Retributive Harmony in the thomistic and the neo-confucian tradition

Abstract

Retributive theories of punishment hold that moral desert is a necessary and sufficient condition for punishment. This principle has been justified in light of rectifying a 'balance of justice' upset by wrongdoing. Many opposed to retributivism, such as Nussbaum, have argued such a ‘balance’ is nothing more than ‘magical’ thinking and retributivism is, in fact, positively harmful. On the contrary, I will argue that there is a compelling way to make sense of that intuition. The Chinese Neo-Confucian tradition and medieval Latin theologian Thomas Aquinas hold that moral wrongs upset a normative order of relationships and, in this respect, disrupt the order that ought to exist in the human community. Despite criticisms that retributivism about punishment requires outlandish metaphysical assumptions, I therefore propose the theory remains plausible without any such appeal.

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A basic idea for retributive theories of punishment is that moral desert is a necessary and sufficient condition for punishment.[[1]](#endnote-1) This principle has been justified by reference to a “balance” upset by wrongdoing.[[2]](#endnote-2) However, Martha Nussbaum has argued this ‘balance’ is nothing more than ‘magical’ thinking.[[3]](#endnote-3) In fact, such a view is positively harmful: “…payback ideas prevent the serious consideration of treatment that might actually better promote general welfare and bonds of trust among citizens. The wrongful act has been done and cannot be undone; it is mere magical thinking involving a strange metaphysics of cosmic balance to suppose that the past is balanced out by a gruesome suffering in the future.” [[4]](#endnote-4) On the contrary, I will argue that there is a compelling way to make sense of that intuition.

A fascinating convergence exists between the twelfth-century Neo-Confucian tradition and the thirteenth-century theologian Thomas Aquinas: both hold that moral wrongs upset relationships and, in this respect, disrupt the order that ought to exist in the human community. Creatively putting these traditions in dialogue offers a unique interpretation of how punishment restores the balance of appropriate social relations, especially given their shared assumptions on relationships and moral repair. Moral wrongdoing is a necessary and sufficient condition for punishment, and suffering is necessary in order to restore the goods internal to human relationships disrupted by wrongdoing. Because appropriate relationships are objectively good, restoring them by punishment would be indirectly beneficial even for the unrepentant wrongdoer.

In both Aquinas’ Aristotelian tradition and the Neo-Confucian tradition, there were tensions in conceiving the purpose of punishment. In the Confucian tradition, there was a focus on virtue, promoted by education or learning, as the essence of governance.[[5]](#endnote-5) Punishments, if necessary, were understood at efforts at moral correction, especially when other means were ineffective to restrain vice. The Neo-Confucians held to elements of this traditional focus on moral reform as the purpose of punishment. I here focus on one exemplar of the Neo-Confucian tradition, a collection of sayings under the title *Reflections on Things at Hand*近思录,complied by Zhu Xi朱熹 and Lu Zuqian吕祖谦, two highly respected Neo-Confucians in their own right. The textbook was intended to introduce students to the broad range of Neo-Confucian metaphysics, ethics, and political philosophy.

In *Reflections on Things at Hand,* one finds an exemplar of moral correction the following: a mother who did not beat her servants but looked on them “as her own children.” She did not ignore her (actual) children’s wrongs, but addressed them directly to bring about their correction.[[6]](#endnote-6) Similarly, in Confucian tradition, the family is the model for governing the State so that familial correction is the ideal for civil correction of wrongdoing.[[7]](#endnote-7) So, as in a family, civil punishment aims at the restoration of loving relationships.[[8]](#endnote-8) The sage prefers education to punishments,[[9]](#endnote-9) so that one aims ‘to make punishments unnecessary’ through preventative moral education.[[10]](#endnote-10)

