remorse in most of these cases, more specifically, there is no room for remorse. It seems nonsensical to feel any remorse for doing a morally good thing for good reasons and even more so when it is deserved. While the mere fact that we might call something a “morally good action” might even already suggest it was

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<sup>4</sup> From this point forward I will refer to this as the “no vacancy principle” because there is no room for any remorse in these cases.

done for a good reason and was also deserved, I use these further stipulations in this formulation in the interest of making this principle I call the no vacancy principle as convincing and uncontroversial as possible. To clarify, what I mean by remorse is not the same as regret. As will be explained later, regret is a far more general term that does not carry with it the same level of moral weight or responsibility.

Importantly, the fact there is *room* for remorse in instances of punishment does not mean that there is a *need* for remorse. I recognize that not everyone will have the same emotional response to punishment that I did. Why the fact that there is room for remorse is important is because while it would not be inappropriate to respond to punishment with feelings of remorse in the cases outlined below no such room exists. What I aim to explain is precisely what about punishment makes room for remorse that does not exist in other cases where individuals get what they deserve.

If I have thus far been unsuccessful in being convincing in my claim, then we need to look no further than our experiences and most basic moral intuitions to tell us the no vacancy principle holds true in almost every case. Let's consider the following case: a friend, over dinner, tells you that she has received a raise for all the extra work she has been doing at her firm. In this case I would say there is no need for you to feel remorse. This follows from the no vacancy principle. First, it is good, notwithstanding salient moral complications<sup>5</sup>, to compensate employees justly.<sup>6</sup> Secondly, the good reason, among others, is because it encourages employees to perform well and builds amicable employee-employer relations. It is also intrinsically good in the sense that we can prima

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<sup>5</sup> For example, we might not say the same thing if by giving this employee a raise, it robs another individual of money they need to feed their family.

<sup>6</sup> In this case all I mean by just is receiving what she deserves which should not conflict with any notion of justice.



fascia claim it is good to act justly. Finally, she deserves it because she actually did go above and beyond and thus merits corresponding pay<sup>7</sup>.

Importantly, this type of scenario is not unique by any means. In fact, we could say very much the same thing if this friend was to receive an award for doing excellent research, winning a marathon, placing second in a chess tournament or raising the most money at the company bake sale. What I mean to show by this example is that in cases where the consequence of getting what one deserves is a reward of some kind, there does not seem to be any room for remorse, at the very least if the reward does not come at some salient cost.

We can also imagine many similar cases where there is a slightly negative cost involved. Let's consider the not unfamiliar case of two friends going to see a midnight movie premier. However, one of the friends forgets her wallet at home. So as not to miss the premier, she asks her companion to borrow the money. The companion happily complies and even buys the popcorn. A week later, upon meeting in the cafeteria, the borrower pays back her friend in full.

Just as in the reward cases, I would argue there is no room for remorse in what I am calling the movie case. This makes sense considering that this too follows from the conditions of the no vacancy principle. First, we can easily call this a morally good action on the same grounds we can say we have a prima fascia moral obligation to keep our promises. Of course, we would not have this moral obligation if the conditions of the promise were immoral like they would be in a murder pact. Neither would we have this

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<sup>7</sup>If this seem redundant, it just reinforces my point that these actions really are actually morally good and thus there is no room for remorse.

obligation if we were either physically unable to keep it or by doing so we would sacrifice some other morally salient concern like not being able to feed one's kids. Because this case has none of these complications, we can say it is morally good that she paid back her friend<sup>8</sup>.

Second, one good reason for both the young lady and others in society to pay back their debts is that it reinforces a societal trust. In other words, it benefits society that we can trust each other to pay back their debts when they say they will because it is this trust that allows many financial intuitions to function like banks and credit unions. On a smaller scale, it is also reasonable for the young lady in this case to pay back her friend in order to keep an amicable relation with her companion.

Finally, just as in the reward cases, there is an element of desert in this case as well as it could be argued that the friend deserves to be paid. Not only is this what both parties can reasonably expect but also there are no extraneous moral concerns to impede the young lady's ability to keep her promise.

Where this is slightly different from the reward cases is that in this case there is a slight cost involved. In other words, in order to satisfy the requirements of desert one person has to suffer a loss of some kind. Furthermore, it might be reasonable to think that a potential source for the tragic elements of punishment could be in that punishment too there is a cost involved i.e. the individual rights and freedoms of the convicted. However,

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<sup>8</sup> In any of these it would, of course, be very easy to add certain details to make these cases very remorseful indeed. To the same degree it would be equally to add lots of details to an instance of punishment to ameliorate the feelings of tragedy. However, all I am doing here is presenting viable and commonplace examples of instances where people have been able to successfully get what they deserve without making any room for remorse.

what these cases show is that mere presence of some cost is not sufficient to produce remorse.

Furthermore, just the reward cases, these type of scenarios where there is a slight cost involved but which still seemingly do not have room for remorse are not uncommon. For example, if I have to break a window to save someone from a burning building or have to get blood on my shirt to properly bandage a wound on the scene of a car accident, there is no room for remorse despite these costs, provided the people I am saving are not moral monsters. In these cases the costs are negligible when we consider the alternatives.

Following this same pattern, let's imagine one more case. Steve, like approximately 5% of male children in the US was a victim of sexual abuse in his childhood<sup>9</sup>. In this case over many years, his uncle repeatedly abused him in secret. Like many victims of sexual assault he never sought help or even reported what happened. This abuse was, as can be expected, a very damaging experience for Steve. He had issues in forming relationships of trust and was confused as to his sexual orientation. In fact, these experiences were so damaging that as a result, Steve engaged in the same sort abusive activity with his adolescent nephew. However, unlike what happened with Steve and his uncle, Steve was caught and openly admitted to his crimes. He was therefore sentenced to 30 years behind bars, forced to register as a sex offender and banned from unsupervised contact with children for at least 10 years after his prison sentence.

At first glance this case too seems to follow the principles of the no vacancy principle and thus make no room for remorse. First, though a more detailed discussion of the justifications of punishment is forthcoming in the Goldman Chapter, we might

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<sup>9</sup> Information is from <http://www.rainn.org/get-information/statistics/sexual-assault-victims>

superficially claim this punishment is morally good on the grounds that we need punishment for society to survive<sup>10</sup>. In other words, punishment is a necessary self-defense to the harm that wrongdoing can impose on society. What's more, there can be little doubt that this nephew is going to suffer life-long effects from this extended abuse just like Steve did.

Secondly, we can certainly say that the punishment in this case is done for a good reason because a society, in general, cannot morally permit adults to sexually abuse children. Beyond that, a society certainly cannot have people walk around unimpeded if it is likely that this kind of behavior is going to continue.

Finally, although Steve's own abuse may have played a factor, Steve is still a moral agent<sup>11</sup> and thus deserves to be punished for the harm he admitted to causing<sup>12</sup>. In other words, we certainly cannot claim that his past excuses him all blame but perhaps his

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<sup>10</sup> Here I am simply arguing that we must have some system of punishment in order to preserve society. In other words, unless the society in question is a society of saints, crime will be an inevitable problem. Here what I mean by crime are the actions which when perpetrated against other people cause significant harm or the kind of harm that if permitted would severely impede the ability of the other members of society to exercise their fundamental rights. Examples of such rights would be the freedom from bodily harm, the ability to own and protect one's own property and home and the right to pursue one's conception of the good-life provided it does not involve harming others. Any society that did not, at the very least protect these most fundamental rights, would fail to serve the most basic function of a state. Simply put, if a state cannot protect its people, then it cannot reasonably be called a state at all. Even if such a state could function to a limited degree, it would certainly be the kind of society in which I would ever want to live. This is very similar to the argument made by Hyman Gross in the beginning of his book which he calls the self-defense justification for punishment (add citation). This, however, only goes so far as to prima-fascia justify the existence of some system punishment at all but does not necessarily commit itself to any particular type of institutionalized punishment. At the same time, I do realize that these rights that I claim must be protected are the same rights that are classically exalted by those who embrace the philosophical liberal tradition, the same kind of liberalism espoused by Mill, Rawls, and Locke. Here I will not defend my commitment to liberalism but instead will simply state as these are the values that all modern state punishment seeks to protect, I need not.

