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Dealing with Wrongdoing from a Hard Incompatibilist Perspective

In his paper *Living without Free Will: The Case for Hard Incompatibilism,* Derk Pereboom examines what would happen to our world if we "do not have the sort of free will required for moral responsibility" (477). He explores how our approaches to various topics would change (such as the meaning of life and personal relationships), but I want to focus on how he thinks wrongdoing should be handled in the absence of moral responsibility. Pereboom puts forth the idea that a "quarantine model" (478) could be used to deal with criminal activity, in contrast with a retributivist system, which would be necessarily voided by hard incompatibilism. However, I believe that the quarantine model not only insignificantly deviates from retributivism, but that it is not even the most optimal criminal prevention strategy for the hard incompatibilist as it does not take the concept of deterrence into full account.

Pereboom takes up a position that is similar in many ways to that of hard determinism, but since it does not necessarily require that the world is determined he calls it "hard incompatibilism" (477). His basic argument is that an agent's moral responsibility for an act is derived from the source of the action's causal history, and not the possibility of alternative action (478). Following this, an agent can only be held morally responsible for acts in which he is "in a particular way" the origin or the source of that act (478). In this way, either a deterministic world or an indeterministic event casual world would leave the agent without moral responsibility, for each act would be "ultimately produced by a source over which she has no control" (478). Pereboom does concede that an agent causal theory is logically consistent with moral

responsibility, but concludes that because we have no scientific evidence for agent causality, we can accept that no agents "have free will of the kind required for moral responsibility" (478).

In his section on wrongdoing, Pereboom points out that accepting hard incompatibilism eliminates the ideas of moral praiseworthiness and blameworthiness. He notes that some might argue for the continued embrace of these concepts, as "there may yet be a practical argument for continuing to treat ourselves and others" as if we were moral responsible for our actions (478). However there are problems with not abolishing these attitudes when faced with the absence of moral responsibility; namely, that "if people are not responsible for immoral behavior, treating them as if they were would be unfair" (479). Pereboom believes that a way around this would be to stop treating people as if they were to blame for their actions, but rather that they had merely done wrong: that changing moral indignation to moral "admonishment and encouragement" could "effectively communicate a sense of what is right, and result in beneficial reform" (478).

Pereboom runs into stickier problems when he moves on to questions of dealing with criminal activity. Most punishment systems today are retributivist, in the sense that offenders are seen to "morally deserve to suffer proportionate punishment" (Walen). Pereboom argues that as retributivist justification necessarily assumes that an agent deserves "pain or deprivation just for performing an immoral action" (480), it is therefore inconsistent with a lack of moral responsibility prescribed by hard incompatibilism. Instead, Pereboom pushes a theory of crime prevention that he calls the quarantine model, in which criminals are treated similarly to "carriers of dangerous disease" (480). He gives an example of someone who "poses a known danger to society by having demonstrated a sufficiently strong tendency to commit murder", and argues that society would have as much a right to detain him, even if he is not morally responsible for his actions, as it does to detain someone who, for example, carries the Ebola virus (480).

Pereboom also points out that society would have a moral obligation to attempt to cure or treat these criminals and, moreover, that "there would be no justification for taking measures that aim only to make the criminal's life miserable" (481).

Before I delve into my main argument, I would like to address Pereboom's claim that hard compatibilism is fundamentally inconsistent with retributivism. For it is not clear to me how a lack of moral blameworthiness necessitates that an agent does not deserve punishment for his actions, which causes the rift between hard compatibilism and retributivism. Retributivist justice is concerned with questions of desert rather than questions of free-will (McLeod), and I believe that it is not logically impossible for an agent to lack the capacity to be held morally blameworthy for his actions and at the same time deserve punishment for those actions. There is not as clear a link between desert and responsibility as Pereboom would like to imply. For example, if a person is not responsible for contracting a deadly disease, they still deserve treatment and sympathy (McLeod). What someone deserves to be punished for is determined by a moral community, and does not rest on metaphysical questions of free will and moral responsibility.

However, principally I find Pereboom's claims to be inconsistent because it does not seem that retributivism would have to be altered in any significant way in order to fit in with hard incompatibilist views. Such a revised view could be that an agent *should* suffer proportional punishment whenever they act in a wrong manner, in contrast with the notion of moral desert in the typical retributivist system. This is not very removed from how we approach situations in everyday life. Take for example, a Lion who has gotten lost in a city. We do not say that the Lion is morally responsible for his actions, as we do not consider him to be a moral agent. This does not preclude us from punishing the lion in the form of tranquilization, or even death, if it would

benefit the rest of the moral community. Also consider the example of the kleptomaniac, who is unable to control his stealing, but is still held accountable for his actions. He cannot be said to be responsible for his actions, but he should still be punished for them. Of course the punishment cannot exceed what the situation requires, and there should be a difference in how consciously controlled crimes are treated from those of the kleptomaniac, but this kind of proportionality is also outlined in a retributivist system (Walen).