The opposing tension was that punishment exists to impose a kind of categorical order on wrongdoers by accurately and publicly declaring moral guilt.[[11]](#endnote-11) Again, the Confucians shares similar concerns: the office of the ruler or sage involves implementing ‘regulations that are correct,’ which is to say regulations corresponding to or appropriately regulating or promoting the relationships that should hold between, for example, parents and children. If the state is not well-ordered, it will fail to promote virtue.[[12]](#endnote-12) Capital punishment is one of the most outstanding of these categorical punishments. This is because killing a wrongdoer necessarily ends any process of moral correction.[[13]](#endnote-13) But the Neo-Confucians claim that capital punishment is necessary; even if the superior man deliberates with pity before imposing capital punishment[[14]](#endnote-14) he will impose it when truly required.[[15]](#endnote-15) The categorical-retributive and the corrective aims of punishment here can come into tension. One can punish when it appears that the punishment either does not in fact or cannot (e.g., capital punishment) bring about moral reform. The view that punishment is a dispensable secondary means to encourage moral reform can also leave punishment without a proper place in political theory.[[16]](#endnote-16) Obviously, to be coherent, the Confucian theory needs to reconcile these aims.

Similar tensions existed for Thomas Aquinas. For example, the doctrine of hell entails that God imposes some punishments justly even when they will never bring about moral reform in the damned.[[17]](#endnote-17) There is no possibility that the damned will repent, so the punishment of hell cannot be justified in view of bringing about repentance. So, one hand, Aquinas explicitly accepts a principle of desert: moral offense is a sufficient and necessary condition for punishment; “sin makes man to be deserving of punishment.”[[18]](#endnote-18) Aquinas also frames the definition of punishment within the overall scope of an ‘order’ of justice: wrongdoing upsets an order, and punishment is a repression of wrongdoers by that same order so as to restore the normative state of affairs.[[19]](#endnote-19)

Fundamentally, punishment of any kind exists to restore justice as appropriate, not to bring about moral reform in the one punished.[[20]](#endnote-20) Aquinas thus claims that punishment is “*per se* ordered to [correct] lack of order….”[[21]](#endnote-21) For example, divine punishments in hell are good insofar as they “impose order on creatures, in which the good of the universe consists.”[[22]](#endnote-22) And this order which God imposes is nothing other than divine justice.[[23]](#endnote-23) But the other tension is that Thomas holds that God intends punishments for a moral purpose; i.e., for the sake of virtue, so that God’s punishments of sinners in this life are all ordered toward spiritual goods.[[24]](#endnote-24) God has personal love for each person and does not will evil for anything He creates.[[25]](#endnote-25) Thomas reconciles these aims in offering a unique understanding of the ‘order’ that punishment seeks to correct: the ‘order’ in question is the common good of society, or peace, so that punishment aims to restore appropriate social relationships.[[26]](#endnote-26)

John Finnis has argued that Aquinas’ vision is akin to that of retributive theorists (e.g., Herbert Morris) who hold that criminal offenses disrupt a societal order of rights and obligations and that this is the ‘common good.’ On Finnis’ view, Aquinas would therefore hold that punishment is required to correct the balance of rights unfairly taken advantage of by the criminal against the law-abiding.[[27]](#endnote-27) Because a criminal overreached in taking unfair advantage, he deserves to be deprived. However, this kind of reading of Aquinas’ view of punishment is selective. Instead, Aquinas’ common good is a concrete ‘relational’ good, a normative order holding among specific relationships among people, not a balance of abstract rights and obligations. The purpose of society is to achieve a uniquely social good founded upon those relationships, namely, the *right* ordering holding among persons.[[28]](#endnote-28) These goods can only be achieved in cultural activity and political life, and thus serve as the reason for the existence of the State. [[29]](#endnote-29)

Aquinas calls this goal of ideal political life ‘peace’.[[30]](#endnote-30) Peace goes beyond mere absence of conflict and is envisioned as a ‘moral unity’ of all citizens in unified pursuit of the same goals. For this reason, perfect peace requires, beyond just relations between citizens, the personal virtue of each citizen. The individual’s reason, will, and other powers should be properly cooperative in pursuit of their proper, natural end. All virtue is a kind of harmony within the human will,[[31]](#endnote-31) but no true virtue is therefore possible without love*.*[[32]](#endnote-32) Love of God or charity (*caritas*) is the greatest of all virtues and the “form” of the other virtues because it is the ‘meta-principle’ of virtuous harmony within each person and in society. Charity produces appropriate order within individuals and between them, as it directs all of their relations to appropriate ends.[[33]](#endnote-33) Love is thus required to properly order societal relationships appropriately and harmoniously so that societal peace, while requiring justice as a necessary condition, can only result from love among citizens.[[34]](#endnote-34) Peace is an objectively good state of relationships in society, as it is a state of being properly ordered (as an individual or group) toward what is truly good.[[35]](#endnote-35) Thus, when appropriate relationships are achieved, peace is the natural result, i.e., peace is nothing more than “the tranquility of order.”[[36]](#endnote-36)