<sup>11</sup> a person who is capable of being held responsible for his actions

<sup>12</sup> There can often be a problem with converting criminal acts to deserved jail time but, in this case, let's assume that his punishment is objectively exactly what deserved.

history does make his action less condemnable than the same crime perpetrated by a person without such a predisposition.

Interestingly though, despite meeting the same standards of the no vacancy principle that was sufficient in the other two cases to leave no room for remorse, this case seems to stand apart from the other two. In other words, something here is slightly tragic where in the other two cases there isn't. At the very least I would say there is something tragic in the mere fact that a man has lost 30 years of his life and countless privileges.

A good way to draw the distinction between this case, the reward case and the cost case would be to consider the following thought experiment. If, for example, in the reward case there was a parade to celebrate the coworker's achievements, we might think little of it. If in the cost case, there was a parade to celebrate the young lady paying back her friend, we might think it was grandiose or silly but not, by any means, morally reprehensible. It would make even more sense if we imagine a parade for the gentleman who got blood on his shirt after helping out at the accident scene. However, if we imagine holding a parade to celebrate Steve's 30 year incarceration, there is something far uglier about that notion. However, at the end of the day they are all still cases in which someone gets what they deserve. The question then becomes why is it that the first two scenarios are cases that perhaps merit celebration where the last case does not.

Furthermore, just as in the cases I outlined when I described my childhood experiences, in Steve's case there is even more room for tragedy in that we could foresee that the punishment will do nothing to address the root cause of his "misbehavior" and perhaps even make him worse. Unfortunately, we need not work very hard to imagine that this case of punishment will be ineffectual at addressing the root cause of the

criminality is not because this case would by no means be alone in this regard. In fact the same could be said about the majority of criminals sentenced to prison time in the United States.

Recidivism is the statistic used to measure the amount of criminal offenders that commit another offense and return to jail after release. In theory, if incarceration was successful in teaching the offender the error of her ways and in addressing the root cause of her criminality, then she would not have a need return to jail for further correction of her behavior. However, the statistics on the matter as reported by the U.S. Bureau of Justice demonstrate the level to which our criminal justice system fails to do that. The statistics reveal the following:

- “During 2007, a total of 1,180,469 persons on parole were at-risk of reincarceration. This includes persons under parole supervision on January 1 or those entering parole during the year. Of these parolees, about 16% were returned to incarceration in 2007.
- Among nearly 300,000 prisoners released in 15 states in 1994, 67.5% were rearrested within 3 years. A study of prisoners released in 1983 estimated 62.5%.
- Of the 272,111 persons released from prisons in 15 states in 1994, an estimated 67.5% were rearrested for a felony or serious misdemeanor within 3 years, 46.9% were reconvicted, and 25.4% resented to prison for a new crime.
- These offenders had accumulated 4.1 million arrest charges before their most recent imprisonment and another 744,000 charges within 3 years of release.
- Released prisoners with the highest rearrest rates were robbers (70.2%), burglars (74.0%), larcenists (74.6%), motor vehicle thieves (78.8%), those in prison for possessing or selling stolen property (77.4%), and those in prison for possessing, using, or selling illegal weapons (70.2%).

- Within 3 years, 2.5% of released rapists were arrested for another rape, and 1.2% of those who had served time for homicide were arrested for homicide.”<sup>13</sup>

What these statistics seem to show unequivocally is that once an individual enters into a life of crime it is very difficult to escape from it. Moreover, if escape really is so difficult then the harm involved in punishment goes far beyond the expected suffering caused by incarceration. In other words, punishment by incarceration is a life-marking event which drastically effects future potential success.

In the same way there is room for remorse in the case of criminal punishment, equally, there is room for remorse in the case of private punishment. This type of remorse in imposing punishment has even gone so far as to become engrained in our popular culture and everyday practices. For example, there are likely very few of us who haven't heard a parent say to their child, either in real life or the media, “this hurts me more than it hurts you” as a sad anecdote to a time-out

, a toy getting taken away or a spanking. What does that saying reflect if not a widespread feeling of reticence and remorse for handing down punishment even when deserved?

What this chapter was designed to show is that there are many commonplace cases in which the result is that people get what they deserve. In most of those cases, even in ones in which there is a cost involved, there is no room for remorse. However, in punishment despite still being a matter of an individual getting what one deserves, there is room for remorse not only due to the expected suffering of punishment but also because this harm does not even aid in addressing the cause of the misbehavior.

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<sup>13</sup> Taken from United States Bureau of Justice statistics at <http://www.bjs.gov/index.cfm?ty=tp&tid=17>

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Before moving on, it is important to note that some might argue that in both the reward case and the cost case there could still be room for remorse because often times for other people to be rewarded some people have to lose out. For example, if we imagine the promotion in the reward case we can also assume that because one person got promoted another did not. However, as will be further explained later cases like this perhaps cause for regret but not remorse because while remorse implies some level of moral responsibility on the part of the agent, regret is a more general lamentation of an unfavorable state of affairs.

### **Goldman on Punishment**

In order to understand what exactly about our current criminal justice system makes room for remorse, it would be beneficial to look at the philosophical literature surrounding the issue. One of the most respected and comprehensive attempts to characterize the seemingly counterintuitive aspects of our current system of criminal punishment was authored by Alan Goldman in his well-known article *The Paradox of Punishment* in 1979.

Goldman begins this influential article by laying out what he takes to be the fundamental paradoxical element of punishment which centers on a conflict of intuitions in that there is a seeming lack of justification for punishment, a practice that should, in principle, be justifiable. As Goldman says: “the paradox of punishment is that a penal institution somewhat similar to that in use in our society seems from a moral point of view to be both required and unjustified. Usually such a statement would be a confused way of saying that the practice is a necessary evil, hence it is justified, all things



considered. But in the case of punishment this reduction does not appear so simple” (Goldman, 42). What Goldman alludes to here is exactly my chief concern with punishment - why is it that doing something seemingly deserved and good seems like it could be construed as bad?

Goldman then goes on to elaborate on exactly how the reduction of punishment to a necessary evil is not so easily accomplished. In particular, where Goldman thinks the problem arises is in the implausibility of the two major views on which punishment is justified - retributivism and utilitarianism. This view, commonly referred to as the mixed justification for punishment, seeks to avoid the objections brought on by attempts to solely use one of these theories exclusively to justify punishment by appealing to the criteria required to justify punishment.

On the surface, the mixed justification of punishment seems to be an amicable and effective way of accomplishing the goal of justifying punishment. The arrangement works in the following way: “utilitarian criteria could be used to justify the institution, and retributive to justify specific acts within it; or utilitarian to justify legislative decisions regarding punishment, and retributive to justify enforcement decisions” (Goldman, 42). In other words, because broadly speaking the utilitarian is concerned with assuring the greatest sum total of happiness for the greatest amount of people, legislation serving to giving power to a criminal justice system, whose job is to cause the suffering of a minority to ensure the greatest amount of benefit to society at large, is entirely reasonable. At the same time, because broadly speaking the retributivist is concerned with individuals getting what they deserve and not what they don't, it follows from their position that harming criminals in an attempt to give them the suffering they

were due is also justifiable. However, despite the fact that this compromise position may certainly seem tempting, Goldman argues that “it is at least as problematic as its rivals” (Goldman, 43).

