The Limits of Pure Restitution

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Abstract: The theory of pure restitution claims that a state should not punish offenders, and instead it should be limited to exacting restitution from offenders. I begin the paper by assessing and rejecting Jesper Ryberg's critique of pure restitution. I then assess David Boonin's defense of pure restitution. I argue that Boonin's theory of pure restitution fails because it cannot rely on carceral nonmonetary interventions. After evaluating Boonin's theory, I advance three novel versions of common objections to pure restitution. I conclude that there are strong objections to any theory of pure restitution that have yet to be overcome.

Keywords: pure restitution; Boonin; Ryberg; restitutionism; punishment; victim; mandatory

Randy Barnett's 1977 proposal to replace punishment with "pure restitution" (which I will define below) provoked a flurry of debate about the theoretical and practical limits of victim restitution.[1] Could it replace punishment? To what extent could it successfully repair the harm done to victims and communities? Scholars advocating for restitution paved the way for amended, more defensible versions of pure restitution.[2] Of these versions, David Boonin's is by far the most comprehensive in responding to the many objections that have been raised against pure restitution. However, a recent critique from Jesper Ryberg aims to cut off this discussion by demonstrating that pure restitution is a self-defeating theory that can be laid to rest without further examination of the long-debated issues mentioned above.[3]

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[1]Randy E. Barnett, "Restitution: A New Paradigm of Criminal Justice," *Ethics* 87 (1977): 297-301.

[2]These scholars have not necessarily embraced pure restitution or the wholesale replacement of punishment. See: Mane Hajdin, "Criminals as Gamblers: A Modified Theory of Pure Restitution," *Dialogue* 26 (1987): 77-86; Joseph Ellin; "Restitutionism Defended," *The Journal of Value Inquiry* 34 (2000): 299-317; Geoffrey Sayre-McCord, "Criminal Justice and Legal Reparations as an Alternative to Punishment," in Ernest Sosa and Enrique Villanueva (eds.), *Social, Political and Legal Philosophy* (Oxford: Blackwell, 2001), pp. 502-29; David Boonin, *The Problem of Punishment* (New York: Cambridge University Press, 2008).

[3]Jesper Ryberg, "Restitutionism: A Self-Defeating Theory of Criminal Justice," *Social Theory and Practice* 38 (2012): 279-301.

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The first task of this paper is to reject Ryberg's critique. I will argue that his misuse of assumptions leads to the mistaken conclusion that pure restitution is doomed from the outset. In so doing, I hope to show that the long-running debates about restitution are still worthy of our attention, and indeed, the next task of this paper is to evaluate them. In the second section, I directly address David Boonin's defense of pure restitution. I believe that a fair treatment of the subject must address Boonin's detailed and thorough arguments, especially because I am rejecting his conclusion. I put forth a new objection to Boonin's version of pure restitution by arguing that it cannot justify the nonmonetary interventions that it relies upon to respond to common objections. This objection applies to any version of pure restitution that advocates nonmonetary interventions of the kind that Boonin defends. Next I advance three novel versions of common objections to pure restitution: the first two objections involve discussions of rich and poor offenders, and the third claims that pure restitution must resort to punishment. I conclude that Boonin's version of pure restitution is false, and also that there are strong objections to any theory of pure restitution that have yet to be overcome.

All theories of pure restitution (also known as restitutionism) rest on two fundamental tenets: first, the state should compel offenders to repair the harm done to their victims; and second, the state should not punish offenders, thus leaving pure restitution to completely replace punishment.[4] The term "pure" to describe this theory of restitution means that the state's response is purely aimed at exacting restitution, and thus it is purely nonpunitive. The state cannot punish an offender, nor coerce other actions beyond the scope of exacting restitution.

The concept of pure restitution has come to encompass a family of resembling versions rather than a single account, and some further differences arise around the roles of the police and civil law in a regime of pure restitution. Some restitutionists take the extreme and untenable view of advocating the "abolition of criminal law" altogether.[5] Criminal law would essentially collapse into tort law, and the police and courts (to various degrees depending on the theory) would be privatized. Because this view is unpopular and liable to obvious objections, it would be unfair to attack pure restitution based on this version. For the purposes of this paper, I will assume that the most defensible version of pure restitution will leave the institutions of the courts and police relatively unchanged, and maintain that the theory can still account for the distinction between criminal and tort law.

[4]Boonin, *The Problem of Punishment*, p. 223.
[5]Ellin, "Restitutionism Defended," p. 299.

1. Evaluating Ryberg's Critique

Ryberg argues that all versions of pure restitution contain a fatal flaw that cripples them from the outset. His argument depends on the "*Third Parties Assumption*: exacting appropriate compensation from a criminal usually causes damage to third parties."[6] This assumption leads to the purportedly fatal flaw of pure restitution in the following way. When the state exacts compensation, third parties are usually harmed, and because of a "constraint against damaging other people," the state should not exact compensation.[7] Thus, pure restitution would guide the state to "contradictory prescriptions," to exact compensation and not to exact compensation, and therefore is unsound. As can be seen above, his argument stands on two assumptions: the Third Parties Assumption, and the "constraint against damaging other people." I will show that Ryberg's argument leads to a reductio ad absurdum, that if pure restitution is self-defeating because of these assumptions, then so are many other state interventions that usually harm third parties. I contend that Ryberg concludes too much from these assumptions and that we should reject his argument.

To begin, the Third Parties Assumption leads to an argument that is, as Ryberg himself describes it, "pretty simple."[8] Exacting restitution will, in not all cases but "usually," result in damages to third parties in addition to the offender. Examples are easy to imagine; for instance, if an offender has to pay a large sum of money, this will affect not only his economic situation, but also that of "his children or other parties who are in some way economically dependent on him."[9] In other words, the Third Party Assumption simply claims that the state's intervention will usually have harmful ripple effects that extend beyond the immediate object of the state's intervention. Is this assumption unique to pure restitution? Clearly this is not the case. Other criminal justice interventions taken by the state, such as arrest, also usually entail harmful ripple effects. A person's arrest often results in trauma and potential loss of economic stability for the apprehended person's family. Is this assumption even unique to criminal justice? I do not see any reason that it would be so limited. The focus of the assumption is the unintended damages of a state's actions, and such a category of damages need not be limited to a situation in which there is a guilty offender. The Third Party Assumption applies just as well to state interventions such as taxation, eminent domain, and

[6]Ryberg, "Restitutionism: A Self-Defeating Theory of Criminal Justice," p. 286 (emphasis in original).

