“Victim’s Rights: Justice or Revenge?”

Consider the following three scenarios:

(1) Alice comes home from work and discovers that John has left her. She drinks a few beers, loads John’s shotgun, the one he used to use to go duck hunting, steps out onto the back porch, and fires the gun over and over again until she feels (a bit) less angry. She does damage to a bunch of trees, but nothing else.

(2) John comes home from work and discovers that Alice has left him. He drinks a few beers, loads his shotgun, the one he usually takes with him to go duck-hunting, steps out onto the back porch, and fires several rounds until his tears stop flowing. The following day, the body of a homeless man, call him Henry, is discovered at the base of a tree into which John has fired his shotgun. His shooting spree has damaged a bunch of trees and killed someone.

(3) The facts are the same as in scenario (2), but instead of Henry, John has killed Rabbi Ben Ezra Gold, an amateur entymologist who was searching for a rare beetle in the wooded area behind John’s house.

A central problem in the theory of punishment is to explain why we distinguish between scenarios (1) and (2). Why do we punish John more severely than we punish Alice? There is a sense in which both Alice’s and John’s actions were the same, even though the consequences were different. Both behaved recklessly and neither intended to kill another human being. The penal codes of most states, however, would permit John to be prosecuted for manslaughter and Alice to be charged at most with reckless conduct. Despite conventional wisdom that John “did” much the same thing as Alice, he (John) will face a much more serious punishment. Is this reasonable and/or fair? Make a case for or against punishing John more severely than Alice, think of several objections to your argument, and respond to them. In the course of making your argument, bring to light the theory of punishment that best explains your position.

Now armed with your argument for or against punishing John more severely than Alice, do you think it is also appropriate to draw a distinction by focusing on the identity of the person John has inadvertently killed; that is, does the tenability of the distinction between scenarios (1) and (2) also support a distinction between scenarios (2) and (3)?

Should the John of scenario (3) be punished more severely than the John of scenario (2)? If so, why? If not, why not? In the course of making your argument, bring explicitly to light the extent to which your position is based on a particular theory and/or view of punishment.
Then, consider the following scenario:

(4) John and Alice have been happily married for many years when they are brutally murdered by Henry. Henry is tried and found guilty of murder. During the sentencing phase of Henry’s trial in which the court will determine whether or not Henry should receive the death penalty, the prosecution plans to introduce the statement they took from John’s and Alice’s children, their son-in-law and grand-daughter. The statement, called the Victim Impact Statement or “VIS,” describes the son’s horror at finding his parents murdered, the daughter and son-in-law’s lasting depression, as well as the daughter’s inability to eat, as well as the pall cast over the grand-daughter’s wedding, which had been scheduled for the weekend following the murder and which, under Jewish law, proceeded in spite of the murder. In their statement the children also talk about the charitable work both their parents did throughout their lives as well as the loss the community as a whole will suffer as a result of their murder.

If you were the Judge in this case, would you permit the prosecution to read the Victim Impact Statement to the jury during the sentencing phase of the trial? Henry’s attorney argues that to permit the admission of victim impact evidence during the sentencing phase of a capital trial would violate the Eighth Amendment and his client’s constitutional rights.

The Eighth Amendment, Henry’s attorney argues, demands “a reasoned moral response to the crime” that his client has committed and the VIS is irrelevant to that end. The prosecution argues that just as the amount of harm one causes bears on the extent of one’s “personal” responsibility, the VIS in this case bears on the magnitude of harm that Henry has caused and so ought to be admissible. The prosecution also insists that “it would be an affront to all civilized members of the community to say that at sentencing in a capital case, a parade of witnesses may praise the background, character, and good deeds of the Defendant without limitation or relevancy, yet not allow anything to be said that bears on the character of, or harm visited upon, the victims.”

What do you think?

Do you allow the Victim Impact Statement to be read to the jury?