Goldman begins his attack on the mixed justification by first focusing on what he perceives to be the weaknesses in the retributivist position. He starts by considering what he takes to be the principal concern of the retributive thesis which he concludes centers on the precise amount of punishment that is justifiable in any given case or, in other words, the matter of determining a criminal’s desert. However, the problem lies in exactly showing how the criminal offender has acted in such a way as to warrant a justified imposition of harm on that individual or as Goldman puts it “if we are to show why [a criminal] cannot legitimately complain of injustice done to them by the imposition of punishment, we must argue they have forfeited those rights which we are depriving them” (Goldman, 43). Both Goldman and the retributivist—here represented by Herbert Morris—agree that if we did not have a way to explain how a criminal forfeits his rights by committing criminal acts, both criminals and members of society would not be convinced that the system was acting within the confines of justice.

Simply put, this kind of explanation as to how criminal acts warrant harm seems indispensable to the overall justification for the retributivist position. As Goldman points out, we need such a rationale because the kinds of rights deprivation caused by the imposition of punishment could not be justified by appealing to the overall societal benefits garnered by using criminals as examples due to their fundamental right as rational agents to not have their rights severely impeded on in the interest of benefiting others.

Alternatively, one could argue that an implicit part of having rights in the first place is in the understanding that one also has the duty to respect the rights of others. Therefore, by violating the rights of others, as one does when he/she commits a criminal act, he/she has failed their duty and should acknowledge that by committing such an act he/she has tacitly agreed to forfeit his/her own rights in the process. However, as Goldman puts it “this partial justification of the right to impose punishment upon wrongdoers is retributive in spirit, but not identical to the classic theories of Kant or Hegel, nor to the well-known contemporary retributivist argument of Morris” (Goldman, 43). What he means by this is that both the traditional and contemporary retributivist would not endorse such a justification for imposing harm on wrongdoers through punishment because they understand that no rational person would ever view their criminal activity as either conscientious or tacit consent to the forfeiture of her rights.

Goldman then moves to elucidate as to exactly what Morris *would* say is the justification for imposing harm on others through punishment and subsequently why this treatment of the issue is still problematic. In particular, Morris views punishment as a means of “removing some benefit unfairly enjoyed by the criminal” (Goldman, 44). Goldman objects to this view first due to the impracticality of balancing each citizen’s benefits and burdens throughout their life time. Furthermore, Morris’ view also seems to have counterintuitive implications because in most cases the prospective unfair benefits gained from crimes against property are far higher than those gained from crimes against people even though crimes of people often involve the more severe harm and deprivation of rights.

Furthermore, even if we grant that by violating the rights of others the criminal implicitly consents to having her own rights violated, another problem arises when deciding exactly what rights the criminal forfeits. It is clear that it would not be just for a criminal to lose all of her rights by violating the rights of others. The easiest response would be that the wrongdoing forfeits whatever rights they violated in others; however, that is impractical in most cases. As a response to the issue of this impracticability, the obvious next step would be to propose that we are then justified in depriving the wrongdoer of an equivalent set of rights but that still leaves us with the problem of how to determine what constitutes an equivalent set of rights.

Importantly, we must keep in mind that imposing excess harm beyond what is deserved on criminals is particularly problematic on the retributivist framework. If we think about punishment as a debt owed to society then, according to the retributivist, it makes sense that we require that debt be paid. It would however be unjust for us to require that a wrongdoer pay back considerably more than his debt by imposing more harm than is deserved through any excess of punishment. As Goldman puts it “if a person can be said to deserve only so much punishment and no more, then any excess appears to be as objectionable as an equivalent harm imposed on an innocent person” (Goldman, 46). Furthermore, Goldman claims that the apparent issues with equating punishment to individual crimes is demonstrated by the fact that philosophers have more readily and frequently applied the equivalent harm to benefit framework to cases of harm against innocents than in the everyday cases of punishment.

The retributivist response to this difficulty in determining equivalent sets of rights would be, as Goldman summarizes it, “one right or set of rights is equivalent to

another...when an average preference scale registers indifference between the loss of either one or the other” (Goldman, 46). What he means by this is that two sets of rights are considered equivalent if from an objective point of view the loss of one or other would be equally acceptable and neither one would be preferential to save or discard.

However, this explanation of rights equivalence leaves the view open to the same objections often raised against the utilitarian. In particular, an opponent may claim the retributivist makes a mistake when she considers harm to the guilty and harm to the innocent on the same scale because it is precisely the right to have her interests considered equally that the wrongdoer does by harming others. What the objector concludes from this is that society then can be warranted in imposing greater harm on the guilty if by doing so society can garner some overall benefit in doing so which they find to be an unacceptable violation of our personal rights and autonomy. The retributivist, however, can readily respond to this objection by clarifying that they are not actually advocating for the equal treatment of both the interest of the guilty and the innocent because in the case of the guilty they are imposing harm while in the innocent case harm is what they are trying to avoid.

Having summarized what he takes to be an initially fair and plausible retributivist position, it is here in his paper that Goldman moves on to an analysis of a plausible utilitarian theory in an effort to further show the general problem with the mixed justification of punishment. In particular, Goldman summarizes the utilitarian position as stating “a political institution involving the administration of punishment by state officials can be justified only in terms of the goal of reducing crime and the harms caused by crime to a tolerable level. The state is not concerned to ensure that all its members

receive their just positive and negative deserts in some abstract moral sense”(Goldman, 47) We must remember that this is stark contrast to the retributivist who is wholly concerned with individuals getting their just deserts. Even if the utilitarian grants to the retributivist that some people deserve to be harmed for their wrongdoing, where they disagree is the notion that the state should be the entity concerned with imposing that harm in every case. Because the utilitarian is fundamentally concerned with overall society benefits and burdens, in order for any wrongdoing to warrant state intervention the overall benefits of imposing punishment on the wrongdoer must decisively overcome the burdens and cost of imposing that punishment.

It is a combination of this general utilitarian justification for the existence of penal institutions combined with the retributivist limitation of the kind and amount of harm we can justifiable impose on wrongdoers that forms the aforementioned highly endorsed mixed justification of punishment. Goldman summarizes the mixed justification a position that “views the social goal of punishment as deterrence, and yet recognizes that we are entitled to pursue this goal only when we restrict deprivation of rights to those forfeited by crime or wrongdoing” (Goldman, 48)

While this compromise position may at first seem very compelling, Goldman is by no means convinced and, for the record, neither am I. Goldman’s first objection to the mixed justification that while it may succeed in avoiding the obviously unwanted outcome of permitting harm to innocents, it may not be equally successful in preventing excess harm to wrongdoers. If the general goal of the mixed theory is to provide meaningfully beneficial deterrence of future crimes by using the suffering of wrongdoers as an example as is the case, then it is likely that it would be able to avoid excessive

punishment imposed in the interest of making the required example of wrongdoers.

Goldman then points out that for the mixed theorist a lot of harm is at stake if the deterrence is not effective because the rate of apprehension for almost any crime is less than half making excess punishment even more worthwhile given the considerable prospective benefits.

It is this conflict between the seeming need to over punish wrongdoers in the interest of more effective deterrence to prevent future harms with our seeming obligation to restrict our punishment solely to what the wrongdoer deserves in the interest of justice that create the meat of the “paradox” in the justification of punishment. As always, Goldman eloquently summarizes the issue in the phrase “the limitation stipulated in our [retributive] premise, then, in effect, annuls our [utilitarian] premise. And yet pursuit of this goal seems morally required and impossible without effective punitive threats. Hence the paradox, or, more strictly, the dilemma. Whereas, much more could be added here as to Goldman’s extensive treatment of the mixed justification of punishment but I don’t want to linger here too long so as to distract from my arguments.

In general, while Goldman’s arguments extend much more extensively what Goldman succeeds in doing here is providing good reason that suggests that the mixed justification of punishment, perhaps one of the most appealing and plausible justifications of punishment, is invalid on the grounds that the individual theses, the utilitarian and the retributivist, are independently objectionable. Therefore when they “mix” to form the mixed justification they bring all of their inadequacies and objections to the table as well making the mixed theory just as problematic as the elements it is comprised of. In other words, in this case the total is not greater than the sum of its two parts.

