**Crime e Castigo Estatal**

* Fonte principal: David Boonin, *The Problem of Punishment*

## 1. A natureza do castigo

* O problema do castigo:

How can the fact that a person has broken a just and reasonable law render it morally permissible for the state to treat him in ways that would otherwise be impermissible? How can the line between those who break such laws and those who do not be morally relevant in the way that the practice of punishment requires it to be? This is the problem of punishment.

* Uma definição de castigo:

P’s act *a* is a legal punishment of Q for offense *o* if and only if

(1) P is a legally authorized official acting in his or her official capacity and

(2) P does *a* because P believes (perhaps mistakenly) that Q has committed

*o* and

(3) P does *a* with the intent of harming Q (even if P fails to actually

harm Q) and

(4) P’s doing of *a* expresses official disapproval of Q for having committed *o*.

* Na restituição (pura), não há a intenção de infligir um dano àquele que violou a lei.

**2. A solução utilitarista**

* De acordo com a solução do utilitarismo (de actos):

…punishing people for breaking the law is justified because it best promotes (or can reasonably be expected to best promote) human happiness or well-being.

* Suponha-se que Larry assalta uma loja de bebidas alcoólicas e é condenado a cinco anos de prisão.

It seems reasonable to expect that incarcerating Larry will have several significant consequences.

* + First, it will significantly reduce his ability to commit further offenses while he is in prison.
  + Second, imprisonment may reasonably be expected to reduce the likelihood that Larry will commit more offenses after he is released.
  + Finally, after learning of Larry’s experience, other potential lawbreakers may also be expected to be less likely to commit offenses in the future.

In all of these ways, it is reasonable to suppose that imprisoning Larry for his offense will reduce the amount of lawbreaking in the future.

…even taking into account the costs to Larry and to those who may miss him while he is in prison, the taxpayers who will pay to feed and shelter him, and so forth, it may seem plausible to suppose that, on the whole, the benefits in terms of overall human happiness generated by imprisoning Larry outweigh the costs and produce a greater overall balance of happiness over unhappiness than would responding to his offense in other ways or not responding at all.

* A objecção de castigar os inocentes:
  + Imagine-se, por exemplo, que castigar o criminoso *e membros da sua família* teria melhores consequências.
  + Nesse caso, seria correcto castigar também os membros da família do inocente.
* Réplica definicional:
  + Esses inocentes, dada a definição de “castigo”, não seriam castigados.
* Réplica de Boonin:
  + Sim, mas sofreriam uma forma de “quase-castigo”: e o utilitarismo implica, inaceitavelmente, que seria correcto tratá-los dessa forma.
* Outra réplica:
  + O utilitarismo não tem a implicação apontada, visto que seria demasiado difícil manter secreta a condenação de inocentes.
* Réplica de Boonin:
  + Em alguns casos, não seria demasiado difícil manter o segredo.
  + Uma prática de punir os familiares inocentes poderia funcionar sem ser secreta.
* A objecção de não castigar os culpados:
  + Suponha-se não castigar um culpado teria melhores consequências.
  + Nesse caso, seria correcto não castigar o culpado.
* A objecção do castigo desproporcionado:
  + Suponha-se que a pena de morte por excesso de velocidade teria melhores consequências.
  + Nesse caso, seria correcto executar esses infractores.
  + Também é possível que o utilitarismo implique castigos desproporcionadamente leves.
* A objecção “no excuses”:
  + O utilitarismo implica

… people who commit crimes under duress or in the heat of passion should receive greater sentences than those who do not.

…for the vast majority of people, the prospect of three years in jail is sufficient to deter them from punching other people in the nose without provocation … But now consider the fact that when a person is provoked to anger by another, the thought of a penalty that would, under normal circumstances, be sufficient to deter him will no longer be sufficient.

* Uma objecção kantiana:
  + Aceitar a justificação utilitarista seria aceitar tratar as pessoas como meios.
* Uma réplica citada por Boonin:

Non-offenders too are knowingly harmed for the benefit of others. Urban redevelopment evicts families from [their] homes. Airports sacrifice the peace of a few for the convenience of many. Sufferers from some communicable diseases undergo irksome restrictions in the interests of public health. Soldiers are enlisted – not always voluntarily – to risk life and limb for [their] country. The list of examples could be much longer. The short point is that anyone who condemns deterrent or precautionary sentences on the ground that they harm offenders for the sake of others must either condemn many of the things that are done to the innocent or explain why only the guilty should be immune from being ‘‘treated as means’’

* Réplica de Boonin: aqui não se tem em conta a distinção entre pretender um dano e simplesmente prevê-lo.