[7]Ibid., p. 300.

[8]Ibid., p. 280.

[9]Ibid., p. 286.

measures taken to enforce health and safety regulations. If the state shuts down a restaurant due to health code violations, then the employees and their families feel the harmful ripple effects of the state's action: they are third parties and Ryberg's Assumption applies to them. In cases of taxation and eminent domain, the state usually mitigates the harm by compensating the object of the intervention (by paying for a new house in the case of eminent domain, or by using the taxpayer's money to provide him with services), which differs from how the state treats offenders. But this does not change anything about the Third Party Assumption, which still underlies the intervention: whether the harms are compensated or not, they have still been inflicted on third parties. In fact, Ryberg acknowledges that a state may or may not choose to mitigate the third party harms resulting from exacting restitution, and presumably this does not change the Third Party Assumption.[10]

Ryberg's second assumption, the constraint against damaging other people, is similarly wide in scope, and Ryberg does not attempt to restrict it to pure restitution. He claims that the foundation of pure restitution entails this assumption, and here is his reasoning. "The criminal is the party who has violated a victim's right to property or right to physical integrity (or however restitutionists wish to put it). Such violations are wrong; or, more precisely, there is a constraint against damaging others."[11] Ryberg contends that this constraint also applies to the state, which means that the state should not damage third parties. This, together with his Third Party Assumption, allows him to conclude that pure restitution is "an inconsistent theory: the state should exact compensation from the criminal, and it would be wrong to exact compensation from the criminal."[12]

Essentially this assumption says that all other things being equal, an individual person or state should not violate rights or harm other people. The vagueness of this formulation makes it uncontroversial, but also toothless. Without further specification, it has no "genuine action guidance," as Ryberg insists a theory should have.[13] And by using such a vague formulation without any further nuance, we can see how easily we arrive at absurd conclusions. If it is wrong for the state to harm third parties, then not only is pure restitution self-defeating, but so is every other state intervention that the Third Party Assumption applies to. Of course, state actions that result in third-party harm may or may not be justified, depending on the details. The debate around whether punishment is justified is exactly the nuanced kind of debate that follows from this line of

[10]Ibid., p. 298.
[11]Ibid.
[12]Ibid., p. 289.
[13]Ibid., p. 300.

questioning, and it is the kind of debate that Ryberg attempts to cut off at the outset with a blunt use of assumptions.

Ryberg partially anticipates the reductio ad absurdum objection I have put forth by briefly considering whether his challenge to pure restitution has a "wider scope" than his target. In one footnote he considers whether the Third Party Assumption could apply to punishment, specifically whether "the challenge of self-defeatingness will constitute a problem for any theory of punishment."[14] He goes on to dismiss this concern by claiming without argument that utilitarian and retributivist theories of punishment could overcome this problem. In another footnote, Ryberg writes that his argument should not be construed to claim "that any sort of compensation practice—such as the one used in relation to many civil law cases" should be considered self-defeating.[15] This suggests that Ryberg is at least partially aware of the threat of a reductio ad absurdum argument—he is careful to specify that his assumptions do not apply to civil law cases. The trouble is that given the way Ryberg construes the assumptions, we have no basis to exclude civil law. If a court rules that somebody (the tortfeasor) should pay damages to an aggrieved party (the plaintiff), then the tortfeasor's family and colleagues may be harmed as a result of the case. Because of the state's ruling and the resultant harm, the Third Party Assumption would apply to them.

So what is Ryberg's reasoning for excluding such compensation practices from the squeeze of his two broad assumptions? "The reason simply is that such a practice may be based on other rationales. For instance, insofar as a compensation practice can be justified on consequentialist grounds, a similar problem would not arise."[16] This is a surprising response, because many varieties of pure restitution use arguments based on consequentialist grounds. And even if pure restitution were divorced from consequentialist grounds, how would that affect whether the Third Party Assumption applies to a particular state intervention? Ryberg provides no answer. Perhaps he is referring to the constraint against damaging other people, but as I explained above, this constraint is too broad to help Ryberg provide a specific answer. Thus, despite briefly addressing other compensation practices and punishment, he does not examine whether the assumptions he uses apply to them. Instead, he finishes by claiming, "even if some other theories may confront the same sort of challenge, this does not help the restitutionist theory of justice considered here."[17] This is a telling remark. The question is not that his challenge

[14]Ibid., pp. 290-91 n. 29.
[15]Ibid., p. 289 n. 26.
[16]Ibid.
[17]Ibid., p. 291 n. 29.

may pertain to other theories, which, given the broadness of his assumptions, it almost certainly does. Rather the problem is that his challenge leads to an absurd conclusion that vitiates not only pure restitution, but also a broad range of other state interventions he fails to consider.

While Ryberg considers possible objections at length, his discussion does not give reason to reconsider the objection I have put forth. He focuses on an interesting question: what is the difference between harm done to third parties caused by the state's intervention, and harm done to the initial victims caused by the offender? He does an admirable job explaining why these harms are more alike than we may at first think. Yet ultimately he concludes that neither the harm to the victims nor the harm to third parties may be justified, which is mistaken. State interventions that inflict harm to the third parties *may* be justified, but whether they are in fact justified depends on the intervention in question, and his conclusion that they cannot be justified is extreme. Once more, we can see how extreme this view is by applying it to all the state interventions that the Third Party Assumption covers, not just restitution. Whether a particular intervention is successfully justified depends on the debates, theories, and details surrounding that intervention—which brings me to the specifics of the debate over the limits of pure restitution.

2. Objections to the Theory of Pure Restitution

The first step in my argument here will be to contend that Boonin's version of pure restitution fails. This is because it relies on nonmonetary interventions (such as incarceration) that cannot be justified by appealing to restitution. My argument against the use of nonmonetary interventions does not claim that all versions of pure restitution are false, but it does show that versions like Boonin's that rely on nonmonetary interventions are false. The reason that I focus on Boonin's version is that I believe it is the most defensible theory of pure restitution. However, this paper is not the appropriate place to argue for this opinion, and there are surely supporters of more orthodox versions of pure restitution that are closer to Barnett's original account who would disagree with my assessment. Nevertheless, even such supporters may find my argument useful, because it could help sharpen the boundary between their versions and Boonin's, and the boundary would be drawn at the use of nonmonetary interventions.