The Neo-Confucians hold a similar view to Aquinas that the order disrupted by moral wrongdoing is the social order of proper relationships in society. Zhu Xi, one of the compilers of the *Reflections,* proposes in a separate work an extended theory of *ren* 仁 (“love” or “humaneness”) that makes *ren* a parallel virtue in many ways to Aquinas’ *caritas*. *Ren* is the source of all moral order, and sooperates in the other virtues as a meta-principle of moral action; “the place of Love [*ren*] in the Moral Order is as the life-producing Mind of Heaven and Earth present in everything.”[[37]](#endnote-37) Much like Aquinas’ *caritas, ren* occupies an analogous place as ‘form’ of the virtues as it directs the others to harmonious ends.[[38]](#endnote-38) For these reasons, *ren* is *the* principle of good action, harmony, and unity.[[39]](#endnote-39) *Ren* directs human acts toward their proper end, and orders all other relationships.[[40]](#endnote-40) Moral perfection is envisioned as creating a properly-ordered, universally-inclusive family, where “all people are my brothers and sisters, and all things are my companions.”[[41]](#endnote-41) Because *ren* unites, moral evils follow from principles of disorder.[[42]](#endnote-42) The opposite of *ren,* selfishness/egoism, is the fundamental moral wrong because it acts against moral order and proper relationships, thereby creating “multiplicities” where harmony/unity should exist.[[43]](#endnote-43)

On such ethical theories where the primary virtues are relational, the ‘order’ punishment restores is a *moral* order of proper relationships, or ‘appropriate loves.’ Aquinas makes this explicit in connection to punishment. Moral offenses are offenses against the orders proper tovariousrelationships: the sinner in relation to himself, the human community, or God. [[44]](#endnote-44) Different punishments result from each disrupted relationship: remorse of conscience, legal punishments, and divine punishments.[[45]](#endnote-45) Punishments are, in each case, an attempt to restore the order to a normative state, and each does so in a way necessarily involving suffering. As disruptions in relationships arise from disordered choices of the will, repair of relationships always involves suffering contrary to the will;[[46]](#endnote-46) “[the offender] has been too indulgent to his will, [and so] should suffer something against his will, for thus will equality be restored.”[[47]](#endnote-47) Suffering is required because undergoing something contrary to the bad dispositions is needed to rectify the will’s disorder.[[48]](#endnote-48) The will needs to “do violence” to itself, to actively work contrary to the state of affairs it brought about (in its own dispositions and in the world) and restore appropriate harmony between itself and others.[[49]](#endnote-49) Zhu Xi shares this view that moral self-correction requires some suffering contrary to the will, as faults are corrected by “going backward, bending the will to obey, and following….”[[50]](#endnote-50)

‘Penance’is the ideal pattern of moral repair, when an individual voluntarily undergoes just punishment for their wrongdoing. The first step is repentance; this is an appropriate grief over sin in order to remove it from one’s will.[[51]](#endnote-51) Repentance alone is insufficient to complete moral repair.[[52]](#endnote-52) Just having sorrow over sin does not necessarily remove its effects from one’s life, as a wrongdoer usually retains some of the dispositions that come from having committed a moral offense (Aquinas’ “stain of sin”).[[53]](#endnote-53) For example, a ‘dry drunk’ can often involuntarily *feel like* having a drink (which requires significant conscientious avoidance of temptation). Part of ‘repairing’ their moral state involves striving to avoid occasions of temptation (e.g., drinking parties) and staying sober long enough to decrease the strength of those involuntary dispositions. But, for much wrongdoing, there are also effects in the world that need to be remedied, requiring acts of restitution and satisfaction.[[54]](#endnote-54) The wrongdoer’s relationships objectively remain disrupted, even if the wrongdoer privately feels sorrow and begins to intend moral reform. Reconciliation is made possible by reversing the *effects* of wrongdoing. True repentance for sin will thus include a desire to repair the effects one’s wrongdoing might have wrought on one’s own psyche or in relationships with others. [[55]](#endnote-55) Because penance is the ideal for Aquinas and the Neo-Confucians, most human punishment should be an attempt to induce the offender to reform and voluntarily do penance.[[56]](#endnote-56) Both thinkers thus think other means to bring about moral reform are often preferable to punishment, such as education.[[57]](#endnote-57) Civil punishment remains radically deficient, consequently, in being able to accomplish moral reform: States have no internal access to the will of the offender and remain fallible.