**3. A solução retributivista: *desert***

* Solução proposta por Michael S. Moore e Stephen Kershnar.
* É moralmente aceitável castigar os criminosos porque eles *merecem* ser castigados.
* O retributivista apela a intuições respeitantes a crimes horrendos, para depois concluir que a posição retributivista também justifica castigos por crimes muito menos graves.
* Boonin cita Primoratz:

If we accept this [desert-based retributivist] claim with regard to the crimes committed in Auschwitz and Buchenwald, why not accept it with regard to crimes against humanity of lesser magnitude? And if we accept the claim with regard to the latter as well, why not with regard to murder of a single human being? And with regard to other crimes, less serious than murder? Or, if we are not willing to go all the way with this demand that justice be done and the criminal paid back in full, where, precisely, shall we draw the line?

* A objecção de não punir os culpados:
  + Uma pessoa pode infringir uma lei justa e razoável, mas não merecer sofrer pelo que fez (pois não fez nada de moralmente errado).
  + Um exemplo:

A person who steals a car to drive a friend to the emergency room clearly breaks the law, but at least in the case in which the friend will otherwise die and the owner of the car will not be significantly harmed by the theft (the owner, for example, has two other cars sitting in his driveway), it again seems clear that the act is not morally wrong.

* A objecção de punir os inocentes:
  + Do mesmo modo que há pessoa que infringem a lei e não merecem sofrer, há pessoas que não infringem a lei e merecem sofrer.
  + Um exemplo:

… consider a man who familiarizes himself with the law and does everything he can to make his wife miserable without crossing that line. If he is legally allowed to scream at her, he screams at her. If he is allowed to cheat on her, he cheats on her. In any way that he is allowed to embarrass, belittle, degrade, and insult her, he does, and with relish. He refrains from beating or raping her, but only because he is afraid of the legal consequences.

* A objecção acto vs. resultado:
  + There is an important gap between the claim that a person deserves something, on the one hand, and the claim that it is morally permissible to impose that something on the person, on the other.
  + The first, as we have seen, amounts to the claim that the world is intrinsically a better place when she gets what she deserves than when she doesn’t, while the second amounts to the claim that we have the right to force her to accept what she deserves whether she wants to or not.
  + The desert-based retributivist position requires us to accept the inference from the former claim to the latter. But the inference itself is objectionable
* Um exemplo:
  + Cinco pessoas más e uma pessoa boa precisam de um rim. A pessoa boa merece o rim: as coisas correriam melhor se ela ficasse com o rim. Mas suponha-se que ela não quer o rim. Seria errado transplantar o rim para o seu corpo.
* Analogamente:
  + Alguém merece sofrer de um determinado modo, com um castigo. As coisas correriam melhor se essa pessoa sofresse. Mas ela não quer sofrer. Então, não será errado impor-lhe o sofrimento?

**4. A solução retributivista: *forfeiture***

* Solução proposta por Alan Goldman.
* Ideia-chave:

if P violates Q’s right to X, then P forfeits P’s own right to X (or perhaps instead forfeits some equivalent right or set of rights).

To this foundational claim, the argument adds the plausible assumption that offenders violate the rights of others.

If both of these claims are true, it follows that offenders forfeit some of their rights in a way that nonoffenders do not. As Goldman puts it, ‘‘by violating the rights of others in their criminal activities, [offenders] have lost or forfeited their legitimate demands that others honor all their formerly held rights’’.

* Diz Goldman:

One continues to enjoy rights only as long as one respects those rights in others: violation constitutes forfeiture.

* Mas por que razão haveremos de aceitar a ideia-chave?
  + Um argumento proeminente (direitos implicam deveres):

If … affirming moral rights involves affirming moral duties, then it would seem to follow that negating one’s moral duties would involve negating one’s moral rights. As Goldman puts it, ‘‘Since having rights generally entails having duties to honor the same rights of others, it is plausible that when these duties are not fulfilled, the rights cease to exist’’