The question left then is: even if we agree with Goldman, what other alternative do we have then to justify punishment? Are we supposed to now conclude that punishment is really simply unjustified after all? Though it does diminish the work he does to refute the mixed justification of punishment, all Goldman is able to leave us with is a tentative alternative justification that still leaves many questions to be answered. In particular what Goldman suggests is that “The final, most fundamental, and most promising alternative would be (not surprisingly) to attack the social and economic causes of crime by reducing the great inequalities in our society. I have nothing to say against this, except that the means to accomplish it short of authoritarian political mechanisms have eluded us. But even were we to progressively achieve the egalitarian program and approach a just economic and social distribution, I believe that the moral problem de-fined here would remain, though perhaps in less acute form. Many would still be tempted to crime, and deterrence seemingly would still be required. It would still be true that genuinely just punishment would not suffice to deter avoidable harm to innocent members of the community, or to enforce genuinely just distributive rules” (Goldman, 58). The thing I want to emphasize here is that at the end of all his analysis of commonly held positions for the justification of punishment, what Goldman finds to be the area most likely to lead to a justifiable system of punishment is precisely the area I wish to focus on-social inequities.

What I endeavor to do in the rest of the paper is to answer the questions Goldman leaves out with his alternative. I would argue that while Goldman’s conclusion that the problem with punishment can be solved by addressing the root cause of criminality is nothing short of insightful, it is at the same time incomplete. What I suggest, not only



answers *my* fundamental concern with punishment— how is there room for remorse in what simply seems to be a matter of getting what one deserves—it also embraces Goldman’s suggestion that the solution to the problems of justifying punishment is addressing the inequalities in social conditions that have been shown to dramatically influence one’s propensity for criminality. In particular, what Goldman fails to acknowledge in his paper is precisely what motivated mine to begin with—the counterintuitive psychological and emotional response that we have to punishment. In other words, Goldman does not acknowledge the role the remorse we feel when we are demanded by justice to inflict suffering on wrongdoers in the form of punishment plays in suggesting precisely where the problem in justifying punishment lies. Very briefly stated, the reason why we both have a hard time justifying punishment and, further, why we cannot help but feel remorseful when we punish is because we are in some sense complicit in causing the very criminal activity we then come to punish. The complicity comes as a result because as a society we allow the very disparities in social conditions to exist that are so fundamental in leading to wrongdoing. To establish this controversial claim I will look to John Deigh’s and David Dolinko’s [The Oxford Handbook of the Philosophy of Criminal Law](#) on shared societal responsibility. Additionally, while Goldman’s analysis made no mention of private punishment, understanding the problems of punishment as the results of complicity and allowing prevailing social disparities also sheds light on steps that could be taken to better address cases of private punishment such as what is done in our schools.

However, while it may be helpful to understand what the root cause of our both our trouble justifying punishment as well as the reason for our feeling of remorse, it

would certainly be even more helpful to have a tractable alternative that addresses both of those concerns. The alternative I suggest is one which I have already discussed—rehabilitation. Very briefly, despite the fact that Goldman doesn't realize it, rehabilitation is a crucial way of achieving Goldman's suggestion of addressing societal inequities because it fundamentally seeks not to continue to disadvantage and marginalize wrongdoers, but contrarily seeks to address the cause of their particular act of wrongdoing and help them to not repeat it. Rehabilitation also similarly allows for the justified execution of private punishment because by addressing our concerns with criminal punishment, due to fact that the concerns with private punishment are in essence the same, it address the elements of tragedy in private punishment as well.

### Remorse, Social Injustice and Criminality

*"We find that all of us, as a society, are to blame, but only the defendant is guilty"-Michael Maslin*

If remorse is generally understood as deep feelings of regret or guilt<sup>14</sup> for one's *own* actions, why then have I been using it to describe the psychological and emotional response that we often feel as a result of punishment that we have no personal role in imposing? In other words: how could I possibly claim that we are complicit in causing wrongdoing that you or I had nothing to do with? You or I didn't tell Derrick to make those bad friends and participate in a robbery. We didn't coerce the other students in my school into misbehaving and disrupting the classroom experience. We certainly didn't force inner city youths to join gangs, sell drugs, steal cars or kill each other. In fact, most of us have never been personally involved in any major crime of any sort. However, while it may indeed be the case that most or all of us have never been a physical

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<sup>14</sup> Here meant to be understood as analogous

accessory or instigator of criminality, as a society we still permit the social conditions to flourish that encourage crime to prevail predominantly amongst those in the lowest socioeconomic classes. I argue that is precisely because of our permissibility of social injustice that we *are* complicit in wrong doing and, furthermore, the remorse we feel is warranted.

There may be a general objection to the fact that I am suggesting that our emotional response to punishment is grounds to think that something about punishment is unjustifiable on the grounds that it would be imprudent to let emotional responses affect our rationality. In other words, the worry that we are permitting our feelings to allow us to become squeamish in the face of the ugly chore of making our fellow man suffer. However, what I am claiming here is not that it is our emotional response to punishment that leads me to the conclusion that our current system of punishment is unjustifiable but rather that by paying attention to our psychological/emotional response of remorse, we realize that this remorse has the ability to suggest punishment may be an instance in which we may be morally responsible to some degree. It is this important role that remorse has to play in suggesting our complicity that Goldman leaves out and it is here that I argue Goldman's argument could be expanded as I attempt to do in this paper.

Furthermore, before continuing it is important to make it clear exactly what I mean when I say that we are complicit in criminality. While there is a perhaps a more robust legal sense in which one can be complicit, the complicity I am referring to here is far more general. While both types of complicity, the legal and the more general, can lead to wrongdoing, the former implies some kind of malicious intentionality that I do not want to assume happens in the case of the social injustice we allow to prevail. In other

words, in the legal sense complicity is usually understood as either knowingly participating in a crime as an accomplice or intentionally lending aid to a criminal in some fashion-- for example, the getaway driver in a bank robbery. However, the sense of complicity I am referring to here does not necessarily involve this kind of intentional contribution to wrongdoing. Instead, the type of complicity I want to focus on here is the sense in which we can call a person who stands by and watches a man beat his wife in the streets and does nothing to intervene is complicit in causing her injury. More specifically, what I mean by complicit here is that in the case of the social injustice that leads to crime, although we could act in opposition to stop wrongdoing, we do not, thus making the inevitable crime partly our responsibility.

A quote by Jeffery Reiman in the Oxford Handbook of Philosophy of Criminal Law sums up the mitigating factors caused by social inequities in the following way “[w]hen crimes are predictable responses to unjust circumstances, then those who benefit from and do not remedy those conditions bear some responsibility for the crimes and thus the criminals cannot be held *wholly* responsible for them in the sense of being legitimately required to pay their full cost” (Deigh, Dolinko, 446). What this quote suggests is that because a disproportionate amount of the criminal activity in this country can be traced back to issues of social disparities that we, as a society, allow to prevail, we should not be so readily disposed to hand out “deserved punishment” because part of the blame lies with us as well. Beyond that, what I take from this type of sensitive theory to issues of social justice is that there really is a sense in which we *are* meaningfully responsible for wrongdoing and in which our feelings of remorse are a natural consequence of the role we play.