After my discussion of nonmonetary interventions, I will put forth my versions of three common objections to pure restitution. Unlike my argument against nonmonetary interventions, these objections apply to all versions of pure restitution. The first two objections I will discuss are known as the Rich Offender Objection and the Poor Offender Objection.

One claims that rich offenders would be able to buy crimes; the other argues that poor offenders would be at an unacceptable disadvantage. The last objection I will discuss holds that forcing offenders to pay restitution is in fact punishment, the Punishment as Restitution Objection.[18] These objections are especially problematic for pure restitution after my argument against nonmonetary interventions: some plausible responses to these objections involve resorting to nonmonetary interventions, but if these are unavailable, then the full force of the objections comes to bear on pure restitution. Restitutionists may be able to defend the theory of pure restitution, but in order to succeed they will need to address these objections.

2.1. The context of the Nonmonetary Interventions Objection

Boonin's version of pure restitution relies on nonmonetary interventions—it argues that the state acting in accordance with pure restitution may incarcerate, monitor, dictate behavioral modification, limit where offenders may live and travel, and so on. I will argue that the theory of pure restitution cannot justify such nonmonetary interventions. To give context to my argument, I will show how crucial these nonmonetary interventions are to Boonin's theory of pure restitution. I will briefly summarize Boonin's responses to two common objections. The objections are the Harm to Society Objection and the Irreparable Harms Objection, and Boonin's responses in both cases involve resorting to nonmonetary interventions.

The long-running debate over the Harm to Society Objection demonstrates why Boonin turns to nonmonetary interventions. The Harm to Society Objection argues that pure restitution cannot account for harms done to indirect or secondary victims of crime (think of community members who feel less safe as a result of the crime).[19] In defense of pure restitution, Boonin provides two responses to the Harm to Society Objection. The first claims that the offender should give restitution to his secondary victims. Boonin acknowledges up front that compelling each offender to give "just enough money to every secondary victim … [is] of course, completely impractical." But he argues that this is not a reason in

[18]The names of these objections come from Boonin. These objections do not compose an exhaustive listing—Boonin addresses eleven objections in *The Problem of Punishment*. I will address three other objections in my discussion of nonmonetary interventions, two more in depth (the Harm to Society Objection and the Irreparable Harms Objection), and one more in passing (the Nonharmful Endangerment Objection). The names of these objections also come from Boonin.

[19]Boonin and others use a more complex taxonomy including "indirect-indirect victims" that I will not explain here because understanding the context of my argument only requires a general understanding of secondary victims, or victims who feel negative ripple effects of the crime but are not directly involved in the crime.

itself to reject the response. After all, the fact that it is "impractical to punish a criminal by subjecting him to precisely the amount of suffering that he is thought to merit" does not in itself invalidate punishment.[20] Boonin gives the example of large class action lawsuits against big tobacco companies, which cannot properly compensate the harm wrongfully done to each of the millions of smokers, but "the state can attempt to approximate this result in a reasonable manner."[21] This is a strong response, because it avoids relying on the improbable assertion that restitution can fully account for harm to every secondary victim. Indeed, if his theory of pure restitution could successfully rely solely on monetary restitution, then I would have little to say against his response to the Harm to Society Objection.

But even Boonin concedes that there are cases in which purely monetary restitution will not adequately restore the harm done to a community, even by the lowered standard of a "reasonable manner" established by approximating the total harm. He gives the example of an exceptionally talented burglar, who after many thefts "has finally been apprehended and been made to compensate his victims for the harms he has wrongfully caused them." Suppose further that the burglar has paid an extraordinarily high level of monetary restitution, enough to pay for all the stolen goods as well as many new security measures for the neighborhood, and having made the payments, he remains at large. Boonin postulates that the victims have still been made "less secure by his actions than they were before merely because he is so skilled at evasion and is still free to roam the streets at night."[22] According to Boonin, monetary restitution would not fully address the rightful concerns of the victims.

Boonin responds to this objection by claiming that nonmonetary interventions, justified by his theory of pure restitution, could address these concerns. He writes that the burglar could

> be compelled to wear a device by which his location could be monitored by the police at all times. He could be subjected to intensive supervision, such as that accompanying probation in some cases, which often includes a curfew. He could simply be locked up. In other cases, an offender might be made to take an anger management course, to undergo therapy, to give up drinking, to stay away from certain people or people under a certain age, and so on. If one or more of these impositions are necessary for an offender's victims to be fully restored to their former level of safety and security, then he owes it to them to undergo these impositions and they could be fully justified by the theory of pure restitution.[23]

As this shows, Boonin's response to the Harm to Society Objection de-

[20]Boonin, *The Problem of Punishment*, p. 227.
[21]Ibid., p. 228.
[22]Ibid., p. 232.
[23]Ibid., pp. 232-33.

pends on nonmonetary interventions. For now I will give the restitutionists the benefit of the doubt that these interventions may be nonpunitive, and assess whether they can be justified purely in terms of restitution.[24]

Boonin also relies on nonmonetary restitution in his response to the Irreparable Harms Objection, which posits that some crimes, most notably rape and murder, result in harms that can never be fully repaired. This is not a problem unique to pure restitution. Punishment cannot *undo* harm done to a murder victim any more effectively than restitution can. However, the Irreparable Harms Objection claims that pure restitution cannot adequately respond to these cases. Boonin does a thorough job of arguing that even if an offender takes on a debt that he will never be able to repay, the state may still coerce him to make as much reparation as possible. His arguments in response to this objection are particularly interesting. Ultimately though, he argues that an adequate response to such crimes would require the state to resort to nonmonetary interventions. He writes that "probably in the vast majority of cases" of rape and murder, pure restitution "would require far more than a monetary payment from the offender." In order to restore the security of the community, "this would likely involve, at the least, constant monitoring of the offender, if not simply preventive incarceration."[25]

As can be seen in Boonin's responses above, adequate responses to cases involving murderers, rapists, and habitual burglars would require more than exacting monetary restitution from the offenders. At the very least, each response would require some kind of intensive limitation of the offender's freedoms. And of course the types of cases that would require nonmonetary restitution are not limited to the three above. An adequate response to cases involving domestic violence, assault, armed robbery, and kidnapping, among many others, would require nonmonetary intervention. Furthermore, Boonin's responses to the two objections discussed briefly thus far (Harm to Society and Irreparable Harms) are not the only responses that hinge on the ability to resort to nonmonetary interventions. If pure restitution could not justify such interventions, it would severely diminish most, if not all, of Boonin's responses to the eleven objections he considers. For example, his response to the Nonharmful Endangerment Objection involves the discussion of how the state should treat an offender guilty of drunk driving. He writes that "it would mean depriving him of his driver's license, or of his car, or compelling him to undergo treatment for his drinking problem."[26] These nonmonetary interventions, like the ones discussed above such as incarceration, involve

[24]I will return to the question of punishment in section 2.5.
[25]Boonin, *The Problem of Punishment*, p. 244.
[26]Ibid., p. 256.

severe curtailment of the offender's freedoms, and they belong in the category of interventions that I will argue the restitutionist cannot justify.