* A objecção dos direitos sem deveres:
  + Crianças de dois anos, por exemplo, não têm deveres, mas têm direitos.
* Implicações muito contra-intuitivas:
  + The forfeiture claim, for example, entails that a rapist forfeits the right not to be raped and a torturer forfeits the right not to be tortured.
  + A second case involves what might be called ‘‘intellectual rights,’’ the rights that a government official would violate, for example, if he prevented members of a particular religious denomination from gathering to worship or if he confiscated and destroyed a reporter’s notes before she was able to produce a story based on them. The forfeiture claim would entail that in such cases the official in question has lost his own right to religious freedom or to freedom of expression.
  + A third case turns on what might best be described as ‘‘procedural rights.’’ A person who has been convicted of breaking the law, for example, presumably has a right to have his sentence determined in a fair and impartial manner. A judge who takes a bribe and as a result hands down an unfair sentence violates this right of the offender. The forfeiture claim would therefore entail that if the judge is convicted of this offence, she has forfeited her own right to receive a fair sentence.
* A objecção do castigo desproporcionado:
  + Considere-se este caso:

Larry kidnaps Moe and holds him against his will for three days in a room of the same size, and with the same amenities, as a standard prison cell. Suppose, moreover, that in doing so he gets Moe to (correctly) believe that he is in no danger of being physically harmed and that he will be safely released at the end of the three days. At the end of the three days, Larry lets Moe go.

What does the forfeiture claim entail about such a case? Larry has clearly violated an important right of Moe’s: the right to freedom of movement. If we accept the claim that the violation of a particular right entails the forfeiture of that right, then we must conclude that Larry has forfeited his right to freedom of movement.

But has he forfeited this right temporarily or permanently? There are two possible answers to this question. Neither can help the forfeiture-based retributivist avoid the disproportionate punishment objection.

* No segundo caso, haveria que condenar Larry a prisão perpétua: um castigo demasiado duro.
* No primeiro caso, haveria que condenar Larry a apenas três dias de prisão: um castigo demasiado leve.
* A objecção da retaliação privada:

Suppose, to begin with an extreme case, that a convicted murderer has forfeited his right to life. The fact that he no longer has a right to life is meant to explain why it is morally permissible for the state to kill him.

But if it is true that he no longer has a right to life, then this fact should make it equally morally permissible for anyone to kill him.

This would apply both to people who wish to kill him because he committed a murder and to people who wish to kill him because they don’t like him or because they simply enjoy killing other human beings.

And the same would be true of lesser offenses:

**5. A solução retributivista: *fairness***

* Solução proposta Herbert Morris e George Sher, entre outros.
  + Esta solução apresenta-se em termos de justiça distributiva.
* Adopta-se um princípio geral de justiça (*fairness*): o princípio do *fair play*.

The principle, in Dagger’s formulation, maintains that ‘‘anyone who takes part in a cooperative practice and accepts the benefits it provides is obligated to bear his or her share of the burdens of the practice’’. To

accept collectively produced benefits without incurring the costs that others incur in producing them is to be a free rider, and the principle of

fair play can therefore be represented as the claim that it is unfair to be a free rider.

To this general and quite plausible moral view, the fairness-based retributivist adds a basic descriptive claim about the nature of society in general. The claim is that society is best understood as a mutually beneficial venture made possible by mutual cooperation. Each person benefits from living in a world of order rather than disorder, that is, but such order exists only because people generally abide by the rules and conventions that make such order possible. Society is viewed as the kind of cooperative practice that falls under the scope of the principle of fair play. More specifically, every person who lives within a given legal order enjoys the benefits generated by other people’s obedience of the law.

It follows from the conjunction of the normative principle of fair play and the descriptive claim on which society falls within that principle’s scope that every person who benefits from the legal obedience of others incurs a moral obligation to obey the law herself. And from this it follows that a person who breaks the law acts unfairly. The offender is a free rider on the lawful behavior of others. She derives the same benefits that others

derive by enjoying the peace and stability that come from living within the law, but she does not incur the costs that others incur in maintaining the legal order. In doing so, the offender therefore enjoys an unfairly large

share of the benefits generated by mutual cooperation.

* No que consiste essa vantagem?

As Finnis puts the point, the unfair advantage that the offender enjoys is ‘‘the advantage of indulging a (wrongful) self-preference, of permitting himself an excessive freedom in choosing,’’ so that he has enjoyed more freedom than has everyone else.

* Justifica-se assim o castigo:

From the claim that every offender enjoys an unfair benefit by committing

an offense, moreover, it follows that by considerations of fairness, this unfair benefit should be taken away from her. And this, according to the fairness-based retributivist solution, is precisely what punishment accomplishes. When a thief is put in prison, for example, the liberty that

she is now deprived of compensates for the extra amount of liberty that

she unfairly took for herself in committing her offense.