Importantly, the reason for the existence of such positions which call attention to the problems caused by disparities in social conditions is because issues of social justice do exist and both their existence and their relation to wrongdoing is supported by empirical evidence. As is summarized in an article titled “Poverty, Urbanization and Crime” by Flango and Sherbenou in the journal *Criminology* “In an effort to evaluate the situational determinants of crime, principal components analysis was used to reduce 59 demographic and socioeconomic characteristics of 840 American cities to six independent factors: affluence, stage in life cycle, economic specialization, expenditures policy, poverty, and urbanization. When regressed upon crime rates two of these six factors, urbanization and poverty, were found to be the more important criminogenic forces” (Flango and Sherbenou, 331)

Beyond that more general assertion as to the relation between poverty and crime, an article in the *Justice Policy Journal* of the Center on Juvenile and Criminal Justice by Brown and Males titled “Does Age or Poverty Level best Predict Criminal Arrest and Homicide Rates” has managed to represent the correlation between poverty and violent

**Table 1. California arrest, homicide death, and sociodemographics by age group, 2006**  
Mean rates per 100,000 population  
(weighted):

Age Group	Arrests for:			Percent of population that is:				
	Homicide	<u>Violent crime</u>	<u>Felony</u>	Homicide death	In poverty	Male	Black	Hispanic
15-19	18.49	792.6	3,237.1	15.8	16.1%	51.3%	7.4%	43.2%
20-24	19.81	903.4	3,890.7	20.0	18.7%	52.1%	7.0%	40.5%
25-29	13.36	793.2	3,357.7	16.2	13.8%	52.1%	6.5%	43.4%
30-34	6.53	588.0	2,474.9	9.3	11.3%	51.2%	5.9%	42.3%
35-39	3.58	432.4	1,834.7	6.7	10.1%	51.1%	6.1%	38.5%
40-44	3.64	388.5	1,724.6	5.4	9.3%	50.8%	6.4%	34.0%
45-49	3.01	316.0	1,426.5	5.8	8.2%	50.2%	6.4%	28.6%
50-54	2.10	179.0	774.9	4.8	8.2%	49.3%	6.0%	24.7%
55-59	1.52	110.6	464.7	3.3	8.1%	48.7%	5.7%	21.0%
60-64	0.88	59.6	221.5	2.7	9.5%	48.1%	5.5%	19.6%
<u>65-69</u>	<u>0.55</u>	<u>29.8</u>	<u>95.4</u>	<u>1.1</u>	<u>8.0%</u>	<u>47.1%</u>	<u>5.9%</u>	<u>19.0%</u>
All ages	6.68	417.6	1,773.0	8.3	11.0%	50.2%	6.3%	32.2%

Note: the values for crime and homicide rates represent total counts divided by total populations and are unadjusted for the differing racial compositions of each age group, shown in the righthand columns.

crime rates in form of a table of information as shown below.

As can be seen from this data a significant portion of the people arrested for homicide in California in 2006 were either poor, young, or a member of a minority group. For example, 32.2% of the arrested people were Hispanic and another 6.3% percent were black and finally an average of 11% of the population were below the poverty line. A combination of these figures leaves us with a total of 49.5% of the population of violent criminals who can be classified as members of disadvantaged or minority populations seemingly unequivocally supporting my thesis that social injustices and racial discrimination that we allow to prevail is a direct contributor to criminality.

The disparities can be further seen in the following graph from the same study which more specifically measures the members of each race arrested for poverty that were also below the poverty line. As can be seen below, the results are appalling, clearly showing that a disproportionate amount of crime committed by minority races, in this case Blacks and Hispanics, are below the poverty line. Perhaps most startling is that around a quarter of both Blacks and Hispanics who commit crime in the 15-19 age group are below the poverty line. This is particularly worrisome considering that crime committed at such an early age is often just the beginning of a life of deleterious run ins with the law as evidenced by cases such the one involving my cousin Derrick as well as the high rates of recidivism .

**Table 2. California violent crime and poverty rates by age, race, 2006**

<u>Age group</u>	<u>White*</u>	<u>Black*</u>	<u>Hispanic*</u>	<u>Poverty rate</u>		
				<u>White</u>	<u>Black</u>	<u>Hispanic</u>
15-19	388.4	3,366.6	852.2	8.5%	25.6%	22.6%
20-24	542.2	2,827.5	1,137.3	14.4%	23.4%	20.4%
25-29	547.2	2,486.3	934.2	8.5%	20.5%	18.3%
30-34	464.2	1,848.3	656.6	6.8%	17.8%	15.9%
35-39	352.0	1,327.6	469.8	6.3%	14.5%	16.9%
40-44	336.5	1,409.2	361.1	5.9%	13.8%	15.8%
45-49	269.6	1,251.2	282.7	5.5%	14.4%	10.7%
50-54	146.1	778.5	166.4	5.5%	14.2%	12.5%
55-59	88.4	516.2	102.1	5.7%	15.4%	13.1%
60-64	47.4	240.2	62.2	6.6%	18.8%	14.8%
<u>65-69</u>	<u>25.3</u>	<u>94.9</u>	<u>30.2</u>	<u>5.0%</u>	<u>15.0%</u>	<u>13.8%</u>
All ages	291.6	1,467.8	459.5	7.2%	17.6%	15.9%

\*Violent crime arrests per 100,000 population

Finally, this last graph shows the rather compelling correlation between the severity of poverty and amount of that group responsible for violent crime amongst those in poverty who have committed violent crimes. For example, as can be seen in the age group 15-19, 76% of the impoverished people who commit crime are amongst the poorest bracket of people. In general this graph lends itself to the conclusion that the more severe the poverty, or in other words injustice, the more likely it is that person will be disposed to commit criminal acts.



**Table 3. Percent of population and violent crime arrests by age group and poverty bracket, California, 2006**

<u>Age</u>	<u>Percent of population by poverty bracket</u>			<u>Percent of violent crime arrests by poverty bracket</u>				
	<u>Population</u>	<u>0-9%</u>	<u>10-19%</u>	<u>20%+</u>	<u>Arrests</u>	<u>0-9%</u>	<u>10-19%</u>	<u>20%+</u>
15-19	2,865,987	35%	16%	49%	22,585	16%	8%	76%
20-24	2,639,193		57%	43%	23,847		44%	56%
25-29	2,432,268	35%	48%	17%	19,310	24%	48%	27%
30-34	2,547,734	46%	51%	2%	14,940	32%	60%	7%
35-44	5,733,491	57%	43%		23,508	42%	58%	
45-54	5,269,455	70%	30%		13,334	57%	43%	
<u>55-69</u>	<u>4,794,381</u>	<u>76%</u>	<u>23%</u>	<u>1%</u>	<u>3,613</u>	<u>59%</u>	<u>38%</u>	<u>3%</u>
All	26,282,509	52%	37%	12%	121,137	27%	42%	31%

Note: empty cells indicate no races in that age group had average poverty levels represented in that poverty bracket.

In regard to the matter of private punishment, while I admit I do not address the relation between social injustice and non-criminal wrongdoing with the same rigor as with criminal offenses, using simply an appeal to common sense, I argue that in the same way that social injustice can be said to be a major factor in causing criminal offenses, it is easy to see how it can also cause wrongdoing outside of the purview of criminal law. For example, it would be easy to imagine how a high-stress and/or chaotic family environment caused by the constant pressures of poverty could cause substandard parenting. With the constant pressure to make ends meet, we can imagine how difficult it would be to pay the necessary attention to each child, especially in the case of a high need child.

What I mean here by substandard parenting is parenting which fails to address the emotional, physical, or attention needs of the child. It is unlikely that such an overburdened parent would have time to read their children bedtime stories, take them to the park, bring them to various playdates or participate in many other hallmarks of great parenting. Neither would they likely be as disposed to encourage their child's innate

talents and passions by paying for music lessons and instruments, buying sports equipment or arts. Neither would these parents be able to afford specialized daycare nor afterschool tutors to address any problems that may arise in a child's education.

Additionally, when we consider the sheer amount of social injustice we tolerate, the propensity for substandard parenting is even further increased. For example, when we consider the fact that because poverty often comes from a chain of poverty, it is likely that these parents might also lack positive role models because their parents too were substandard due to the stress poverty put on them.

Furthermore, we can also easily imagine how substandard or ineffective parenting would then lead to misbehavior in the children who, as a result of their occupied caretakers, lack the emotional support and attention they need. As a result, we can imagine how these children would seek that attention and support in unhealthy and potentially destructive ways

Perhaps our complicity would not be so meaningful if it were the case that social injustice and its effects on criminal activity were unavoidable. However, this is not the case as is evidenced by the fact that many other countries do not have our problems with either social injustice or crime. Despite the fact that the United States is by no means the most populous country nor the poorest, as shown by the chart below, it has the highest prison population of any other country thus betraying a unique social injustice that we allow to persist and that we and we alone are responsible for.