But neither the State, nor even God, can *force* the offender to repent. This raises the question of what purpose punishments serve when reform never happens or is in principle impossible (what I term ‘retributive’ punishments).[[58]](#endnote-58) For both thinkers, as we said, wrongdoing disrupts appropriate relationships.[[59]](#endnote-59) If one party to a broken relationship does not want to voluntarily change themselves and restore the proper order of love (doing penance), then all that can be done is to repair the peace of the communityinsofar as is possible. Aquinas’ justification for exile or capital punishment relies on direct benefit to the common good.[[60]](#endnote-60) When the State punishes in these cases, it removes an offender from harmful interaction with the community and tries to facilitate amends being made to the victim/s, thus restoring some peace to the community.[[61]](#endnote-61) Aquinas holds that it remains a good *for the offender* that peace should be restored.[[62]](#endnote-62) Thus ‘retributive’ punishments benefit the wrongdoer, if only indirectly.

In Aquinas’ theory of hell, we have an extreme example of a ‘retributive’ punishment that nevertheless benefits the damned indirectly. God removes the damned to hell where their actions will do no harm to others and thereby restores peace to the rest of society (i.e., the blessed).[[63]](#endnote-63) This removal indirectly benefits the damned. While the damned cannot repent,[[64]](#endnote-64) hell stops the damned from harming themselves by committing further moral wrongs. But hell also ‘fulfills’ the desires of the damned. The damned, in rejecting God, choose some other good in His place. Hell is God allowing the damned to have what they want, despite it being painful to them. Their suffering is the *natural consequence* of choosing something other than their true good – they chose poorly, objectively speaking, and suffer the consequences of wanting something other than eternal happiness.[[65]](#endnote-65)

We could imagine, similarly, for a truly evil offender that was so disordered that he could not be restrained from wicked acts by any other punishment, removal from society by exile or capital punishment would be indirectly beneficial to the offender. First, it would prevent him doing further moral injury to himself by continued wrongdoing. Second, by putting him in an appropriate relationship to society *as an offender*, the punishment would put him in an objectively better situation than continuing in evil without any societal attempt at correction. There are obviously different kinds of punishments with different physical or mental pains, but the pain of *punishment* seems inherently connected to an ‘offense.’ Unrepentant offenders suffer from punishment because they believe their punishment is inappropriate (e.g., unmerited). One would not suffer in the same way from being isolated in prison if it were for protection from enemy forces or convalescence. But, in that case, the suffering puts the wrongdoer in touch with the *truth* of their wrongdoing and in a morally better situation than they would be without that suffering. Zhu Xi could likely hold a similar intuition about ‘retributive’ punishments, as punishments have been seen in the Confucian tradition “as unilateral ritual, where the party who refuses to enter into the social ordering of society is compelled to become part of that ordering.”[[66]](#endnote-66) Thus, the wrongdoer’s suffering at being corrected by punishment puts him in an *objectively* good and appropriate relationship, beneficial even to the wrongdoer himself, as opposed to the case where society were to allow him to do evil without any attempt at correction.[[67]](#endnote-67)

Consider for a moment a case of inappropriate punishment. Inappropriately light punishment intuitively trivializes an offender’s crime or what the crime did to others. Not punishing sends a message that we do not value the victim of crime appropriately, or that society does not as strongly condemn the crime as that of others.[[68]](#endnote-68) While obviously less beneficial, a harsher sentence could at least instill in the offender a fear of committing the crime again.[[69]](#endnote-69) In the best case scenario of ‘penance,’ an offender would: voluntarily take ownership publicly for the offense, make amends as appropriate, and perform ‘satisfaction’ (e.g., voluntarily accepting jail time). The offender would need to make significant satisfaction to repair his relationships with the community and to become the sort of person who can come to strongly despise his former motives and intentions.[[70]](#endnote-70)

