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EXTENDING PEREBOOM'S QUARANTINE SYSTEM

by

NATHAN HOUCK

Under the Direction of Eddy Nahmias, PhD and Nicole Vincent, PhD

ABSTRACT

Derk Pereboom (2014) argues that human beings do not have the kind of free will required for moral responsibility. Pereboom argues that we should use a system of incarceration for criminal offenders based on a quarantine analogy. Patients in quarantine scenarios are not responsible for their sickness, are separated from society because of the danger they pose, and are prepared for release as soon as possible. By analogy, criminal offenders should also be separated from society and rehabilitated to prepare them for release. In this thesis, I extend the ethical applicability of Pereboom's quarantine system by engaging with an objection from Saul Smilansky. I extend Pereboom's quarantine system in an additional way by discussing what constraints should be put on the use of direct brain interventions to rehabilitate criminal offenders. In doing so, I start a conversation about how the quarantine system could be implemented in a liberal democratic society.

INDEX WORDS: Free will, Moral responsibility, Incarceration, Quarantine, Direct brain intervention, Rehabilitation, Pereboom

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NATHAN HOUCK

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NATHAN HOUCK

Committee Chair: Eddy Nahmias

Nicole Vincent

Committee: Andrew Altman

Electronic Version Approved:

Office of Graduate Studies

College of Arts and Sciences

Georgia State University

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Dedication

I dedicate this thesis to my parents, Stacey and Dale Houck, who have supported me in all of my endeavors.

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1 Introduction

Free will is generally understood as a power or ability that is required for human beings to be morally responsible in the desert sense – in the sense that one would deserve praise or blame for his or her actions. Determinism is the thesis that given some past state of affairs and the laws of nature, there is a future course that necessarily follows¹. Compatibilists argue that free will and determinism are compatible – determinism can be true and human beings can still have free will. Incompatibilists argue that free will and determinism are not compatible – either determinism is true or we have free will, but not both.

There are different types of compatibilists and incompatibilists. Compatibilists can disagree over what is required for free will while agreeing that it is compatible with determinism. One example of a particular compatibilist position is capacitarianism, the position that individuals have free will and moral responsibility as a result of having particular capacities. Incompatibilists, on the other hand, can disagree on the truth of determinism, e.g., libertarians argue that determinism is false and thus we may have free will, while hard determinists argue that determinism is true and thus we do not have free will. There are other positions in the free will debate however, that do not fit neatly into one or the other camp. One such position is moral responsibility skepticism, which holds that human beings do not have free will regardless of the truth of determinism (see Strawson 1994). Another position is the Fundamental Dualism of Saul Smilansky (2000), who argues that we lack a deep sense of free will (what he identifies as an

¹ What determinism amounts to is a complex question. There are competing definitions (necessitation, entailment, fate, plus many more), so I use the understanding of determinism as necessitation merely as an example (Vincent 2013, p. 5).

incompatibilist sense of free will), yet also argues that we possess a shallower sense of free will (compatibilist free will) that is still very important to us as human beings.

This thesis focuses on the position of Derk Pereboom (2001, 2014). Pereboom is an incompatibilist – on his account, humans do not have the kind of free will required for moral responsibility – and he calls his particular brand of incompatibilism ‘hard incompatibilism.’ The main argument for Pereboom’s hard incompatibilism is as follows:

(1) “All of our actions and choices are either alien-deterministic events – events such that there are causal factors beyond our control by virtue of which they are causally determined, or truly random events – those that are not produced by anything at all, or partially random events – those for which factors beyond the agent’s control contribute to their production but do not determine them, while there is nothing that supplements the contribution of these factors to produce the events” (127).

(2) “Freedom of the sort required for moral responsibility ... is incompatible with our actions and choices being events that lie on the continuum from alien-deterministic through partially random to truly random events” (127).

Therefore,

(3) Human beings do not have the kind of free will required for moral responsibility.

Pereboom calls the continuum from alien-deterministic through partially random to truly random events a *responsibility-undermining continuum*. Our best physical theories place all events governed by physical laws on this continuum (127). The only theory of choice and action in which our choices and actions do not land on the responsibility-undermining continuum is agent-causal libertarianism. However, “empirical objections provide good (albeit not conclusive) reasons to believe that we are not agent-causes” (128).