This point can be expanded on further by examining the hypocritical position that Pereboom has taken in his defense of a quarantine model. Somehow, Pereboom believes that a model of criminal prevention based on quarantine methods would fundamentally differ from a retributivist system, but I argue that a quarantine model would necessarily punish criminals by taking away their freedom. When a criminal is removed from society, they are punished for an act they are not morally responsible for. This seems to be almost identical to what would happen in a system of retributivist justice; the only thing that would change would be that instead of receiving undeserved punishment, criminals are merely getting punished, which seems more word-play than anything else. Pereboom recognizes that he must do this because the alternative is completely un-defendable: a system that allows no punishment of criminal actions. It is not hard to imagine the problems that would arise in this sort of society, and this is why Pereboom tries to sneak in his quarantine theory as a radical change from the retributivist model.

Pereboom would probably defend his theory by saying that in the quarantine model it would be "morally wrong to treat carriers of a disease more severely than is required to defuse the threat to society" (480). Therefore, it is a more morally acceptable model than that of a retributivist system, as criminals are not punished unnecessarily. To me this seems an odd and unimportant distinction, especially because retributivist systems have a proportionality clause.

There is no reason why a revised retributivist system could not scale its punishment to the level that Pereboom wants, and then this system would be virtually identical to the quarantine model. Both systems would punish criminal for their actions, there would only be a difference in the justification for why the offenders get punished.

There is also something to be said for the moral benefits of deterrence, and it is not immediately clear why the minimum amount of punishment for criminals, as outlined in the quarantine model, is inherently better. I will make the claim that at extremes, it is obvious that higher levels of punishment can deter immoral action, and thus encourage moral action – this is known as deterrence. I will also claim that a moral system should have, as one of its principle goals, a want to encourage moral action and to stop immoral action. Therefore, it can be seen that higher levels of punishment have benefits for a moral system, as deterrence causes more agents to act in a moral manner. However, as Pereboom points out, there are also negatives that come with higher levels of punishment, and specifically for the hard compatibilist, there is the worry already noted that "if people are not responsible for immoral behavior, treating them as if they were would be unfair" (479). These two conflicting sentiments leave us with a paradox of sorts: as it is morally wrong to punish people for actions they are not responsible for, it is also morally wrong to stop people from having the ability to do morally correct actions (i.e. in the absence of deterrence). It is thus clear that we must try to pick the lesser of these two evils, but unlike Pereboom, I believe that while there is not an instantaneously clear winner, a better case can be made for deterrence over punishing people for actions they are not responsible for.

To illustrate this point, let us examine the hypothetical Moral City, which is made up of 100 citizens and one perfectly moral hard incompatibilist mayor, who is omniscient concerning the future and the sole undisputed figure of authority in the town. Let us imagine that he is

debating this very question of deterrence versus non-responsible punishment in regards to a policy change in response to murder. To simplify the problem say that he has two options in terms of what he can set the punishment for murder to be, either a quarantine period of 20 years, in which the offender is held in a very comfortable quality of life while attending correctional treatment, or 20 years in jail, in which only the basic needs of the prisoner are met, but he receives no physiological harm. The mayor knows that if he chooses the first punishment option, there will be 10 murders in the town over a 10 year period, while if he chooses the second punishment option, there will only be 1 murder in the same time frame. Which is better moral choice? I would argue that the second option would be the better moral choice as it maximizes the amount of moral actions by the town's citizens. The response to this is that it would cause the one perpetrator to be unfairly punished for his action when he is not, in fact, responsible for what he has done. However, it should be recognized that if the mayor had chosen the first option, 10 individuals would have been unfairly punished for actions that they had not been morally blameworthy for. Either way, with a punishment system, it seems that agents who commit *wrong* actions are going to be treated in a manner that Pereboom would consider unfair. Therefore, I am not convinced by Pereboom's argument that a quarantine system would be the best way to handle crimes in a hard incompatibilist world, as this strategy minimizes punishment, which increases the amount of individuals who are wrongly punished and decreases the amount of moral actions as there is less deterrence. Instead, it appears as though increased punishment concentrates the negative moral effects on to a smaller number of individuals, who, as I have already argued, may even deserve their punishment even if they are not morally responsible for their actions. Therefore, it seems clear that the quarantine model would not be the optimal system of criminal prevention from a hard Incompatibilist view

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