Before continuing to my Nonmonetary Interventions Objection, I should clarify Boonin's appeal to such interventions. He argues that an offender may give restitution by undergoing restrictions on his freedoms in response to the harm he created. It is important to understand what Boonin means by this, and in order to illustrate it, consider again the example of the talented burglar. Imagine that the burglar is finally caught, and he is sentenced to pay restitution to all his victims, including funds to help hire a new patrol officer in order to repay his debt to his secondary victims. His sentence also mandates that he wear a GPS device that tracks his movements at all times and automatically alerts police when he is not where he is supposed to be. While it may seem strange to claim that the reason that the burglar is forced to wear the device is because by doing so he is giving restitution to his victims by restoring them to a level of previous safety, Boonin insists on exactly such a justification. The restitution takes the form of increased safety, and the community is composed of anyone who benefits from this increase, regardless if they were aware of the risk or the offender's crimes. One benefit of this argument is that restitutionists can deal with problematic cases in which the victims are given restitution to account for an increase in risk, despite not being aware of the original risk or the actions taken to curb it. It is important to recognize the nature of restitution Boonin is defending: the state may exact restitution from an offender with nonmonetary interventions, and this restitution takes the form of increased safety in the community, making up for the risk the offender imposed on the community.

2.2. The Nonmonetary Interventions Objection

I have argued that nonmonetary interventions are indispensible for Boonin's version of pure restitution, and now I will argue that such interventions are not actually available to restitutionists. My argument will focus on three reasons that pure restitution cannot justify such nonmonetary interventions. First, crime prevention is a simpler and more plausible justification for the nonpunitive interventions in question. Second, a theory of pure restitution that incorporates such interventions strays too far from a coherent concept of restitution. And third, pure restitution, as defended by Boonin, is susceptible to objections that plague punishment. I should note that my argument does not attempt to preclude restitution from justifying *any* nonmonetary interventions. There are obvious cases in which nonmonetary interventions are straightforwardly restitution-oriented, for instance, compelling an offender who sprayed graffiti to spend an afternoon scrubbing graffiti. But these are not the targets of my

objection—I am focusing on interventions that severely restrict an offender's freedoms, which are the interventions that add significant explanatory power to theories of pure restitution. When I use the word "carceral" to describe nonmonetary interventions, it is in order to refer to these interventions that entail restrictive impositions. I will propose a way to draw a line between interventions that can and cannot be justified by restitution in my discussion of the second reason and the concept of restitution.

The first reason that carceral nonmonetary interventions are not justified under pure restitution is that the justification requires unnecessary complications to be added to the straightforward goal of crime prevention. Boonin's amended version of pure restitution uses crime prevention practices as a means to restore victims by reducing their risk exposure. The problem is that these practices don't need the extra story of restitution in order to be justified: they can be justified simply out of concern to prevent crime. Crime prevention practices are best understood as a means to prevent crime, and any attempt to turn them into a means for something else should be met with skepticism. Not only does the concern of restoring victims seem like an ad hoc addition to the justification of these practices, but Boonin's theory of pure restitution also gains important traction from including these practices. Without them, his theory would be untenable because of the fact that many offenders need to be monitored, restricted, treated, or detained in order to maintain a tolerably safe community. So it is difficult to see Boonin's justification of these practices under the rubric of "restitution" as anything but piggybacking off the inherent plausibility of their crime prevention justification.

To illustrate how Boonin's theory benefits from the simpler justification of crime prevention, take the following example: perhaps the state orders that a sex offender be barred from working or living with children. The obvious justification for this intervention is to prevent future harm to children. But Boonin's justification is much more complicated. The offender gives restitution to the community, not with money, but because of the state's restriction on his movement. The restriction itself restores them to a previous level of well-being by reducing their risk exposure to the offender. These steps are circular and unnecessary. Or let us return to the burglar example: he is sentenced to pay restitution as well as wear a GPS monitoring ankle bracelet. It seems uncontroversial that the *monetary* restitution paid to his victims and secondary victims could be justified by appealing to the theory of pure restitution. But the intention of making the burglar wear the GPS monitor is aimed directly at preventing recidivism and has nothing to do with repairing the harm done to his prior victims. To bring this point into sharper focus, imagine that the burglar had the habit of traveling while he burgled, never visiting the same

neighborhood twice. Presumably, after catching him, the state would still be justified in tracking his movements, but this would not be in order to restore the level of safety to his previous victims, but rather to prevent harm to potential future victims. Crime prevention is an end in itself, and therefore we should reject the pure restitution justification that requires additional complications.

The restitutionist may respond to this objection by insisting that the added complication is not sufficient reason to reject the justification. This response may argue that crime prevention itself is merely a goal, not an action-guiding theory. A state intervening to prevent crime should have an idea of why it is intervening, the limits of its interventions, and so on. Pure restitution is one such theory. According to this response, my reason for rejecting the justification would fade away: pure restitution does not add unnecessary complications, but merely adds theoretical heft behind why a state is intervening to prevent crime. The goal of crime prevention would be subsumed into the larger goal of giving restitution to victims by increasing their safety.