An important aspect of debates about free will is the implications that such debates have for moral responsibility. Smilansky, for example, argues that moral responsibility is the reason that most people care about free will in the first place (2011). Moral responsibility practices like praise, blame, and more basic attributions of agency are a ubiquitous feature of human

interaction. What happens when, as in Pereboom's case, you argue that human beings are not morally responsible? What implications does this have for how we treat each other, especially criminal offenders?

Our criminal justice system appeals to a number of justifications for punishment. We punish criminal offenders because we want to *deter* other individuals from engaging in criminal activity. We incarcerate criminal offenders because we want to *incapacitate* them; that is, we want to prevent them from harming other citizens. We punish criminal offenders to *communicate* the norms of society and to *express* solidarity with victims of crimes. *Retribution* is a justification for punishment that plays a very large role in our justice system. Retribution is backward looking and based on considerations of desert. When we punish someone for retributive reasons, we punish them because they *deserve* it for something they have done (or failed to do) in the past. If, as Pereboom argues, human beings are not morally responsible in the basic desert sense, then retribution, a fundamental justification of punishment in our criminal justice system, is illegitimate.

If retributive punishment is illegitimate, what should society do with criminal offenders? There is a *prima facie* motivation to prevent criminal offenders from harming society, so how do we accomplish this goal without appealing to retributive justifications? Pereboom argues that even in the absence of basic desert a *quarantine* analogy could justify the incarceration and treatment of criminal offenders. Such a system would work similarly to the way in which quarantines operate in situations where there is a dangerous communicable disease outbreak. Criminal offenders would be separated from society, despite not deserving such treatment, simply because they pose a danger, and they would continue to be separated until they no longer presented a serious threat to society. Since they wouldn't deserve such treatment however,

Pereboom argues that efforts would need to be made to make the incarceration reasonably tolerable and opportunities for rehabilitation and treatment would need to be given to help criminal offenders return to society as quickly as possible.

This proposal for treating criminal offenders raises a number of questions: What are the criteria that determine when a wrongdoer is fit to return to society? Who determines the criteria? What methods of rehabilitation are acceptable? Are there consent requirements on behalf of the wrongdoer for such treatments? Also, importantly, such an incarceration program could be viewed as attempting to *fix* criminal offenders, or else, if they should not be receptive to being fixed, to keep them indefinitely separated from society, and treating criminal offenders in such a fashion might be thought to raise a number of objections.

In this thesis, I will extend the applicability of Pereboom's incarceration scheme based on a quarantine analogy. First, I will engage with an objection by Saul Smilansky. Smilansky (2011) argues that the incarceration of criminal offenders who are not morally responsible leads to a practical reductio. According to Smilansky, depriving individuals of their liberty through incarceration is a serious harm because liberty is seen as a very important right and the individuals being incarcerated in such a scenario do not deserve such deprivation. Compensation would be needed to make up for the undeserved suffering. However, given the importance of liberty, the compensation would need to be quite extensive. Not only would paying for the compensation be difficult, but it would also take away the deterrent effects of punishing criminal offenders – after all, if they got caught, they would be lavishly compensated. Such a scenario would lead to, among other things, a societal nightmare. An additional claim made by Smilansky is that appeals to consequentialism are illegitimate when attempting to respond to the reductio because the free will debate assumes a deontological paradigm.

While Neil Levy (2012) and Pereboom defend the appeal to consequentialism as legitimate, I take a different route and argue that Pereboom's quarantine system can overcome the reductio by appealing to threshold deontology. I argue that the reductio can be overcome on deontological grounds because the question of incarcerating criminal offenders who are not morally responsible for their actions creates a moral dilemma for a deontological system. The moral dilemma can be solved by utilizing a threshold deontological system that legitimizes appeals to consequences in extreme situations, such as the situation under consideration. The extreme negative consequences legitimize a course of action that avoids Smilansky's reductio. By arguing that Pereboom can overcome the reductio by appealing to threshold deontology, I extend the ethical possibilities for applying the quarantine system.