As Murphy puts it, ‘‘This analysis of punishment regards it as a debt owed to the law-abiding members of one’s community; and, once paid, it allows reentry into the community of good citizens on equal status’’

* A objecção de não punir os culpados:
  + Presume-se aqueles que infringem a lei são *free riders*.
    - Por vezes isto é verdade (e.g. fugir aos impostos).
    - Mas por vezes não é!

Consider, for example, what this analysis would imply about rape. Some

men rape some women, while many other men rape no women. The claim that legal offenses are to be understood as free riding on the law-abiding

would mean that the rapist’s offense is to be analyzed in terms of the rapist’s unfairly taking advantage of all men who voluntarily refrain from committing rape. But this is unacceptable. As Duff puts it, ‘‘this account of the criminal wrongfulness of rape is perverse: what is wrong with rape is that it attacks another person’s interests and integrity, not that it takes unfair advantage of the law-abiding’’

* Outros casos:

The vast majority of people, for example, have no desire to molest a child. There is therefore no cost to them in refraining from doing so. But if there is no cost to them in refraining, then they bear no burden by refraining, and the offender who does molest a child therefore enjoys no unfair advantage over them.

Relatedly, there are some criminal behaviors that many people are incapable of engaging in. Most people, for example, do not know how to hack into the Pentagon’s computer system. They are therefore not burdened by a law that forbids them to do so. So, if a hacker succeeds in breaking this law, there is no sense in which they are voluntarily exercising a form of self-restraint that the hacker is unfairly refraining from exercising.

* O retributivismo de *fairness* procura justificar o castigo com a alegação de que infringir a lei é uma forma de *free riding*.
  + Mas, como estes exemplos mostram, há muitas ofensas graves que não satisfazem esta descrição.
  + Assim, este retributivismo não justifica o castigo para essas ofensas.
* A objecção de não punir o ofensor previamente vitimizado:
  + Considere-se este caso:
* Suppose, for example, that Larry, Moe, and Curly have all been law-abiding citizens, benefiting from the legal order and bearing their fair shares of the burdens involved in maintaining it.
* Suppose, next, that Larry robs Moe.
* As an offender, Larry now enjoys an unfairly high share of the costs and benefits involved in social cooperation.
* As a victim, Moe now enjoys an unfairly low share.
* And as neither an offender nor a victim, Curly continues to enjoy just the right share.
* Clearly, the fairness-based retributivist seems to be in a good position to defend the punishment of Larry.
* But suppose now that Moe decides to commit a legal offense of precisely the same magnitude as the offense that Larry committed against him: he robs Curly.
* In this case, Moe appropriates for himself an additional amount of personal freedom: more than people are ordinarily allowed to take for themselves, but just enough to make up for the fact that he was victimized by Larry. In this case, the result now seems to be that Moe is back at the level at which he enjoys just the right share of the costs and benefits involved in maintaining the social order.
* But if he is already at that level, then considerations of fairness can do nothing to justify reducing him to a lower level. And if this is so, then fairness-based retributivism cannot justify punishing him.
* As Sher puts the problem, ‘‘we seem . . . committed to the view that wrongdoers who were themselves previously wronged do not now deserve to be punished’’

**6. A solução do consentimento**

* Solução proposta por C. S. Nino
* Quando se entra num táxi, consente-se tacitamente que o taxista exija de nós um pagamento pelo serviço prestado.
  + O acto em questão é voluntário.
  + O acto tem uma consequência normativa (*temos* de pagar ao taxista) e é realizado com o conhecimento dessa consequência.
* Uma alegação sobre a lei:
  + ‘‘A necessary legal consequence of committing an offense is the loss of immunity from punishment that the person previously enjoyed’’

And from this, it seems to follow that a person who voluntarily commits an offense and understands that he is doing so consents to his loss of immunity from punishment. This is not to insist that the person who breaks the law consents to being punished. Whether or not an offender is actually punished is a factual matter, and on Nino’s analysis the agent consents to the normative, not the factual, consequence of his voluntary act. Rather, the person who breaks the law consents to the resulting state of affairs in which punishment is now permissible.

As Nino concludes his argument, ‘‘The individual who performs a voluntary act – an offense – knowing that the loss of his legal immunity from punishment is a necessary consequence of that act consents to that normative consequence’’. And since the offender has consented to losing any claims against being punished, it is morally permissible for the state to punish him even though this involves treating him in ways that would otherwise be impermissible.