However, this response is unsuccessful, because pure restitution does not profess to justify crime prevention as a whole. It aims to justify exacting restitution. Therefore, in order to justify a particular carceral nonmonetary intervention, it must hijack the plausible goal of crime prevention and use it as part of its justification in the name of restitution. Take the example of the state preventively incarcerating a murderer. "Preventive incarceration," is Boonin's phrase,[27] and he tips his hand by using it. As its name implies, the goal of preventive incarceration is to prevent the murderer from harming people. The goal is not to exact restitution—there is no such thing as "restitutive incarceration," because restitution is not directly involved with the state's intervention. Only after the primary goal of crime prevention is accomplished may the restitutionist point out his justification: since crime prevention increases safety, the state may then claim that it has exacted restitution from the offender in the form of this increased safety. We can see that, on a case-by-case basis, the restitutionist is trying to slip restitution through the turnstile behind the straightforward goal of crime prevention. According to pure restitution, exacting restitution is the goal not just at the theoretical level, but with each nonmonetary intervention. Attempting to justify a particular preventive intervention with restitution involves circling through the goal of prevention to the additional goal of restitution. This circular addition is an attempt to lend credence to the restitution when it should be the other way around: if restitution could justify a particular intervention, then it

[27]Ibid., p. 244.

should be restitution adding explanatory power.

The second reason to believe that pure restitution does not justify carceral nonmonetary interventions is that the interventions strain the concept of restitution to its breaking point. Preventive incarceration, along with many of the crime prevention practices that Boonin claims are justified by appealing to restitution, stray so far from the concept of restitution that the justification becomes implausible. The practice of offenders paying restitution, as it was originally conceived and how it is currently practiced, involves offenders paying their victims. It is an act that the offender takes. Of course the act may be coerced, or the offender's wages may even be garnished, in which case he does not himself complete the action of paying the victim. But it is his money, and it flows from him to his victims. In Boonin's theory of pure restitution, this simple transactional concept has morphed beyond recognition. If an offender is locked up against his will because he is a danger to the community, what is it exactly that he is paying? What actions or resources of his are going to restore his victims? The answers to these questions are not obvious, so we should be skeptical of the claim that preventive detention is a method to give an offender the opportunity to pay his community back. Certainly there are nonmonetary actions that are straightforwardly restorative. Again, the offender scrubbing off graffiti he sprayed is a clear example. But the conceptual force behind restitution resides in an offender's ability to restore his community, and this force loses justificatory power the further it lapses away from an offender's payment for his offense.

So how might one differentiate between interventions that restitution can successfully justify and those it cannot? The answer, as I suggested above, is whether an offender gives back to his victims, through actions or resources. In other words, a necessary condition of restitution is that an offender gives some of his resources. I use "resources" in a conventional sense to include money and effort. While this is not the proper place to defend a full definition of restitution, this necessary condition explains the intuition that an offender being locked up against his will is an implausible way for him to pay restitution. In contrast, the offender scrubbing graffiti is clearly using his effort to pay restitution.

A restitutionist may respond by biting the bullet in cases like preventive incarceration and GPS monitoring, but then go on to argue that many cases of nonmonetary interventions do fulfill the necessary condition of the offender giving some of his resources. This response would claim that borderline cases could still be justified as restitution, such as an offender complying with a restraining order by avoiding certain people and places. In this case, the offender's effort and attention spent in complying with the order would be the resources he gives for restitution. This re-

sponse attempts to salvage pure restitution against the Nonmonetary Interventions Objection by arguing that while the full range of nonmonetary interventions may not be available, some would be. And these justifiable nonmonetary interventions would be sufficient for the state to maintain a tolerably safe community.

However, this response fails, because even if restitutionists could successfully argue that such restrictions fulfill the necessary condition of the offender giving resources, the Nonmonetary Interventions Objection would still hold for important nonmonetary interventions. Boonin fully admits that these interventions, such as preventive incarceration, would be necessary to maintain a safe community. While I doubt that restitutionists could defend the claim that an offender's compliance with a restraining order qualifies as restitution, I do not need to argue that point here. Conceding that preventive incarceration and GPS monitoring cannot qualify as restitution is enough to disable many restitutionist responses to objections. To quote Boonin's response to the Irreparable Harms Objection again, most cases of rape and murder would require, "at the least, constant monitoring of the offender, if not simply preventive incarceration."[28] Therefore we must conclude that the concept of restitution does not encompass carceral nonmonetary interventions that a state would need in order to maintain a tolerably safe community.

I have argued thus far that carceral nonmonetary interventions are unavailable to restitutionists because these interventions are justified as crime prevention rather than restitution. I have also argued that the concept of restitution does not allow for carceral nonmonetary interventions to qualify as restitution. But now let us assume that I am mistaken, and suppose that every nonmonetary intervention Boonin mentions is indeed justified by restitution. Even so, there remains a serious problem with using carceral nonmonetary interventions under pure restitution. This, my third reason for rejecting nonmonetary restitution, argues that Boonin's version of pure restitution is vulnerable to many of the same critiques that he levels against consequentialist justifications of punishment. I contend that two features of Boonin's version of pure restitution are problematically similar to features of consequentialist justifications of punishment, making Boonin's pure restitution susceptible to many of the same objections Boonin puts forth against punishment. The two features are: the goal of increasing safety, and the use of a wide range of carceral nonmonetary interventions.

As I noted above, Boonin attempts to out-maneuver objections by relying on nonmonetary interventions with the goal of restoring victims

[28]Ibid.

to "their former level of safety and security."[29] However, fulfilling this goal by imposing restrictions on the offender puts the pure restitutionist in a structurally similar bind to that of the consequentialist arguing for punishment. In Boonin's words, every consequentialist justification of punishment "is entirely forward-looking," which will result in "cases in which more future good will be produced by punishing some innocent people and not punishing some guilty people, in which more good will be produced by punishing some guilty people too much and others too little."[30] Therefore the problem with arguing that punishment is justified because of its good outcomes (such as increased safety for the community) is that it would justify unacceptable interventions. The question then becomes whether there is enough difference in the aims and means of pure restitution and punishment to allow the former to escape objections to which the latter buckles under. The answer is that the aims of the two are indistinguishable, and the means to produce those goals are also difficult to tell apart. Boonin's pure restitution aims to raise the level of safety in the community. This is a classic consequentialist goal. And the means, including incarceration, monitoring, coerced treatment, and so on are the means found within a punitive criminal justice system. Therefore we should conclude that Boonin's version of pure restitution has, in maneuvering to avoid objections, become so similar to consequentialist punishment as to leave it vulnerable to many of the same objections.