I will further extend Pereboom's quarantine system by considering various political, legal and social concerns. By considering such concerns, I begin the discussion of how to implement Pereboom's quarantine system in a liberal democratic society – something that Pereboom does not consider. I use the political, legal, and social concerns to suggest conditions for the legitimate use of direct brain interventions to rehabilitate criminal offenders in the quarantine system. C.S. Lewis (1953) worries that a system of rehabilitation for criminal offenders will grant too much authority to the state in deciding what characteristics a citizen should have. Bublitz and Merkel (2012) argue that a legal right to mental self-determination needs to be recognized in order to differentiate legitimate and illegitimate attempts to influence the mental life of citizens. Additionally, Elizabeth Shaw (2012) argues that interventions into the brains of criminal offenders need to be restricted in order to prevent problematic societal relationships.

My overall aim in this thesis is to extend the applicability of Pereboom's quarantine system. I do so in two ways: 1) I show that Pereboom's system is compatible with threshold

deontology, thereby extending its ethical applicability, and 2) I suggest conditions for the legitimate use of direct brain interventions to rehabilitate criminal offenders, which begins the process of preparing Pereboom's system for implementation in a liberal democratic society.

2 Pereboom's Quarantine System

Pereboom's (2014) incarceration scheme uses an analogy with the right to quarantine and utilizes preventative detention and rehabilitation (153). Borrowing from Schoeman (1979), he argues that we have the right to isolate the criminally dangerous in order to protect society just as we have the right to quarantine people who are carriers of severe communicable diseases (Pereboom 156). In most quarantine situations, the individuals infected with serious diseases are not responsible for contracting the diseases. Despite their lack of responsibility, we view it as legitimate to quarantine them if the threat to society is high enough. The quarantined individuals are harmed by this practice, but the harm is justified by appeal to the need to protect society. Pereboom argues that this same line of thought can be applied to individuals who pose a dangerous criminal (rather than communicable disease) threat to their fellow citizens. Such individuals, according to Pereboom's hard incompatibilism, are not morally responsible for the criminal threat that they pose, but the fact is that they do still pose that threat to the safety of society (156).

Following the analogy, there are restrictions that would be placed on the treatment of the criminally dangerous under such a system. Just as unnecessarily severe treatment is illegitimate in quarantine scenarios, so too the criminally dangerous are to be treated no more severely than is necessary to protect society. Additionally, just as carriers are released from quarantines once

the threat of the disease has passed, so too incarceration is to end once the threat of criminally dangerous action has passed (156).

Another notable feature of the quarantine system is its focus on rehabilitation. In quarantine scenarios, carriers are made safe for release as quickly and safely as possible. Aiding carriers of communicable diseases in a speedy release is a matter of fairness since the carriers are deprived of their liberty for the benefit of society and do not deserve such deprivation. By analogy, an emphasis should be placed on rehabilitating the dangerous dispositions of criminal offenders to help them return to society. Furthermore, if indefinite confinement is required for public safety, then there is no reason to make the criminal offender's life more miserable than is necessary to protect society (156).

The quarantine system can also deal with *potential* criminal offenders. There are different methods by which it can be ascertained that an individual might commit a crime in the future. Perhaps an individual threatens to commit a murder. Perhaps an individual has described plans to attack others to a psychologist and is then reported to the police. Or perhaps we might utilize neuroscientific techniques to determine whether individuals pose a threat to society. Regardless of how the information is gathered, Pereboom argues that preventative detention should be restricted to only the cases of people who are especially dangerous. One reason for this restriction is that the general right to liberty carries substantial weight in considerations of incarceration *before* a crime is even committed. Additionally, there is a concern about using people merely as means that cautions against society becoming too liberal with preventively detaining people (169). Just as the dangerousness of a disease corresponds with the invasiveness of justified prevention methods in quarantine scenarios, so too does the dangerousness of the offender correspond with the invasiveness of justified forms of incapacitation (170).