If the offender were not, in fact, to repent, there would still be merit in a harsher sentence. In restoring social relationships, punishment directly brings peace to society. It also helps the offender indirectly to punish him more appropriately. Punishment treats an offender as he/she *should* be treated. Offenders suffer from the punishment because they do not want to be publicly treated as a seriously guilty person that needs to make satisfaction. They do not see what he did as wrong or the victim as needing anything from him. But this suffering in thinking themselves unfairly punished is the result of an objective *moral disorder*. Harsher punishment, then, causes an offender to experience the badness of their wrongdoing, communicating by the sentence that they are in need of reform. This punishment is morally appropriate to the disorder, and it puts the offender in a position apt for moral reform and making amends to the victim/community. Having the fact of guilt communicated, even if it never bears fruit in reform, is better for the offender than allowing them to freely continue in thinking that their crime would be acceptable in certain cases. By punishing them with a ‘slap on the wrist,’ the justice system does a disservice to the offender, let alone the community.[[71]](#endnote-71)

Such an account of punishment does not require ‘magical metaphysics’ to be plausible. Rather, the question is what would be required in order to restore appropriate relationships after wrongdoing. Aquinas and the Neo-Confucians make a compelling case that suffering punishment is a necessary condition for correcting a disordered will and, thereby, restoring our relationships. The ideal moral reform is penance, where repentance leads to voluntarily accepted punishment. But the suffering of involuntary punishment is necessary for the common good insofar as it restores objectively good relationships in society but is also potentially morally educative to wrongdoers. The objective good of relational harmony entails that even wrongdoers who do not repent of their crimes benefit indirectly from a punishment that restores peace in society.