I will not attempt here to revisit Boonin's objections to consequentialist justifications of punishment and whether they apply to pure restitution; however, the success of my argument does not depend on such a comprehensive comparison. The two theories are similar enough in their goals and their means that the burden is on Boonin and other restitutionists to show why pure restitution evades common objections against punishment. However, as a brief example of how an objection against punishment could apply to pure restitution, take the case of disproportionate treatment. Boonin and other critics of punishment often point out how consequentialism may justify disproportionate punishment. Boonin uses the extreme example of executing a driver for speeding in order to "produce enough deterrence to compensate for the harm done to the speeder himself."[31] What reasons do we have to believe that pure restitution would avoid justifying similarly extreme interventions? If preventively incarcerating speeders restores harm to the community more effectively than exacting monetary restitution, then pure restitution would justify such incarceration. Suppose a state noticed that its rate of automobile

[29]Ibid., p. 233.
[30]Ibid., p. 84.
[31]Ibid., p. 76.

accidents due to speeding was costing thousands of lives each year—in the United States the number of "speeding-related traffic fatalities" totaled 10,591 in 2009.[32] Perhaps the state then determined that in order to restore security to its citizens, it would enact a policy to significantly reduce speeding. If this policy consisted of exacting restitution in the form of multiple years of incarceration from everyone caught speeding, one could easily imagine the rate of speeding plummeting, which may save thousands of lives. Those caught speeding would be paying restitution to the community in the form of helping to deter others from speeding, and would therefore be helping to save many lives. The goal of exacting restitution using carceral nonmonetary interventions is, after all, to increase safety, and the offender incarcerated for multiple years would be contributing to the deterrence and therefore to the increased safety.

A restitutionist may argue that the state may exact restitution only to repair harms limited to those that were inflicted on the offender's immediate community, which would preclude the possibility of exacting restitution in order to create deterrence for the larger society. But an offender guilty of speeding contributes in a small but real way to the deadly local problem of speeding-related fatalities in the offender's community. Exacting significant restitution from this offender would go much further toward the goal of restoring safety to the roads in his community than would exacting restitution by giving the offender a ticket. Perhaps a restitutionist could reply that pure restitution does not justify exacting restitution beyond what would be necessary to restore the community to the level of safety immediately preceding the speeding incident. However, the restitutionists' own techniques in defending restitution belie this response: their arguments show that they do not believe such a limitation exists. Mane Hajdin in particular made a breakthrough in defending pure restitution against the objection that claims that restitution would provide insufficient deterrence when he argued persuasively that because offenders gamble on the fact that they are not likely to be caught, the state may exact more restitution from the offender than would be needed to restore the harm he caused.[33] This additional restitution would be to account for the gamble the offender makes, and would also serve to deter future offenders. This response has become a standard tool in the restitutionist repertoire; Boonin adopts the same line of argument in responding to what he calls the Insufficient Deterrence Objection.[34] Restitutionists can-

[32]U.S. Census Bureau, "Transportation: Motor Vehicle Acccidents and Fatalities," https://www.census.gov/compendia/statab/2012/tables/12s1108.pdf, modified 28 May 2014.

[33]Hajdin, "Criminals as Gamblers: A Modified Theory of Pure Restitution," p. 78.

[34]Boonin, *The Problem of Punishment*, pp. 264-67. Boonin uses language of restoring harm rather than accounting for an offender's gamble. He argues that the offender who

not have it both ways. If we are to believe that pure restitution may justify exacting more restitution than is strictly necessary to restore the harm caused in order to account for the offender's gamble, as well as to add deterrence, then we must also conclude that pure restitution would justify the disproportionate exaction of restitution for speeding.

I have argued that there are three reasons to reject the use of carceral nonmonetary interventions within a theory of pure restitution. First, the interventions cannot plausibly be justified by restitution over crime prevention; second, the interventions do not fit within a coherent concept of restitution; and finally, the use of such interventions makes pure restitution vulnerable to objections that trouble punishment. For these reasons, we must reject any theory of pure restitution that includes these interventions, including Boonin's. I will now give my own version of three common objections to pure restitution, and unlike my objection to carceral nonmonetary interventions, these objections apply to all theories of pure restitution.

2.3. The Rich Offender Objection

The possibility of an extremely wealthy rapist who continues to rape victims and pay the millions of dollars of restitution poses serious trouble for pure restitution. In order to maintain a tolerably safe community, the state would probably need to separate the wealthy rapist from potential victims—in other words the state would need to resort to carceral nonmonetary interventions,[35] which again emphasizes the force of my Nonmonetary Interventions Objection. But even if the crime were less serious than rape and thus might not require nonmonetary responses, it would still seem problematic for wealthy people to "buy" crime. Charles Abel and Frank Marsh[36] and Geoffrey Sayre-McCord[37] both answer that

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commits a crime that has a low detection rate creates more harm, because if the detection rate for an offender's crime is low, "the greater the subjective anxiety and objective insecurity his offense will cause to other potential victims similarly situated, and thus the greater harm he will cause" (p. 265). Boonin might therefore object to my characterization of his argument as exacting more restitution from an offender than needed to restore the immediate harm he caused. However, by recalculating harm based on detection rates, Boonin is making essentially the same move Hajdin makes. My objection still stands, and could merely be reworded to account for Boonin's notion of increased harm: the speeding example is surely an instance of a crime that has a very low detection rate and could therefore be paired with extremely high restitution.

[35]Boonin's response to the Rich Offender Objection involves pointing to nonmonetary interventions as solutions. Ibid., pp. 259-61.

[36]Charles F. Abel and Frank. H. Marsh, *Punishment and Restitution* (Westport, Conn.: Greenwood Press, 1984), p. 185.

[37]Sayre-McCord, "Criminal Justice and Legal Reparations as an Alternative to Punishment," p. 508.

the restitution can be measured in effort, or work hours, rather than money. They think that this would level the playing field. One might object to this response, because if the goal of pure restitution is to repair harm, and a rich offender can adequately do that with money, then forcing him to work additional hours would be redundant. It would also be open to criticism that the intention is actually to make him suffer, which would count as punishment. Defendants could respond that the goal is to make the currency of payment fair, rather than intending to make the offender suffer. It seems that making an offender work, either at his normal job or one provided by the state, could be justified by the goal of repaying a debt to the victim. After all, working to repay debt is much more straightforward than wearing a GPS device to repay a debt.

