

Proportionality NC

I negate

Definitions:

Ought:

**Ralph Wedgwood**  **in 2006 explains that there is a**

(Ralph Wedgewood, Professor of Ethics at Oxford University, *The meaning of ‘ought’*, 2006 Oxford Press, www-bcf.usc.edu/~wedgwood/meaningofought.htm)

I have already cited the **distinction between the practical ‘ought’ and what Sidgwick called the “political ‘ought’”. The most striking difference between these two kinds of ‘ought’**, as I have suggested, **seems to be this: the practical ‘ought’ is clearly indexed to a particular agent and time, and it is a constraint on what “ought” to be the case**, in this sense, **that it should be realizable by what the agent thinks or does at that time; the political ‘ought’**, on the other hand, **is not indexed to any particular agent and time in this way.** **I might say, ‘The British constitution ought to be radically reformed’**, without having any particular agent *x* in mind (either individual or collective) such that I mean to say that *x* ought to bring it about that the British constitution is radically reformed.In that case, as I argued earlier, my statement does not contain any implicit reference to any particular agent. **My acceptance of this statement hardly commits me to *planning* on the radical reform of the British constitution; at most it commits me to *favouring the goal* of such radical reform**.‘Ought’ exhibits other sorts of contextual variation as well. For example, on some occasions, **therefore ‘ought’ seems to be relative to a particular goal or purpose.**

It would be complete bollucks to say that the United States Criminal Justice System refers to anything specifically. In the Cross Ex even my opponent was unable to tell me where a simple murder case could be appealed to if it happened in the State of Washington. And with rules like no double jeopardy there is no way to tell me where the process begins or ends. Thus trying to make a case about to how certain policy actions would be effective vs. Others are moot in so far as there really is no actor to base it off of.

Observation #1: Eye for an Eye is often misconstrued to philosophically denounce Retribution

**Flanders 2010 explains**

(Chad Flanders, Assistant Professor of Law @ Saint Louis University School of Law, *Retribution and Reform*, 2010, http://works.bepress.com/cgi/viewcontent.cgi?article=1000&context=chad\_flanders)

I start with a passage from Augustine that exemplifies this particular thread in the retributive narrative. **Augustine takes** this narrative from the Old Testament, and its principle of lex talionis, or the “law of the claw.” **The scriptural maxim** he is interpreting is **that one should take an eye for an eye and a tooth for a tooth. Many have heard this as a counsel for brutal revenge, and condemned it for this reason. For Augustine, the problem with taking “an eye for an eye” is not only conceptual, it is also scriptural**. In the New Testament, **Jesus says that we should not seek revenge, but rather “turn the other cheek” when someone has wronged us. Indeed, Jesus seems to** explicitly **repudiate the tenet that one should repay “an eye for an eye**” (“you have heard it said … but I say”). To put it in Whitman’s terms, **Jesus seems to be advocating that we replace a regime of harshness** (the law of revenge or an “eye for an eye”) **with a regime of mildness** (the law of compassion or love). **It would seem that we have to accept one and give up the other; we cannot have both. Augustine says that to interpret the two passages as contradictory is to make a mistake, for they are not in tension. Both, despite appearances, prescribe mildness. It is important to read the principle of an eye for an eye as a limiting principle; you can take an eye for an eye, but no more than an eye. To take more than an eye from someone who has taken out your eye would be disproportionate**. **This is the familiar equation of retribution and proportionality -- pay someone according to his desert, no more no less -- and Augustine makes it.**

Observation #2: Rehabilitation isn’t inherently a “more humane” approach to Punishment

**Charles Logan ’93 explains**

(Charles Logan, Professor of Law @ University of Connecticut Law School, 1993, *Meta-analysis and the Rehabilitation of Punishment,* Justice Quarterly Magazine, www.bop.gov/news/research\_projects/published\_reports/cond\_envir/oreprlogangaes.pdf)

**[Some scholars] argue that, “Rehabilitation is the only justification of criminal sanctioning that obligates the state to care for an offender's needs or welfare. We disagree. Rehabilitation raises the question of whether it is society's obligation to transform the inmate into a law-abiding citizen, not whether it is society's duty to treat the inmate humanely. None of the purposes of punishment directly defines a state's obligation to care for inmates. In fact, almost any justification of punishment might be interpreted to imply conditions that range from the brutal to the benign. Rehabilitation** in some of its paternalistic forms **is just as coercive as other justifications.** Inmates may well be "encouraged," or "persuaded" into treatment against their wishes. Retribution, often associated with harsh treatment, also can imply that a prolonged separation from society, proportional to the crime, is sufficient punishment, but that the prison climate must be safe and must offer enough amenities so that prison life is not inhumane

Observation #3: Utilitarian Calculus is impossible in so far as causes are impossible to distinguish

The problem with Rehabilitation and Retribution is that they can’t exist mutually exclusive to each other in the real world. Rehabilitation is retribution in so far as criminals are forced to go to it, and Retribution is rehabilitation is so far as the notion of punishment is supposed to stop the criminal from doing the action again. In practice the two effects of these principles overlap so much that it becomes impossible to distinguish where one starts, and where one begins. Therefore we have to evaluate each in principle of values rather than empirically.

Value: Justice (ONLY READ IF THE AFF DOESN’T READ A JUSTICE VALUE, OTHERWISE CONCEED).

Value Criterion: Fairness

Justice can only be achieved when social questions of fairness, proportionality and necessity are given consideration. Justice applies to all individuals in a society, therefore both the victim and the criminal need to be given equal consideration. Proportionality is also the only principle that can be applied across the broad spectrum of crime, from white collar crime to violent crime. Therefore prefer the standard that better understands the nature of Justice.

Contention #1: Retribution is the only way to guarantee proportionality

**Flanders 2010 explains**

(Chad Flanders, Assistant Professor of Law @ Saint Louis University School of Law, *Retribution and Reform*, 2010, http://works.bepress.com/cgi/viewcontent.cgi?article=1000&context=chad\_flanders)

**Retribution is** often seen as a **desirable** theory precisely **because it can explain proportionality while other theories of punishment cannot**. **This inability to explain how disproportionate punishments are unjust is considered a main objection against deterrence theories of punishment especially. If the goal of punishment is deterrence, then it is an open empirical question of how much punishment it will take to deter either the person or others from committing the crime in the future. It could, in principle, be endless punishment.** **That is to say, there is nothing built-in to the concept of deterrence that says any punishment for an offender is prima facie “too much.”** We won’t know that until we know what will optimize deterrence. **There is no reason in principle why we wouldn’t need to punish someone fifty, sixty, or a hundred years, to deter others from committing a similar crime.**

This ultimately begs the question, how much rehabilitation does it take until someone can become a productive member of society again? There is no answer to this question so eventually this leads to an endless amount of punishment. Rehabilitation inherently has no check on fairness.