* A objecção do criminoso ignorante:
  + Aquele que desconhece a lei que violou, ou a pena associada a essa lei, não consente a perda da sua imunidade ao castigo.
* A objecção da negação explicita:
  + Um agente pode explicitamente não consentir a perda da sua imunidade ao castigo.
* A objecção das leis injustas:

Suppose … that you live in a country ruled by a dictator. He has imposed a law under which people are sentenced to twenty years of hard labor in a brutal prison camp for publicly criticizing the government.

You are aware of this law. Nonetheless, you publicly and voluntarily criticize the government. Indeed, you publicly and voluntarily criticize the government precisely because it has imposed this law. You are arrested. Nino’s position implies that you have consented to waive your liability to punishment, and that it would therefore be morally permissible for the state to condemn you to twenty years of hard labor for having publicly criticized it.

And suppose … the state unobjectionably forbids people from overparking but objectionably imposes capital punishment on those who overpark. In this case, as Alexander points out, the consent solution will entail that ‘‘one who voluntarily overparks ‘consents’ to be executed’’. But this implication is unacceptable. And so, once again, is the consent solution to the problem of punishment.

**7. A teoria da restituição pura**

* Uma reacção possível:
  + Mesmo não havendo uma boa solução para problema ético do castigo, há manter a instituição do castigo, pois este é necessário na prática.
* Outra reacção possível:
  + Há que acabar com o castigo e substituí-lo por tratamento e terapia.
* A proposta de Boonin:
  + Há que acabar com o castigo e apostar na restituição às vítimas.

The problem of punishment arose for two reasons: punishment involves the state’s intentionally harming some of its citizens, and it involves treating the line between those who break the law and those who do not as justifying treating people on one side in ways that it would not treat those on the other. But neither of these features of punishment is a feature of compulsory victim restitution.

…although compulsory victim restitution typically does involve predictable harm to the offender, pure restitution does not involve harming the offender intentionally, either as an end in itself or as a means to a further end.

And while punishment involves the state’s treating people who break the law in ways that we would not permit it to treat people who do not break the law, compulsory victim restitution does not. The state compels nonoffenders to make restitution to others all the time. Whenever one party successfully sues another party for damages in a civil lawsuit, for example, someone who is guilty of no violation of the law is nonetheless compelled to compensate someone else for damages she is found to have caused.

### 7.1. Clarificação da teoria

(1) …the theory is restricted to cases in which offenders harm their victims.

(2) …the theory is restricted to cases in which offenders wrongfully cause harm. … I will say that an offender’s act wrongfully harms a victim if the offender’s harmful act is prohibited by law and if the legal prohibition is just and reasonable.

(3) the theory says that offenders must make restitution to their victims when they are responsible for the harms they have wrongfully caused.

(4) Fourth, the theory says that when the offender is responsible for his

act, when the act is wrongful, and when the act harms the victim, the state should compel the offender to restore his victim to the level of well-being he rightfully enjoyed prior to the offense.

### 7.2. Danos à sociedade

* A teoria da restituição é demasiado individualista.
  + Ignora os danos à sociedade decorrentes da violação da lei.
  + Pense-se num assalto: não afecta só a pessoa que foi assaltada.
* Diz um dos críticos:

the [pure] restitution theory understates the importance and the complexity of the network of relationships that is disrupted by crime, relationships too complex to be repaired through payment of compensation

* Réplica das vítimas secundárias:
  + O defensor da teoria pode defender que a restituição também é devida àqueles que são afectados mais indirectamente pelo crime.
* Como poderá efectuar-se a restituição? Só monetariamente?
  + Não.
* A propósito de um exemplo de assalto:

In cases such as this, the theory of pure restitution may be unable to do anything more if it is limited itself to monetary restitution. But this is not

a problem for the theory. Rather, it is a reason for the theory to refuse to

be constrained by this limit. There are many other ways that the burglar

in this case could more fully restore his victims to their previous level of

safety and security. He could, for example, 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 … 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 areas or 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.

### 7.3. Danos irreparáveis

* Outras objecção: há crimes que resultam em danos irreparáveis.