However on closer inspection, we must reject this response. Imagine a wealthy offender who does not work, perhaps because he is retired or lives off his wealth. He could be forced to pay restitution measured by hours of work in a government-provided job. Then consider the following dilemma, which shows that there is no middle ground for the state between letting the offender buy crime and intending the offender to suffer: would the offender pay restitution up front before putting in his work hours, or after he has completed the hours? We can safely assume that the victim would simply want the money for restitution as quickly as possible. If the offender paid the victim up front but the state still coerced him to work additional hours, the justification of pure repayment would be dubious for the additional hours of labor. And if the victim were told to wait until the offender completed the labor, this would undermine the explicit goal of repairing harm to the victim solely for the purpose of making the offender put in his required work hours. Perhaps the state would pay the victim up front, and then coerce the offender to complete the work hours and pay the state back for the restitution. But this response uncovers the true motivation: to coerce the offender to complete the work hours, not simply to repay the victim. Forced work is unpleasant at best, and the harm imposed on the wealthy offender could not be justified under the banner of restitution. Ultimately, forcing offenders to work when they could pay full restitution is not justified by the aims of restitution. We must therefore reject this response and conclude that the possibility of rich offenders buying crime remains a crippling objection to pure restitution.

2.4. The Poor Offender Objection

The Poor Offender Objection draws its force from practical problems rather than theoretical inconsistencies. Most offenders are poor. Unsurprisingly, there is a wealth of data showing that poor offenders cannot

pay victim restitution even when coercive action is taken to compel their payment.[38] If poor offenders cannot reasonably be expected to afford the restitution that they owe, the theory of pure restitution should be rejected. Second, if poor offenders know that they cannot be forced to pay restitution because they have no assets, then there would be little to deter a poor offender from committing crime. Defendants might counter both concerns by substituting monetary payment with work hours. Poor offenders could be compelled to work, either in the private sector or on state projects. Boonin uses this reasoning in his response to the Poor Offender Objection.[39] This would eliminate the concern over deterrence, as well as provide a currency that even poor offenders could use to repay: their effort.

Theoretically, this response works well. It avoids the problem of redundancy that vexes the same response to the Rich Offender Objection, because the poor offender has no option to simply pay the restitution. The nonmonetary state-coerced action can also be justified straightforwardly as effort directly linked to repaying the offender's debt. But the drawbacks are in the details of implementation. Consider two offenders guilty of the same serious robbery, both reluctant to pay the high restitution. One has sufficient funds for the restitution and the other has no assets at all. Pure restitution would justify treating the two accomplices extremely differently. One of them would begrudgingly pay the restitution, while the other would be consigned to forced labor. Even presuming that the poor offender's labor earns him minimum wage, the number of hours required to repay the restitution in full could be daunting. If the offender were also charged for the marginal costs added to the criminal justice system, such as the costs of his arrest, prosecution, board and housing during the labor camp, as well as restitution to the community's secondary victims, then the robbery could very easily cost this offender years of forced labor. The stark difference between the two accomplices, both guilty of the same crime, one simply having to write a check and the other consigned to forced labor for years, is reason enough to reject this response. Even if one does not subscribe to the retributivist ideal of equivalent treatments of equivalent wrongdoings, it is easy to see how the resulting situation would be untenable. An egregious divide between forced labor for the poor offenders and writing a check for the rich ones is a politically and historically troubling notion. Given that a disproportionate percentage of poor black males are incarcerated in the U.S., the switch to a system where wealthy whites were even more able to avoid incarceration but poor black men were forced to labor for years would be

[38]Matthew Dickman, "Should Crime Pay? A Critical Assessment of the Mandatory Victims Restitution Act of 1996," *California Law Review* 97 (2009): 1687-718, p. 1695.

[39]Boonin, *The Problem of Punishment*, p. 262.

unacceptable, to say the least.

A restitutionist might ask us to suppose that the currency were measured instead by hours of work rather than the wages of those hours. In this case, the state could approximate the rough equivalent of the value of the restitution and the hardship of a certain number of hours of labor. This response is also flawed, because it crosses the line of what pure restitution could reasonably justify. If the state goes to the trouble to provide the infrastructure for offenders to work, but knows that the work will not result in full restitution, then the state would be paying for the offender to work. Why not take the money and compensate the victim instead? The money spent on the administrative costs necessary to compel offenders to work could instead be directed to the victims of the crime. This allocation would fit pure restitution much better, because it would be repairing the harm done to the victim rather than ensuring the offender gets his come-uppance by putting in his work hours. We must therefore reject this response and conclude that the practical problem of exacting restitution from poor offenders remains a powerful objection to pure restitution.

In addition to presenting a problem for the theory of pure restitution, the Poor Offender Objection also challenges the commonplace action of compelling offenders to pay monetary restitution. The ruinous effects of mandatory restitution imposed on offenders regardless of their ability to pay can be seen today in the U.S. In 1996, the passage of the Mandatory Victims Restitution Act (MVRA) "made restitution mandatory in almost all cases in which the victim suffered an identifiable monetary loss, which removed judicial discretion from the imposition of restitution orders. The MVRA also removed judges' ability to fashion restitution orders based on an offender's ability to pay."[40] Unsurprisingly, the MVRA has resulted in the explosion of criminal debt, growing eightfold in the first decade after its passage, and the vast majority of this debt is unpaid victim restitution.[41] In a moment of remarkable candor, the Department of Justice admitted that the MVRA "has resulted in a large surge in criminal debt, but it has not resulted in any appreciable increase in compensation to the victims of crime, in most cases, because of the defendants' inability to pay."[42] Because over 85% of arrested offenders are impoverished, because their assets gained by criminal activity are seized by the state, because they have low levels of training and skills, because their job prospects diminish after their release, and for a wide variety of other

[40]Dickman, "Should Crime Pay?" p. 1688.

[41]Ibid., pp. 1691-92.

[42]Ibid., p. 1694, quoting: "Letter from Clarence A. Lee, Assoc. Dir., Admin. Office of the U.S. Courts, to Gary T. Engel, Dir. of Fin. Mgmt. and Assurance, U.S. Gen. Accounting Office (June 6, 2001), in GAO, Criminal Debt 2001, at 105."

factors contributing to their poverty,[43] "judges have likened the collection of restitution to 'get[ting] blood out of a stone'."[44] There is also discouraging evidence that suggests that offenders do not try as hard to fulfill their restitution orders when they feel that the orders are unfair and unrealistic compared with when the orders are tailored to their situations.[45]

In addition to victim restitution, the state has tried to recoup the enormous costs of mass incarceration and other criminal justice expenses by imposing fees and fines on top of restitution debt. Legal debt is long-term and subject to interest, and it is "typically substantial." In fact, "[b]y 2008, defendants sentenced in 2004 had been charged an average of $11,471 by the courts over their lifetime."[46] This additional debt has more and more frequently translated into imprisonment, despite a U.S. Supreme Court decision banning the practice of imprisoning people for nonpayment.[47] The reason for this is specifically the practice of arresting debtors "not for nonpayment, but rather for civil contempt of court—that is, failure to comply with a court order to pay their financial obligations."[48] This allows the courts to imprison debtors without having to charge them for nonpayment.