Country	Prison population	Population per 100,000	Jail occupancy level %	Un-sentenced prisoners %	Women prisoners %
US	2,193,798	737	107.6	21.2	8.9
CHINA	1,548,498	118	N/A	N/A	4.6
RUSSIA	874,161	615	79.5	16.9	6.8
BRAZIL	371,482	193	150.9	33.1	5.4
INDIA	332,112	30	139	70.1	3.7
MEXICO	214,450	196	133.9	43.2	5
UKRAINE	162,602	350	101.3	19.5	6.1
SOUTH AFRICA	158,501	334	138.6	27.5	2.1
POLAND	89,546	235	124.4	16.8	3
ENGLAND/WALES	80,002	148	112.7	16.4	5.5
JAPAN	79,052	62	105.9	14.7	5.9
KENYA	47,036	130	284.3	45.6	42
TURKEY	65,458	91	77.4	47.7	3.3
NIGERIA	40,444	30	101.5	64.3	1.9
AUSTRALIA	25,790	125	105.9	21.6	7.1
SCOTLAND	6,872	134	107.5	21	4.4
N IRELAND	1,375	79	91.5	37.4	2.2

SOURCE: International Centre for Prison Studies

All of this data serves to paint a compelling picture as to the fact that there *is* a salient correlation between crime and the societal injustice we allow to prevail. However, another factor to consider when contemplating the extent of our role in permitting the social injustices which in turn cause crime and other acts of wrongdoing is the extent to which we have the ability to change the social conditions that cause the problems. That is, because part of the nature of any moral obligation must be the ability to fulfill it and if it is not the case that we can fulfill the obligation in question, it is meaningless to say we “ought” to do so. However, as members of a democracy we do not have such an excuse. Part of the nature of a democracy is that, in principle, the people are responsible in a

relevant moral sense for the actions of *their* government. That means that although it is up to elected officials to actually determine and enforce legislation and distribution of resources that will ultimately determine the levels of social justice, we the people determine who makes those decisions. Because we do, in a relevant sense, have power to enact positive social change, we are responsible for the prevailing social conditions.

In order to remove our contemporary society from responsibility, some might argue that current social conditions are the products of generations of discrimination and other such factors we had no control over. While that may be the case, it is certainly true that, due to our relatively direct role in government, we *do* have the ability to force change in the interest of correcting the disparities as they become apparent. In other words, it is not necessarily the fact that we cause the social conditions that lead to criminality that make us complicit enough to warrant remorse, but rather it is the fact that we allow these disparities to continue to prevail.

With the understanding that such societal inequities exist in our very own society and with the further general understanding that this is a direct cause in creating the conditions for crime or other wrongdoing, it is no surprise that our emotional and physiological reaction to punishment is anything other than remorse. In fact, it is precisely due to our indirect involvement in criminality that I chose to use the term remorse as opposed to another such as regret. Sure, I can regret things that I am responsible for but those cases still do not always have the same weight as remorse which directly implies some moral failing on the part of the speaker. For example, I may “regret” when I decide to eat onions for lunch before an important business meeting. I can “regret” that it rained on the day I was supposed to go on a picnic. I can “regret” that I got caught

in traffic on the way home. I can “regret” that the store ran out of my favorite cereal. I can even regret seriously wrong things. For example, I “regret” that the holocaust and the apartheid occurred. However in none of these cases would the word remorse be appropriate because there was no involvement direct or indirect. I do not regret punishment like I regret eating onions or getting stuck in traffic; the response to punishment is much more meaningful. The term regret carries with it no sense of moral responsibility whereas the term “remorse” does. Unlike the holocaust or the apartheid to which I am entirely causally separated<sup>15</sup>, I am complicit in the social conditions that lead to crime and punishment thus making remorse the correct term.

It is also important to note that complicity doesn't always have to be straightforward in the same sense that one is straightforwardly complicit when she knowingly provides the guns for an armed bank robbery. Let's consider a case where Randy buys a puppy. However, instead of training the dog to be friendly, roll over, play dead and such, he trains it to attack children using dummies and auditory stimulation. He lives by himself in a relatively remote location so he thinks and even hopes that his creation will never actually attack anyone but, for some reason, he finds training the dog in this way is pleasant for him. One day, some children on a hike in the mountains stumble upon Randy's remote cabin property and are mauled by the dog. Despite the fact that Randy had nothing to do with the attack and the fact that he did not ever intend anyone to come to harm as a result of his actions, it would not be controversial to claim

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<sup>15</sup> It would make sense, however, if members of the societies that permitted the conditions leading to atrocities such as the holocaust and the apartheid felt remorse as opposed to regret because they would be complicit in those atrocities in the same way we, as U.S. citizens and voters, are complicit in criminality.

that he is still complicit in the attack because if not for the fact that he created these dangerous conditions, the attack would not have taken place.

In the same sense that Randy is in some sense responsible for the mauling of the child, we too are partially responsible for wrongdoing. In other words, just as Randy's decisions to allow the conditions that would reasonably lead to the mauling of children makes him complicit in the mauling, because we allow the conditions that would reasonably lead to many of our impoverished and disadvantaged members of society to commit acts of wrongdoing, we are also complicit.

It is important to note that it is not at all incompatible with my view that some crimes produce large amounts of remorse while others seemingly none at all. In some cases the societal externalities play a larger role than others. That is, some crimes can be more easily traced to social inequalities than others. For example, if we imagine a young man from Compton is arrested for selling drugs to children to feed his family, it would not be hard to reduce his criminality at least in part, to the well-known and violent, poor, and gang-ridden area in which he grew up. On the contrary, if a wealthy celebrity living in a Hollywood mansion was convicted of the same crime it would be very difficult to reduce his criminal act to social conditions that we as a society could be held complicit in creating. Because it is precisely our role in permitting the social conditions that lead to wrongdoing that leads to our remorse, it follows that in cases where the social conditions we created play little or no role in the criminal act in question we do not feel the same level of remorse, though it of course entirely reasonable that some may still regret the fact that another person is facing considerable suffering.

At this point it would make sense to address the natural objection to my rather controversial view which would take the form: if we are complicit in criminality, are we then unjustified in punishment? However, what I am saying here does not necessarily mean that punishment is not justified but rather that in order to feel fully justified in imposing punishment and to avoid the feelings remorse we need to address the social inequities that plague our society. In particular, what I lay out in the next chapter is a system of punishment that does not seek to harm wrongdoers but rather to help them by addressing the root cause of their criminality which includes social inequities. Very briefly, what I propose is a system of punishment centered on rehabilitation. Because the goal of this rehabilitation centered punishment is to help the wrongdoer address the root cause of his criminal dispositions, we avoid feelings of remorse because we are working towards remedying precisely the social injustice which Goldman finds so troubling. Furthermore, we avoid the nasty consequence so prevalent in current punishment in which a wrongdoer spends painful months and years imprisoned only to be released to the same conditions which caused the criminality in the first place. In other words, criminal punishment neither has to be so painful for the wrongdoer or the bystander.

### **Rehabilitation as Punishment**

Before proposing my final solution to the problem, it may be helpful to just briefly recap what I have done up to this point. Thus far what I have claimed is that the way in which punishment is currently carried out in our current criminal justice system paradoxically and invariably leads to deep feelings of remorse despite the fact it is supposed to be a morally good action. I then go on to claim that this remorse is a natural response to the fact that we are in some sense complicit in permitting the existence of the very social injustice that leads too much of our crime. However that leaves us with the important question of what to do next. Because punishment is, at the very least, necessary for the preservation of society, there may be a real worry, although not necessarily morally justifiable, for the greater good of society we must allow punishment to continue. If we recall, it is precisely this worry that motivated Goldman's paper. However, as Goldman suggests in the final paragraph of his paper "the final, most fundamental, and most promising alternative [means of making punishment justifiable] would be (not surprisingly) to attack the social and economic causes of crime by reducing the great inequalities in our society" (Goldman, 58). In other words if we take action to address the social injustice that cause our feelings of complicity it need not be the case that punishment continue as necessary evil (but evil nonetheless). I argue in this chapter that way this can be accomplished is through a system of punishment focused on



rehabilitation which due to its central aim of addressing the cause of criminality, would ameliorate some of our complicity by striving to correct social injustice.