1. M. MOORE, *The Moral Worth of Retribution*, in *Placing Blame,* Oxford University Press, Oxford 2010*,* 104-152. [↑](#endnote-ref-1)
2. Moore alludes to these justifications; ibid., 209-210. Herbert Morris’ version of such a “balance” theory is not obviously “metaphysical”; H. MORRIS, *Persons and Punishment*, “The Monist”52 (1968) 4, 475-501. But Hampton’s theory of punishment comes closer to a metaphysical reading, as wrongs bring about a state of affairs where the victim is valued less than he/she ought to be; Jean Hampton, *Correcting harms versus righting wrongs,* in “UCLA Law Review*,”* (1991-1992)39, 1673-1685. [↑](#endnote-ref-2)
3. M. NUSSBAUM, *Anger and Forgiveness,* Oxford University Press, Oxford 2016, 178. [↑](#endnote-ref-3)
4. Ibid.*,* 183-184. [↑](#endnote-ref-4)
5. X. YANG, *The Confucianization of Law and the Lenient Punishments in China,* in “International Journal of Criminal Justice Sciences” 10 (Jan.-Jun. 2015) 1, 34; X. REN, *Tradition of the Law and Law of the Tradition*, Greenwood Press, Westport, CT 1997, esp. 19-23 & 31; D. GARDNER, *Zhu Xi’s Reading of the Analects*, Columbia University Press, Columbia 2003, 110; C.-Y. CHENG, *The Chinese Theory of Criminal Law* in “Journal of Criminal Law and Criminology*”* 39 (1949) 4, 465. [↑](#endnote-ref-5)
6. CHU HSI [Zhu Xi] and LU TSU-CH’IEN, *Reflections on Things At Hand* [*RTH*], trans. W.-T. CHAN, Columbia University Press, New York, NY 1967, 179-180. [↑](#endnote-ref-6)
7. Ibid., 202. [↑](#endnote-ref-7)
8. This is implied in the case of T’ien Chi – *RTH*, 248. [↑](#endnote-ref-8)
9. *RTH,* 208. [↑](#endnote-ref-9)
10. This is a common mantra in Chinese Confucian thought; c.f., YANG, *The Confucianization of Law and the Lenient Punishments in China,* 34. [↑](#endnote-ref-10)
11. This can be seen as a case of ‘rectification of names,’ or *zhengming* 正名. C.f., D. HALL and R. AMES, *Thinking Through Confucius,* SUNY Press, Albany, NY 1987, 173-175. See also the earlier Confucian view: XUNZI, *Xunzi,* trans. E. HUTTON, Princeton University Press, Princeton 2014, ch. 18: ln. 184-199: “[in orderly, ancient times] rewards and punishments were all bestowed as requitals; they were things which followed according to kind. […] If punishments match up to offenses, there will be order. If they do not match up to offenses, there will be chaos.” [↑](#endnote-ref-11)
12. *RTH*, 208-209, 258. [↑](#endnote-ref-12)
13. Even if a wrongdoer might reform on the way to execution, one cannot reform after death, prescinding from questions about the immortality of the soul. [↑](#endnote-ref-13)
14. *RTH*, 246. [↑](#endnote-ref-14)
15. Zhu Xi, *Philosophy of Human Nature* [*PHN*], trans. J. P. BRUCE, Probsthain & Co., London 1922, 256. [↑](#endnote-ref-15)
16. S. ANGLE, *Sagehood*, Oxford University Press, Oxford 2009, 220-221. [↑](#endnote-ref-16)
17. C.f., THOMAS AQUINAS, *Summa Contra Gentiles* [SCG] IIIb, c 140, n. 10-11. [↑](#endnote-ref-17)
18. THOMAS AQUINAS, *Summa Theologiae* (Leonine ed., 1888-1906) [ST] I-II, q. 87, a. 1, ad 2. […peccatum facit hominem esse reum poenae…] [↑](#endnote-ref-18)
19. ST I-II, q. 87, a. 1, resp. [↑](#endnote-ref-19)
20. C.f., ST I-II, q. 87, a. 3, ad 2; SCG IIIb, c. 146, 1, 4-5, & 10. [↑](#endnote-ref-20)
21. ST I-II, q. 87, a. 3, ad. 4. [poena…per se tamen ordinatur ad privationem ordinis….] [↑](#endnote-ref-21)
22. SCG IIIb, c. 144, 10. […propter ordinem imponendum creaturis, in quo bonum universi consistit.] [↑](#endnote-ref-22)
23. ST I-II, q. 87, a. 3, ad. 3. […Deus non delectatur in poenis propter ipsas; sed delectatur in ordine suae iustitiae, quae haec requirit.] [↑](#endnote-ref-23)
24. C.f., SCG IIIb, c. 140, n. 6; c. 141, n. 6; ST II-II, q. 87, a. 2, ad. 1. [↑](#endnote-ref-24)
25. ST I, q. 20, a. 2, resp. & ad. 3. [↑](#endnote-ref-25)
26. Aquinas does not embrace the view that there must be *lex talonis* equality of punishments to offenses. C.f., ST II-II, q. 61, a. 4; P. KORITANSKY, *Thomas Aquinas and the Philosophy of Punishment,* Catholic University of America Press, Washington 2012, 105-106. [↑](#endnote-ref-26)
27. J. FINNIS, *Natural Law and Natural Right,* Oxford University Press, Oxford 1980,263. See more recently his *Aquinas,* Oxford University Press, Oxford 1998, 214. [↑](#endnote-ref-27)