Pereboom emphasizes that rehabilitation would focus on the causes that underlie and explain crime. Such conditions could be psychological illness or psychological characteristics not traditionally classified as illness such as a lack of empathy or sympathy and a tendency to avoid blame. Pereboom states that such policies would not treat the agent as mentally ill. Instead, they would seek to bring about moral change by addressing conditions that underlie criminal behavior in a non-punitive fashion (171). For example, therapeutic measures might be used to restore an offender's capacity for reasons-responsiveness (172).

This section has described Pereboom's quarantine system for incarcerating criminal offenders. It has described the analogy and the principles for the incarceration scheme that follow from the analogy. In the next section, I will engage with Smilansky's practical reductio of Pereboom's position and, despite Smilansky's argument, *extend* the quarantine system's ethical applicability.

3 Engaging with Smilansky's Practical Reductio: Extending the Ethical Applicability of the Quarantine System

In this section, I will discuss Saul Smilansky's practical reductio of Pereboom's quarantine system. I begin by presenting Smilansky's reductio. I then present Pereboom's response to Smilansky, which rests largely on consequentialist grounds. I conclude the section by arguing that the quarantine system can overcome Smilansky's reductio by appealing to threshold deontology. Appealing to threshold deontology extends the quarantine system's ethical applicability beyond consequentialism.

Smilansky (2011) argues that the incarceration of criminal offenders who are not morally responsible leads to a practical reductio. Societies have citizens who harm other citizens. Insofar

as a society desires to keep its citizens from being harmed, it needs to deal with criminal offenders. In order to protect the majority of citizens, criminal offenders have to be separated from society. However, separating criminal offenders from society deprives them of their liberty, which is a very serious deprivation. Smilansky argues that if human beings are not morally responsible, and criminal offenders do not therefore deserve the harms they experience during incarceration, then criminal offenders need to be compensated for these harms (355). In order to make up for the imposed hardships, Smilansky argues that the punishment of criminal offenders should become *funishment* (354). Funishment is the practice of making an individual's life enjoyable. Institutions of funishment, according to Smilansky, "need to be as delightful as possible," resembling "five-star hotels, where the residents are given every opportunity to enjoy life" (355). The fun needs to be so exorbitant because those incarcerated are deprived of their liberty, which is a serious harm. Smilansky calls the incarceration of morally innocent people, which criminal offenders are if human beings are not responsible, the "greatest injustice" (356).

The practical *reductio* comes into play when you consider the costs of implementing and maintaining institutions of funishment. If the incarceration of criminal offenders is as grave as Smilansky argues, then it seems that to make up for the harms perpetrated against them a large amount of society's resources would need to be allocated for the compensation of criminal offenders. Given Smilansky's discussion, compensation would likely take the form of provided services like food, entertainment, and education, rather than monetary payouts. Smilansky predicts that the amount of money required to compensate criminal offenders would be "horrendously expensive" (356). He argues that this compensation would be morally required because the criminal offenders are deprived of their freedom, so "their moral claim on social resources is very high" (356).

Smilansky's *reductio* presents a larger problem: "the criminal life is at risk of being perceived as a win-win situation... The potential offender knows that, if he is not caught, he can enjoy the spoils of his crime. But even if he is caught, he faces only some time in an institution of funishment, which - apart from being separated from lawful society - will be like a fabulous holiday" (359). Not only does a lack of deterrence lead to more crime, it also leads to *even higher* costs for institutions of funishment! If criminal offenders must be compensated for their incarceration to the extent that Smilansky argues, then it seems that society will find itself in a nightmare of crushing taxes and rampant crime.

Smilansky's *reductio* highlights two consequences of incarcerating and compensating individuals who are not morally responsible. First, society will not be able to properly operate. Second, a position that denies moral responsibility would defeat its own goals by implementing the policies which Smilansky argues follow from its position: "hard determinists² have sought to limit the number of people that the justice system must deal with, to reduce public hatred of offenders, and to beneficially reform the social conditions that generate crime. But hard determinism itself defeats all those idealistic goals" (361).

