PUNISHMENT

1. Utilitarian or Teleological Theories of Punishment
   The Utilitarian argues that punishing a person is justified if and only if doing so has (or is likely to have) better consequences than not doing so, “when, and only when, it is a means to such future goods as reform of the offender, protection of society against other offenses from the same offender, and the deterrence of other would-be offenders” (Feinberg) — by contributing to the individual’s retribution, by incapacitating the offender, thereby preventing him from engaging in further undesirable behavior, and through deterring others from committing the same offense. The utilitarian holds that it is necessary for an instance of punishment to be justified that it do some good.

2. Deontological or Kantian Views of Punishment
   The deontological view holds that punishment of an individual is justified if and only if it gives him or her what he or she deserves. “Punishment is justified only on the ground that the wrongdoing merits punishment.” (Feinberg) Justification is backward-looking as opposed to forward-looking.

3. Proportionality
   A utilitarian interpretation of proportionality will rest on the future advantages of the punishment. A punishment is disproportionate only if it is more or less than what is required for the pursuit of a legitimate state purpose. Any punishment which is inflicted beyond what is necessary, say, to deter the offender and others from engaging in anti-social conduct is without point. On a retributive theory the punishment must fit the crime; it ought to be of a gravity or severity justly proportional to the seriousness of the crime.

4. Theories of Punishment: Utilitarianism v. Deontological ethics
   Utilitarianism is one of a variety of theories that takes the consequences of an act as the arbiter of whether the act is right or good. So if the consequences of an act or a policy are, taken together, good, then the act is good. Deontological ethics, of which Kantian ethics is an example, takes the moral correctness of an act as given by its conformity to our duties and obligations to treat one another in certain ways. A Kantian or retributive view of punishment is intimately bound up with what a person deserves. The utilitarian holds that for a punishment to be justified it must do some good. The problem with the retributive view, a utilitarian might say, is that it can produce situations where we are required to punish someone even if it clearly doesn’t do any good and going about punishment in this way is inconsistent with a humane and forward-looking approach to criminality. The Kantian, however, might argue that a utilitarian approach to punishment can lead to situations in which persons are undeservedly punished.

5. Treating persons as a means v. Treating persons as ends-in-themselves
   Suppose a judge decides to punish you with life imprisonment for running a stop-sign. He decides to do so because he is “sick and tired” of having to deal “time and again” with lawlessness of this sort and he is hoping that by setting an example, others will come to realize the consequences of acting as you did and cease to behave so badly. Even assuming that the judge is right and that lawlessness of this sort will decline dramatically with the imposition of such a sentence, from a Kantian’s point of view, you have very good reason to wonder what gives the judge the right to use you in this way. Indeed it is this wonder that lies at the heart of the retributivist and Kantian insistence that punishment must be deserved, if it is to be fair or just. The difficulty with a utilitarian approach to punishment, the Kantian will argue, is that it allows persons to be punished out of all proportion to their guilt and even in the absence of any guilt whatsoever, if it serves the best interests of the community at large.