The irreparable harms objection rests on two claims:

* + the claim that people who commit such offenses as rape and murder would face no (or at least no serious) consequences and
  + the claim that this result is unacceptable.
* Boonin critica ambas as alegações.
* Contra a segunda alegação:

If I borrow money from you and then lose all my money (and, let us say, also lose my ability to earn more money), then I cannot pay you back. But this does nothing to impugn the principle that people should repay their loans. Nor does it provide a reason to think that you are suddenly allowed to treat me in ways that would otherwise be impermissible, say by deliberately harming me. Again, it simply shows that sometimes people can’t do what they should do or what they would be permitted to do were this possible.

In precisely the same way, if there are cases in which it is not possible for an offender to restore a victim to his previous level of well-being, this does nothing to invalidate the principle that the state may compel offenders to make restitution to their victims but may not punish them. It simply shows that when offenders violate the law, it is not always possible for the state to do everything that it would be morally permitted to do in response.

* O mesmo se aplica ao castigo:

If pure restitution must be rejected because, in some cases, we cannot extract the restitution to which we would be entitled, then punishment would also have to be rejected because, in some cases, we cannot impose the punishment to which we would be entitled.

* Sobre crimes de violação:

If the victim cannot be fully restored to her previous level of well-being, then the state should compel the offender to do the best he can to bring about that result. What would that amount to? I do not claim to know.

* Há que atender às vítimas secundárias desses crimes.
* Sobre crimes de homicídio:

The direct response turns on three claims, which I will refer to as the ‘‘transferability claim,’’ the ‘‘substitutability claim,’’ and the ‘‘pricing claim.’’ Each claim, taken individually, is extremely difficult to deny. All

of the claims, taken together, show how the theory of pure restitution can

overcome the irreparable harm objection even for murder and even if we

limit our focus to the harm done to the victim.

The **transferability claim** maintains that a debt owed by one person to another can be transferred to a third party when the person who is owed something dies before the debt is fully paid.

The **substitutability** claim maintains that if one person cannot pay another precisely what she owes him, she can still be obligated to fulfill her debt by substituting something else of comparable value.

The **pricing claim** maintains that it is possible, at least in principle, to put a dollar value on a person’s life.

* Combinando as três teses:
* …suppose, again, that Curly has wrongfully killed Larry.

* the fact that Curly cannot give Larry precisely what he owes him does not mean that he owes him nothing at all. According to the substitutability claim, it means that he owes him something of comparable value.
* And according to the pricing claim, this something of comparable value can be stated in terms of dollars. Suppose, for the sake of the example, that Larry’s life was worth $25 million.
* In that case, the result of combining the substitutability and pricing claims is that Curly would now owe Larry $25 million.
* But, of course, Curly can’t give Larry $25 million any more than he can give him his life back. Larry, after all, is dead. So, Curly can’t give him anything. But according to the transferability claim, this does not mean that Curly owes nothing to anyone. It means that the debt he has incurred is transferred to Larry’s estate.
* And so, the result of combining these three claims is that under the theory of pure restitution, Curly would incur a large debt as a result of killing Larry.

### 7.4. O criminoso rico

* Objecção: a restituição não será um encargo pesado para o criminoso multimilionário.
* Primeira réplica:

…when the wealthy offender robs my neighbor and then restores him to his previous level of well-being, the cost to me and my other neighbors is significantly higher. Since the wealthy offender has barely been harmed by his action, he has barely been deterred from repeating it.

This means that he has caused much more harm to his secondary victims – more subjective anxiety and a greater decrease in their objective level of security – than has the typical offender. Thus, he owes much greater compensation to his secondary victims than does the typical offender

* Segunda réplica:

…if the rich offender objection provides a sufficient reason to reject the theory of pure restitution, then it will also provide a sufficient reason to reject the practice of punishment.

The punishment for many offenses, for example, is a fine. If a millionaire and a person of average means are each fined for committing the same infraction, the wealthy offender suffers much less than the ordinary one.

And the same is often true in the case of prison sentences. A typical offender, for example, is likely to find it extremely difficult to find work after spending five years in prison. His sentence may ruin the rest of his life. But a wealthy offender will find it much easier to return to life after prison.

### 7.5. Dissuasão insuficiente

* Objecção: a restituição não é suficientemente dissuasora.
* Boonin responde a esta objecção salientando os danos às vítimas secundárias.
  + Se a taxa de detecção de um certo tipo de crime for alta, a restituição será suficientemente dissuasora.
  + Se a taxa de detecção de um certo crime for baixa, os danos secundários serão mais elevados e assim a restituição exigir será mais elevada, pelo que a restituição será suficientemente dissuasora.