It has been said that, perhaps a little in jest, that all philosophy is simply a footnote to Plato. Regardless of whether or not we can agree this is the case, what is undoubtable is that Plato, not surprisingly, had a well-developed theory of just punishment albeit spread out in several of his different works. Where this becomes relevant is that, as will be further explained throughout this chapter, it is precisely the kind of rehabilitation centered theory of punishment, though perhaps not in every detail, that I want to endorse.

Plato begins the discussion of just punishment in his masterpiece, The Republic. While what he presents in the Republic is far short of comprehensive what Plato succeeds in doing is hinting at what will later become a far more robust theory of punishment in his later works and also laying down certain base principles on which his later writings will predicate. Interestingly enough, he does this rather by accident while attempting to accomplish something far more ambitious, define and characterize the true nature of virtue of justice. And just like many of Plato's other philosophical conclusions, he lays out his argument in the form of a dialog using his teacher Socrates as the main character. The dialectic develops as follows:

*“Socrates: Should a just man really harm anyone whatsoever?”*

*Polemarchus: Of Course. He should harm those who are both bad and enemies.*

*Socrates: When horses are harmed, do they become better or worse?*

*Polemarchus: Worse.*

*Socrates: With respect to the virtue<sup>16</sup> (that makes dogs good, or to the one that makes horses good)?*

*Polemarchus: With respect to the one that makes horses good.*

*Socrates: And when dogs are harmed, they become worse with respect to the virtue that makes dogs, not horses, good?*

*Polemarchus: Necessarily.*

*Socrates: And what about human beings, comrade; shouldn't we say that when they are harmed, they become worse with respect to human virtue?*

*Polemarchus: Of course.*

*Socrates: But isn't justice human virtue?*

*Polemarchus: Yes, that's necessarily so, too.*

*Socrates: Then, my dear Polemarchus, people who have been harmed are bound to become more unjust.*

*Polemarchus: So it seems.*

*Socrates: Now, can musicians use music to make people unmusical?*

*Polemarchus: No, they can't.*

*Socrates: Or can horsemen use horsemanship to make people unhorsemanlike?*

*Polemarchus: No.*

*Socrates: Well, then, can just people use justice to make people unjust? In a word, can good people use their virtue or goodness to make people bad?*

*Polemarchus: No, they can't.*

*Socrates: For it isn't the function of heat to cool things down, I imagine, but that of its opposite.*

*Polemarchus: Yes.*

*Socrates: Nor the function of dryness to make things wet, but that of its opposite.*

*Polemarchus: Of course.*

*Socrates: So the function of a good person isn't to harm, but that of his opposite.*

*Polemarchus: Apparently.*

*Socrates: So it isn't the function of a just person to harm a friend or anyone else, Polemarchus, but that of his opposite, an unjust person.*

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<sup>16</sup> "Virtue (*arête*) is that state or property that makes something good. For example, the virtue of a knife might include having a sharp blade" as defined by the glossary (p 329) of C.D.C Reeve's translation of Plato's [Republic](#).

*Polemarchus: I think you are absolutely right, Socrates.*

*Socrates: So if someone tells us it is just to give to each what he is owed, and understands by this that a just man should harm his enemies and benefit his friends, the one who says it is not wise. I mean, what he says is not true. For it has become clear to us that it is never just to harm anyone” (Plato, The Republic, Reeve translation, 2004, p 11-12).*

What Plato lays out in this dialog seems entirely counterintuitive to any notion of punishment whatsoever because it explicitly prohibits harm, a seemingly central and indispensable element of punishment. In fact, if we recall the retributivist and the utilitarian thesis both endorsed the harm caused by punishment; they just justified for different reasons. To be more specific, as outlined in the Goldman chapter, the retributivist endorses harm as a way of giving the wrongdoer her just deserts while the utilitarian justifies the harm because it, all things considered, bestows greater benefits on society. Furthermore, both the utilitarian and the retributivist would undoubtedly claim that the harm bestowed by punishment, at least when done correctly, is overall a just practice though that too they would claim for different reasons. That being said, Plato’s suggestion to Polemarchus that inflicting any harm on anyone is unjust would seem to indict any system of punishment for wrongdoing.

However, we would be making a mistake if we were to take Plato’s prohibition of harm to conclude that Plato did not endorse punishment. Of course, Plato endorsed punishment but the conception of punishment he endorsed was far different from our current conception. The particulars of this nuanced conception are largely brought out in his Dialog the Gorgias and are nicely summarized in the book Plato on Punishment by Mackenzie which I will use to lay out Plato’s view. Plato’s discussion of punishment in the Gorgias, just like many of the philosophical puzzles brought out in Plato’s works,

begin with a question posed to Socrates. In this instance the question I want to focus on is the one of whether or not it's better for a wrongdoer to be caught and punished for his wrongdoing or for him to get away with it and avoid paying the penalty. As McKenzie states it, for Plato the answer is the more controversial as he argues that "the unjust man who gets away with [wrongdoing] is worse off than the man who is punished for his wickedness" (Mackenzie, 179).

In order to argue that a wrongdoer should be better off having been punished than getting away with it, Plato had to argue that punishment is inherently beneficial.

Mackenzie breaks the argument down into the following 10 premises:

1. *"Paying the penalty [dikēn didonai] is the same thing as being punished justly [dikaiōs kolazesthai]."*
2. *To every agent there corresponds a patient.*
3. *The patient will be such as the agent makes it.* (as for any transitive verb, if someone hits, something is hit)
4. *The effect on the patient may be qualified in exactly the same way as the act is qualified (476d3)...*
5. *The man who punishes rightly [orthōs] punishes justly.*
6. *So the punisher does just things, and the punished suffers just things* (from 5 and 6)
7. *All just things, qua just, are fine (476b1)*  
*E. Of two fine things, that one is finer which exceeds the other in pleasure or benefit or both. Similarly, of two shameful, that one is more shameful which exceeds the other in pain or harm or both.*
8. It would be absurd to suppose that he who suffers a just, and so fine, punishment enjoys a pleasure. (as continued in a footnote) That punishment is painful to the punished is, of course, true by definition C.F. Ch. 1c.
9. So punishment is fine because it confers a benefit.
10. Therefore the victim of punishment benefits from it." (Mackenzie, 180)

In summary, this argument claims that just punishment is by nature beneficial because by imposing a just act upon a wrongdoer, in this case punishment, one imposes a good thing upon the wrongdoer as justice by nature is good. Furthermore, because we can certainly not claim punishment is good because it is a source of pleasure it must be so

that punishment is good because it is beneficial. However, as Mackenzie is quick to point out, this argument is heavily flawed and overly ambiguous. Among other salient objections, there is a certainly a problem in the ambiguity in what Plato means by “just punishment.” As Mackenzie rightly questions “does Plato mean [just punishment is] what is exacted in accordance with the law, or in accordance with our moral intuitions? Clearly the two need not be the same. Second, derivate from this is an ambiguity about what is legal: if Plato is discussing legality, does he refer to actual laws, as he obeyed them, or to an ideal legal or penal code?” (Mackenzie, 181)

Importantly, I need not, and shall not here defend either Plato’s problematic argument for how punishment is inherently beneficial to the wrongdoer or his motivation for reformative punishment as a way to impose virtue which would be inherently good for the subject. I will, however, take from Plato the spirit of what he is saying here which is that punishment should primarily benefit. Furthermore, I contend that focusing on helping the wrongdoer we do not simply unfairly advantage his interests but rather we help ourselves. In other words, if we invest in rehabilitative punishment that addresses the root cause of criminality we simultaneously act in an effort to retard further criminal acts. Furthermore, by focusing on rehabilitation we can avoid feelings of remorse because by doing so we acknowledge and act to correct our role in causing criminality as well as the extreme difficulty of escaping the conditions that lead to crime.