How can Pereboom's proposed system overcome the practical *reductio*? The obvious initial move involves an appeal to consequentialism. Such an appeal would allow Pereboom to argue that a society should incarcerate criminal offenders without compensation because the consequences that would result from such a policy would be better than the consequences of not doing so. Smilansky, however, argues that an appeal to consequentialism would betray the moral force of moral responsibility skepticism (362). Smilansky says,

² In his paper, Smilansky attacks 'hard determinism.' However, I take after Levy (2012) and discuss 'moral responsibility skepticism' throughout this paper instead of hard determinism. I follow Levy in this regard because "Smilansky's argument seems to generalize to all skepticisms about moral responsibility," which includes Pereboom's hard incompatibilism (478).

for hard determinists, everyone is morally innocent! Hard determinism as a moral position thus holds that no one deserves to be made to suffer, or to be made worse off than another, and hence that it would be *unjust* to do so. Hard determinism cannot turn to consequentialism for assistance in overcoming the *reductio*, for it would thereby completely betray itself as a distinct ethical position (363).

Smilansky is arguing that moral responsibility skeptics not only make a metaphysical claim, that human beings lack free will and moral responsibility, but that they also have a normative stake in that metaphysical claim (Levy 483). The moral implications, he argues, are why we care about the free will problem in the first place (Smilansky 363). Smilansky says that moral responsibility skepticism, as a deep moral view, cannot punish/incarcerate based on consequentialist criteria because it "shares the broadly deontological paradigm notion of free will ... that 'free will is required for moral responsibility'" (363). Smilansky also says, "the free will paradigm holds that free will is a necessary condition for moral responsibility, which is a condition for desert, which is required for just punishment" (353). It then follows, on Smilansky's presentation, that just punishment is not possible. This conclusion follows because a lack of moral responsibility, which Pereboom argues for, prevents desert, which prevents just punishment. Smilansky says that pessimism about whether or not humans have free will "would not suddenly make a morally serious hard determinist indifferent to the fact that we do not have free will and moral responsibility, and permissive about blame and punishment" (363).

Appeals to consequentialism in order to avoid the *reductio* are illegitimate for moral responsibility skeptics, according to Smilansky, because they buy into the 'deontological paradigm of free will.' Matters of desert are of central importance in this paradigm. If human beings are not morally responsible, then every human being is on a level playing field when it comes to desert and differences in treatment are not justified. Smilansky seems to think that matters of desert are not valued in the proper way by consequentialism and, as a result,

consequentialism operates outside of the paradigm, which means it cannot be used to overcome the reductio.

Pereboom responds to Smilansky by arguing that in rejecting basic desert, the free will skeptic has no requirement to compensate the incarcerated for reasons of basic desert (172; see also Levy 2012). Smilansky's argument appeals to the fact that, on Pereboom's account, criminal offender's lack negative desert, so punishing them without compensation is morally problematic. However, Levy (2012) and Pereboom (2014) argue that appealing to desert, in any way, is not grounded when basic desert is rejected. Skeptics can try to avoid unneeded suffering, as Pereboom emphasizes should be done in his quarantine system, but there is no moral requirement to compensate for undeserved suffering should it happen (173).

Smilansky, however, would likely reply that a moral baseline exists *despite* a lack of basic desert because desert "is a way of justifying divergence from a moral baseline" (364). In other words, if basic desert is not possible, there is still a moral baseline that exists and divergence from the baseline becomes unacceptable. Pereboom denies that any type of conduct is required towards criminal offenders *for reasons of desert* when there is a lack of basic desert. Reasons of fairness, as Pereboom argues, can legitimately motivate certain types of conduct towards criminal offenders, but not reasons of desert. Smilansky, on the other hand, posits a moral baseline of conduct, *especially* when there is a lack of basic desert. On Smilansky's account, from the perspective of a state, lack of basic desert would require treating all citizens equally. Incarcerating some without compensation would be an injustice (364). The difference between the two accounts is that while Pereboom is interested in fairness, his view does not *require* strict adherence to principles of fairness (172). Thus, we would not be required to compensate wrongdoers to the extent required by Smilansky because other values would give us

reason not to do so. On the other hand, Smilansky is pushing a deontological position that would require treating all citizens equally given a lack of basic desert, where not doing so by appealing to other values would be illegitimate.