So what are the effects of these policies and practices? To summarize: low rates of actual victim compensation, swelling debt, a return to imprisoning people for their debts, and a growing bureaucracy to handle the Sisyphean task of collecting the uncollectable. This leads me to conclude that there are forceful practical reasons to reject implementing a system-wide imposition of mandatory victim restitution. Of course, many specific instances of mandatory victim restitution may be justified, but as a default policy it simply does not work.

2.5. The Punishment as Restitution Objection

As I mentioned above, one of the two tenets of pure restitution is that the state should not punish. The question still remains whether compulsory victim restitution is in fact nonpunitive. Many cases of compulsory victim restitution could be, and have been, perceived as punitive. Take the case of the state compelling a vandal who breaks a window to pay for

[43]Dickman, "Should Crime Pay?" p. 1695.

[44]Ibid., quoting: "R. Barry Ruback, The Imposition of Economic Sanctions in Philadelphia: Costs, Fines, and Restitution, FED. PROBATION, June 2004, at 21, 25."

[45]Ibid., p. 1697.

[46]Katherine Beckett and Naomi Murakawa, "Mapping the Shadow Carceral State: Toward an Institutionally Capacious Approach to Punishment," *Theoretical Criminology* 16 (2012): 221-44, p. 228.

[47]*Bearden v. Georgia*, 461 U.S. 660, 662-63, 668-74 (1983).

[48]Beckett and Murakawa, "Mapping the Shadow Carceral State," p. 229.

repairing the window. This is clearly justified in terms of restitution. But one might still object that while it repairs harm, it is also punitive, because forcing the offender to pay is harmful to the offender. However, according to the most commonly used definitions of legal punishment, the harm (or hard treatment) is intentionally inflicted on the offender. In this case of restitution, the intent is to repair the window, not to cause the offender suffering. This is the argument that Boonin makes.[49] There is some evidence that the general public supports this conclusion. In a study that tracked participants' responses to scenarios of victim restitution and punishment, Olga Tsoudis found that people are more likely to view compulsory victim restitution as nonpunitive, which "further supports the position that victim restitution is more compensation than punishment."[50]

However, consider if the offender refuses to pay restitution. It seems that any mechanisms of enforcing his compliance would be punitive. Michael Cholbi writes that if an offender refuses to comply, then the state could respond by "forcing her compliance in a literal sense (using electronic funds transfer to garnish her wages, for instance) or by resorting to other coercive measures, such as incarceration. Such responses amount to punishing her noncompliance."[51] And Stephen Kershnar writes: "The likely means of ensuring payment is via threat of ... punishment."[52] These are compelling arguments. If the state orders an offender to pay restitution, this alone may not qualify as punitive, because the harm involved is not intended. However, if he refuses to pay, and the state threatens to put him in prison, then the threat of intended harm is introduced. And if the state carries out this threat, then it seems clear that it has punished the offender for noncompliance. There does not seem to be a good response to this argument. The U.S. Supreme Court case I cited above shines light on this issue. In 1983, the Court ordered that a sentencing court may not imprison someone who has made good efforts to pay his court-ordered restitution debt but cannot make the payment due to inability to pay. The Court considered such imprisonment to be punishment. It held that the probationer's poverty is not his responsibility, and therefore it cannot be held against him as reason for further punishment if he makes good effort to try to pay restitution but cannot meet the full payment.[53] Punishing

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[49]Boonin, *The Problem of Punishment*, p. 215.

[50]Olga Tsoudis, "The Likelihood of Victim Restitution in Mock Cases: Are the 'Rules of the Game' Different from Prison and Probation?" *Social Behavior and Personality* 28 (2000): 481-98, p. 494.

[51]Michael Cholbi, "Compulsory Victim Restitution is Punishment: A Reply to Boonin," *Reason* 2 (2010): 85-93, p. 86.

[52]Stephen Kershnar, "Does Necessity Justify Punishment? Assessing the Main Threat to David Boonin's Restitution Theory," *Public Affairs Quarterly* 26 (2012): 71-80, p. 73.

[53]*Bearden v. Georgia*, 461 U.S. 660, 662-63, 668-74 (1983).

him after he has tried but failed to pay his restitution "would be little more than punishing a person for his poverty."[54] The Court's opinion in this case provides further evidence that imprisoning someone for a failure to pay restitution counts as punishment, which bolsters the objection that the state cannot rely solely on compulsory restitution without recourse to punishment for noncompliant offenders.

Cholbi and Kershnar are correct to point out that most cases of enforcing compulsory victim restitution are punitive. However, they are mistaken to say all such cases are punitive: one notable exception is their own example of wage garnishment. If an offender does not pay restitution and the state threatens to garnish his wages, it is not threatening to intentionally harm him. Rather, it is threatening to do what the offender was ordered to do: use the offender's money to pay the victim. This exception aside, I conclude that most cases of enforcing compulsory victim restitution are punitive. While court orders to pay restitution may not be punitive, their enforcement will entail recourse to punishment. Therefore this objection leads us to reject one of the basic tenets of pure restitution: a state cannot completely replace punishment by relying on restitution.

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So where does that leave the role of victim restitution in a criminal justice system? In this paper, I have argued that the role will be limited. The theory of pure restitution cannot rely on carceral nonmonetary interventions, and it has yet to overcome three common objections. There is good empirical evidence that systematic, mandatory restitution is untenable. And enforcing compulsory victim restitution will most likely require punishment. These reasons cast doubt on whether pure restitution could ever be a stand-alone alternative to punishment. The role of victim restitution in a criminal justice system should be limited to what it can reasonably accomplish, using methods that cohere with the concept of restitution. The dream of a nonpunitive criminal justice system that relies solely on restitution is attractive, but careful scrutiny of pure restitution reveals that it is likely out of reach.[55]

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[54]Ibid., at 671.

[55]I would like to thank Professor David Benatar at the University of Cape Town for his guidance, as well as two anonymous reviewers for *Social Theory and Practice* for their thoughtful commentary.