28. C. DE KONINCK, *The Primacy of the Common Good,* in *The Writings of Charles de Koninck,* vol. 2, ed. and trans. R. MCINERY, University of Notre Dame Press, Notre Dame, IN 1999, esp. 75. [↑](#endnote-ref-28)
29. J. MARITAIN, *The Person and the Common Good*, trans. J. FITZGERALD, University of Notre Dame Press, Notre Dame, IN 1966, 49-53. [↑](#endnote-ref-29)
30. C.f., THOMAS AQUINAS, *De Regno,* c. 3, n. 17. [↑](#endnote-ref-30)
31. SCG IIIb, c. 139, 15. [↑](#endnote-ref-31)
32. ST II-II, q. 23, a. 6 & 7. [↑](#endnote-ref-32)
33. ST II-II q. 45 a. 6 ad 3 [Ultimum autem est, sicut finis, quod omnia ad debitum ordinem redigantur, quod pertinet ad rationem pacis.] “The ultimate is that by which, as end, all is appropriately ordered, which pertains to the definition of ‘peace’” [↑](#endnote-ref-33)
34. ST II-II, q. 39, a. 3, ad. 3; q. 29, a. 4, resp. […non est alia virtus cuius pax sit proprius actus nisi caritas.] [↑](#endnote-ref-34)
35. It should also be noted that the ‘order of divine justice’ is an order immanent to created things, so that they have their own natural principles of action. Charity is thus the fulfillment of these natural principles. C.f., ST I-II, q. 93, a. 5, resp. The same is true of Zhu Xi, who thinks the universe is ordered by *li; RTH*, 73. [↑](#endnote-ref-35)
36. ST II-II, q. 29, a. 1, ad. 1. [↑](#endnote-ref-36)
37. *PHN*, 352. [↑](#endnote-ref-37)
38. Ibid. [↑](#endnote-ref-38)
39. Ibid., 365, 375-6. [↑](#endnote-ref-39)
40. Ibid., 376. [↑](#endnote-ref-40)
41. Ibid., 76-77. [↑](#endnote-ref-41)
42. S.-H. LIU, *Understanding Confucian Philosophy,* Praeger, Westport and London 1998, 159-161. [↑](#endnote-ref-42)
43. *RTH*, 23. [↑](#endnote-ref-43)
44. A moral offense typically upsets more than one order at a time. [↑](#endnote-ref-44)
45. ST I-II, q. 87, a. 1, resp & ad 3. [↑](#endnote-ref-45)
46. Aquinas is clear that not any suffering or harm will be correctively ‘contrary to the will’; c.f., THOMAS AQUINAS, *Quaestiones* *De Potentia Dei,* q. 5, a. 4, ad. 6. [↑](#endnote-ref-46)
47. ST III, q. 86, a. 4, resp. [↑](#endnote-ref-47)
48. ST III, q. 86, a. 4 & 5. Forgiveness of the guilt of sin is the same thing as the infusion of sanctifying grace, a new “configuration” introduced into the will. This is the gloss on Aquinas’ doctrine in E. STUMP, *Aquinas*, Routledge, New York, NY 2003, 432. The note of disrupted relationships is implied in ST I-II, q. 87, a. 6, ad 3 (cited earlier). [↑](#endnote-ref-48)
49. ST I-II, q. 87, a. 6, resp. […manifestum est quod macula peccati ab anima auferri non potest, nisi per hoc quod anima Deo coniungitur…. Coniungitur autem homo Deo per voluntatem. Unde macula peccati ab homine tolli non potest nisi voluntas hominis ordinem divinae iustitiae acceptet ut scilicet vel ipse poenam sibi spontaneus assumat in recompensationem culpae praeteritae, vel etiam a Deo illatam patienter sustineat….] “…it is manifest that the stain of sin is not able to be removed from the soul except by joining the soul to God… Joining man to God occurs through the will. Therefore the stain of sin is not able to be taken away from man unless the will of man accepts the order of divine justice as would be apparent in either spontaneously assuming punishment in recompense for the previous fault or undergoing that patiently which God [sends].” [↑](#endnote-ref-49)
50. Ibid*.*, 171-172. [↑](#endnote-ref-50)
51. C.f., ST III, q. 85, a. 1, resp. [↑](#endnote-ref-51)
52. Even in the case of perfect contrition, need for satisfaction is not obviated; ST Suppl., q. 5, a. 2, ad 1. [↑](#endnote-ref-52)
53. ST I-II, q. 86, a. 1. Also ST I-II, q. 87, a. 6. [↑](#endnote-ref-53)
54. In ST I-II, q. 87, a. 6, ad 3, Aquinas lists stains not only in the will, but in the powers of the soul, the upset equality of (legal) justice, and the scandal that happened in the eyes of others. He also says that there remains a penalty beyond mere restitution, compensating for the offence itself; ST II-II, q. 62, a. 3, resp. [↑](#endnote-ref-54)