Naturally not all crime comes as a result of some social injustice and some punishment seems very well deserved. Therefore there is a question as to how we can endorse rehabilitation for those that have committed crimes independent of the influences of social injustice. First, punishing using rehabilitation in all cases bestows a fundamental

benefit upon society in general by reducing the likelihood that further crime will be committed by the individual in question because it seeks to address the cause of criminality regardless of the cause. We should also keep in mind that just as both retributivism and utilitarianism are based on their respective moral principles, punishment centered on rehabilitation is also backed by very respectable moral principles: the moral principal that it is good to help people in general and that it is better to help people than harm them.

Rehabilitation, additionally, conveniently avoids many of the most pressing worries that the retributivist must contend with. In particular, the retributivist must be ever vigilant in making certain that the punishment imposed on the wrongdoer is equivalent to the amount of harm due to wrongdoer. In other words, the punishment must always fit the crime. As previously stated, the consequences for punishing a wrongdoer beyond what is deserved are equivalent to those of harming an innocent person for no reason at all. However, when it comes to rehabilitation the stakes are much different because by rehabilitating a wrongdoing we are not explicitly seeking to harm them but rather help them. Therefore, the rehabilitationist has a little more flexibility in determining exactly how much rehabilitation is warranted by each act of wrongdoing because the consequences of being wrong are not additional years of suffering but rather more time spent in an effort to correct what can often be very complex issues.

To the same degree, rehabilitation also avoids the pressing concerns that utilitarian must contend with. As outlined in the Goldman chapter, the utilitarian has a serious worry of not being able to avoid undeserved punishment in an effort to assure that

its primary goal of deterrence is reached. However, because rehabilitation is not focused on deterrence it avoids this concern entirely.

There may, however, be some valid concern that punishment focused on rehabilitation would not have the effect in deterrence that some might find indispensable to any system of punishment. While I do still argue that punishment centered on rehabilitation is the best option after an individual has, unfortunately, already committed a criminal offense, the need for rehabilitation could be greatly reduced if we launched a preemptive strike at the heart of issues that cause criminality through the augmentation of our educational system, the implementation of outreach programs and other such preemptive measures.

This augmentation would not only decrease the need for punishment by reducing the amount of crimes committed, it would also reduce criminality by decreasing the circumstances in which criminal activity is tempting by emphasizing the likely long-term cost a life of crime will incur at a young and impressionable age. For example, I do not think it is at all unreasonable to suppose that a frank explanation of exactly what unsavory realities such as the risk of drive-by shootings and raids by enemy gangs, the constant fear of apprehension by the law and endangerment of loved ones that inner city gang life entails would discourage many young people from feeling inclined to join as opposed to the more glorified explanation provided in the streets.

Another reason to prefer a system of punishment predicated on a desire to rehabilitate like the one I am endorsing here is because it would seemingly be preferable to its alternatives behind a veil of ignorance such as the one described by Rawls in his book A Theory of Justice. The veil of ignorance taken from Rawls' highly influential

book is a well-known philosophical tool to measure if a social practice is truly just. As Rawls suggests, to determine what social policies are truly just for all citizens we should imagine that before entering into the society we are placed behind this veil of ignorance thus making it impossible to know where in society we will end up meaning we could be poor, rich, a minority, a majority, a man, woman, child, old person or any person in any societal status. Because we don't know where will end up and because a rational agent would never knowingly condemn herself to suffer injustice and because we cannot gamble on what societal position will end up in, the idea is that each person would only elect to impose the social policies that were fair to all people across all social levels. That being said, it would make sense that people would elect to impose a system of punishment that neither has the risk that they could be over punished as a means to deter other crime, as would be the worry under the utilitarian system, or the risk that they could be punished severely as a means to pay back their debt to society, as would be the worry under the retributive system. I argue it is far more likely that people would elect to be part of system that sought to address any injustices, societal disadvantages and criminal predispositions as would be the case with rehabilitation.

Some might argue against my view that there would still be room for remorse in a rehabilitation-centered view of punishment. They may, for example, appeal to a case in which a wrongdoer immediately upon committing the criminal act, or shortly thereafter, has a drastic and complete change of heart in which she immediately understands the error of her ways and is deeply regretful for her actions. In other words, she is instantly rehabilitated, having absolutely no desire to ever commit such an act again thus rendering the kind of institutionalized rehabilitation I am proposing here useless. In response, I



would argue that such cases are rare as evidenced by the high rates of recidivism and further that it would be practically impossible to determine who is genuinely rehabilitated as opposed to those looking to escape their punishment

This also leads to the more general question as to how we would be able to determine exactly when rehabilitation is achieved. What I would suggest is instead of having a prison parole board mainly consisting of prison officials and administrators, that the parole boards be consisted of almost entirely trained psychiatric staff and experts in behavior prediction who would be more readily disposed to form accurate predictions that the wrongdoer has been successfully rehabilitated. In the cases where rehabilitation is impossible, which is conceivable, it would make sense to continue to work the individual to reach the highest level of rehabilitation possible but lifelong incarceration could be justified in these cases in the interest of protecting society from the inevitable harm caused by their release.

The retributivist may object my rehabilitative punishment proposal on the grounds that by focusing on so much on the interest and betterment of the wrongdoer we would be giving the wrongdoer far more than he deserves. However, we must remember that the rehabilitative punishments would still be an exercise in the attempt to give people what they deserve. In fact, it would likely involve many of the same deprivation of rights that criminals currently face in our criminal justice. The chief difference is one of goals. For the retributivist, what matters is that the wrongdoer suffers as a way to pay the debt she owes to society. On the other hand for the rehabilitationist, what matters is still that the wrongdoer get what she deserve but also that we acknowledge that we may have played a role in causing the criminality and work to address it. Furthermore, as I have already

suggested, by seeking to help the wrongdoer we are simultaneously helping ourselves and looking after our interests as well.

### **Conclusions**

There might always be something regrettable about punishment due to fact that, under any conception of punishment, we must engage in the unsavory task of depriving our fellow man of certain rights and freedoms for extended periods of time. That being said, punishment should always be imposed with care and restraint. However, I argue that punishment need not be a source of remorse. By acknowledging the role our remorse plays in showing that we are in some sense complicit in the wrongdoing that leads to the need for both private and criminal punishment we can be led to the natural conclusion that we must work in an effort to correct the social injustice that in large part leads to criminality. In addition to some necessary societal reform, the way in which we both satisfy the need for some system of punishment as well as ameliorate the social issues that cause criminality is through a system of punishment similar to one which Plato advocates for, a system based on rehabilitation. This system of rehabilitation in addition to being preferential to the retributivist and utilitarian alternatives also seems to be the most just way of imposing punishment in a system so full of social injustice because it seeks to target and eliminate precisely the social injustice that causes our remorse in the first place.

While I am fully aware of the difficulty of enacting meaningful change to the societal conditions in an effort to assuage some of our complicity, I still argue that it a necessary burden that we must shoulder. In fact, it is precisely the kind of attitude that solely focuses on cost that retards progress because sometimes a costly long-term investment is necessary especially when considering the centuries of injustice we are trying to fix. It is no surprise that meaningful change will come at the cost of significant resources and lots of time but when we consider the alternatives—namely, an unjustifiable and remorseful system of punishment imposing unjustified harm to thousands of our citizens—the cost becomes far more reasonable and even necessary in the interest in living in a society in which we can morally endorse our system of punishment.

**Honor Statement**

As a student at Union College, I am part of a community that values intellectual effort, curiosity and discovery. I understand that in order to truly claim my educational and academic achievements, I am obligated to act with academic integrity. Therefore, I affirm that I will carry out my academic endeavors with full academic honesty, and I rely on my fellow students to do the same.

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