I have two responses to the deontological position being pushed by Smilansky. The first is that Pereboom's quarantine system would not disregard the well-being of criminal offenders. Recall that Pereboom appeals to fairness as a reason to not treat criminal offenders any more harshly than necessary and to place a priority on providing opportunities to live a meaningful life (173). The second response is that strict adherence to deontological principles, even in the face of extremely negative circumstances, is a hard line deontological position, and certainly not the only deontological position that could be held. Threshold deontology, for example, is a softer version of deontology that allows that, at some point, negative consequences might make it such that it is morally required, or at least permissible, to abandon adherence to certain deontological principles.

As discussed above, Pereboom provides his own defense against Smilansky on consequentialist grounds. In addition to Pereboom's own response, I will push back against Smilansky's reductio in a different way. I will grant Smilansky's premise that appeals to consequentialism are illegitimate and show that Pereboom's system can overcome the reductio in a second way by appealing to threshold deontology. Showing that this is the case will extend the ethical applicability of the quarantine system by increasing the range of ethical systems with which it is compatible.

I will now show that Pereboom's quarantine system is compatible with and can use threshold deontology to overcome Smilansky's reductio. I will argue that a state adhering to threshold deontological principles can legitimately choose not to compensate incarcerated

criminal offenders to the extent argued for by Smilansky, even though the criminal offenders don't deserve to be harmed and are being harmed by being incarcerated. Smilansky argues that deontological commitments are what lead to the reductio because they require society to lavishly compensate incarcerated criminal offenders. I will argue that deontological commitments do *not* require us to compensate incarcerated individuals to such an extent. If this is true, the quarantine system will have greater ethical applicability.

I begin by arguing that the decision whether to incarcerate and compensate criminal offenders who are not morally responsible produces a moral dilemma for a deontological system. I then argue that it is legitimate, when confronted with such a moral dilemma, to weigh the consequences of different courses of action. Particularly, the amount of deontological violations should be appealed to. The course of action with the least amount of violations should be chosen. An analysis of the different courses of action for dealing with criminal offenders undeserving of punishment shows that incarceration without compensation, or not nearly as much as Smilansky requires, leads to the least amount of deontological violations. I conclude that it is legitimate to incarcerate criminal offenders without compensation on deontological grounds, thereby avoiding the reductio. This conclusion shows that the quarantine system is compatible with deontological ethical commitments.

I understand moral dilemmas to be situations in which there will be a morally problematic feature of an action no matter what action is chosen. I argue that the decision regarding what to do with criminal offenders, if human beings are not responsible, is a moral dilemma. No matter what course of action is chosen, there will be a morally problematic feature of the decision. If this is the case, then what are the potential courses of action that all have morally problematic features? First, one needs to decide whether or not to incarcerate criminal

offenders. Given the threat that criminal offenders pose to other citizens, I imagine most people would take the answer to this question to be obvious – we should incarcerate criminal offenders. If that is the case, the second thing that needs to be decided is whether or not to compensate them (funishment). I take these two questions – incarcerate or not incarcerate, and compensate or not compensate – to set the three basic options for deciding what to do with criminal offenders. A state can: 1) not incarcerate criminal offenders, 2) incarcerate with compensation (funishment), or 3) incarcerate without compensation.

Now that I have laid out the three basic options, the next step is to explain why each option has a morally problematic feature. Doing so will motivate the claim that the quarantine system faces a moral dilemma. Deontological systems appeal to inherent qualities of actions to justify them as morally permissible or problematic. Deontological systems can be usefully contrasted with consequentialist systems, which appeal to the consequences that follow from actions (SEP entry for ‘Deontological Ethics’). Another way of thinking about the distinction, from Zamir and Medina (2010), is that “deontological theories view the goodness of outcomes as a morally relevant factor, but, unlike consequentialism, they do not consider it the only intrinsically important factor” (41). For my response to be deontological, the possible situations need to contain inherently problematic features, not just features that bring about negative consequences.

I will focus on a deontological violation that occurs in all three scenarios: harm to innocents (people undeserving of punishment). There may be other deontological violations occurring in the scenarios, but harm to innocents is particularly relevant to our discussion. For one, this particular violation has the advantage of encompassing other violations. Murder, theft, and assault, for example, are all violations that bring harm to an individual that does not deserve

such treatment. Second, harm to innocents is the very feature that Smilansky identifies when presenting his practical reductio (criminal offenders are innocent and do not deserve incarceration). Third, harm to innocents is an action that we can easily see a deontological system identifying as *inherently* problematic, which allows me to legitimately claim to be using a deontological system to overcome the reductio.