55. C.f., THOMAS AQUINAS, *Quodlibet* II, q. 7, a. 2, resp. Aquinas’ theory of indulgences illustrates the social nature of his vision of moral repair. While it might seem more appropriate to Buddhism to ‘transfer merits’ between individuals, Aquinas’ doctrine of indulgences is in fact more closely grounded on something akin to the Confucian concept of an ideal family united in love. Indulgences communicate satisfaction for sin through the communion of charity in the family of the Church (the Church is, as it were, one body bonded in love), so that one family member can assist in repairing the effects of wrongdoing committed by another family member. In an ‘indulgence,’ the satisfaction for wrongdoing, and thus the reparative effect of penance, is vicariously granted to a penitent by the Church. This is also to say that the repair of the effects of wrongdoing is not left entirely to the efforts of the individual. The penitent can cooperate with others in moral repair. Insofar as they do, as it were, seek for help in bringing about reconciliation between themselves and others, it is to the penitent’s moral credit as well. [↑](#endnote-ref-55)
56. ST II-II, q. 108, a. 3, ad 2; *RTH,* 208. [↑](#endnote-ref-56)
57. Zhu Xi would be motived by texts like *Analects* XX.2. See also GARDNER, 110. For Aquinas, while more complicated than can be dealt with here, a perfect moral reform of the offender would satisfy all the need for punishment; ST Supp., q. 5, a. 2. [↑](#endnote-ref-57)
58. Although questions of efficacious grace are more complicated and controversial, God cannot “compel” the will to choose something against its own free inclination, ST I, q. 105, a. 4, ad 1; I-II, q. 6, a. 4, ad 1. [↑](#endnote-ref-58)
59. For Zhu Xi’s view, see *RTH,* 207, 215; GARDNER, 60; for wider scope in the Confucian tradition, see Yang, 34. [↑](#endnote-ref-59)
60. ST II-II, q. 64, a. 2. [↑](#endnote-ref-60)
61. KORITANSKY, 166-167. [↑](#endnote-ref-61)
62. DE KONINCK, op. cit. [↑](#endnote-ref-62)
63. C.f., SCG IIIb, c. 144, 11. […secundum divinum iudicium, aliqui debeant a societate bonorum perpetuo separari et in aeternum puniri, ut ex perpetuae poenae timore homines peccare desistant, et bonorum societas purior ex eorum separatione reddatur.] “…according to divine judgment, it is owed to some to be separated from the society of the good forever and to be punished eternally, as from fear of perpetual punishment men desist from sin and the society of the good becomes purer because of their separation. “ [↑](#endnote-ref-63)
64. C.f., ST Supp., q. 98, a. 2. [↑](#endnote-ref-64)
65. Aquinas compares it to the way overeating leads to suffering, objectively speaking. The suffering of hell is thus the natural result of choosing the objectively wrong object of fulfillment and happiness. C.f., SCG IIIb, c. 145, n. 3. For a further argument for this point, see E. STUMP, *Dante’s Hell, Aquinas’s Moral Theory, and the Love of God*, in “Canadian Journal of Philosophy”16 (1986) 2, 181-196, esp. 195-197. [↑](#endnote-ref-65)
66. J. STROBLE, *Philosophy of Punishment: East and West,* (unpublished draft, Jan. 21, 1998), URL: http://www2.hawaii.edu/~stroble/XingFa.html [accessed December 4, 2016]. [↑](#endnote-ref-66)
67. There might even be a moral obligation for society to do so for the sake of the offender, beyond the need to protect victims. If other preventative educative measures are not effective, it would be morally harmful to the offender to allow them to continue in evil. Even though it is beyond the scope of the paper, consider whether we could, without moral fault, deceive serial killers in taking pleasure in murder vicariously in a Nozick-esque ‘experience machine.’ [↑](#endnote-ref-67)
68. Aquinas notes that a judge who exercises too much leniency harms the common good in just this way. C.f., ST II-II, q. 67, a. 4. [↑](#endnote-ref-68)
69. Aquinas has a place for deterrence in both of these ways. C.f., SCG IIIb, c. 145, n. 2. [↑](#endnote-ref-69)
70. A question of “how much” satisfaction is required is beyond the scope of this paper. But it seems the answer is situational to the nature of his crime and that most people acknowledge six months in county jail is insufficient to repair Turner’s relationship to the victim or community. [↑](#endnote-ref-70)
71. One can compare the account of punishment here with the aims of punishment outlined in XUNZI, op. cit., c. 18, ln. 175. [“the basis for all cases of punishing people is putting a halt to those who are violent, treating as bad those who are bad, and warning those who have not yet acted.”] [↑](#endnote-ref-71)