How does harm to innocents occur in each scenario? In scenario (1), where criminal offenders are not incarcerated, the deterrent effects of incarceration will be absent and criminal offenders will commit crimes against their fellow citizens with greater frequency such that there will be a substantial increase in harm to innocents. If, as per scenario (2), we incarcerate with compensation, harm will come to innocents as described in Smilansky's reductio. And if, as per scenario (3), we incarcerate without compensation, then harm will come to the incarcerated, who are also innocent and undeserving of punishment.

Thus far, I have described how a legitimate deontological system can find itself in a moral dilemma when trying to decide what to do with criminal offenders who do not deserve punishment. What needs to be decided next is a course of action. John Ladd (1958) argues that when we are confronted with obligations to two (or more) incompatible courses of action, we are being asked to do something that we cannot do. He argues that the forces of the incompatible normative obligations cannot both be sustained due to the principle that 'ought implies can.' Since we cannot fulfill both obligations, the normative demand to perform both actions ceases (817). The question then becomes "which obligation should be fulfilled?" Ladd argues that we need to appeal to other considerations about the cases in order to make our decision (818-819). In the dilemma of punishment I've described, if all options hold us under the same obligation (not to harm innocents), then what other considerations should we appeal to?

I argue that the consideration we must appeal to in the case of incarcerating criminal offenders is the *amount* of harm to innocents that occurs in the different scenarios. This proposal seems problematic because it suggests that a deontological system look to consequences when deciding the proper course of action. However, I do not think it is always problematic for a deontological system to appeal to consequences. In certain circumstances, such as dilemmas in which no course of action allows all deontological obligations to be met, it is the decision procedure that is required. For now, I will look at how this decision procedure selects a course of action that avoids the reductio. I will justify the legitimacy of such a decision procedure for a deontological system later.

As mentioned above, there are three scenarios to consider for dealing with criminal offenders: 1) no incarceration of criminal offenders, 2) incarceration with compensation (funishment), and 3) incarceration without compensation. All three scenarios involve harm to innocents. Using Ladd's suggestion for a decision procedure, I will look at the amount of harm to innocents in each scenario and, as a result, argue that incarceration without compensation should be chosen.

1) If criminal offenders are not incarcerated, criminal offenders will have the opportunity to continue committing crimes against their fellow citizens. The lack of deterrence through incarceration will also encourage even more people to lead a life of crime, which will increase the harms experienced by citizens. Such a scenario will involve more murders, serious assaults, and thefts of property and income, all of which harm innocents. This empirical claim is being made from the armchair, but it seems very plausible given human psychology and the way in which society currently operates.

2) If criminal offenders are incarcerated *with* compensation, then Smilansky's reduction will take hold. Large amounts of innocent people will be harmed as a result of increased criminal activity and crushing taxes. Compared to scenario 1, there may be less crime, though the enticement of funishment may increase it. Furthermore, the increased costs of funishment, if they are as extensive as Smilansky suggests, will produce more harm for non-incarcerated citizens by taking away monetary capabilities to defend and take care of themselves.

3) If criminal offenders are incarcerated *without* compensation, then there will be no tax hikes and no increase in crime. Society will run far more smoothly than it would in either of the other scenarios. Despite the harms experienced by incarcerated criminal offenders, this option clearly results in the least amount of harm to innocents. Additionally, recall that I am defending the quarantine system. Pereboom argues that we should avoid making life in the quarantine system any more harsh than is necessary. Endorsing the third option need not be seen as endorsing the current status quo of incarceration that is seen today. Pereboom's position is also consistent with endorsing "measures for reducing crime that aim at altering social conditions, such as improving education, increasing opportunities for fulfilling employment, and enhancing care for the mentally ill" (174).

Based on the above evaluation, I argue that incarceration without compensation is the proper course of action for a deontological system. It is the proper course of action because it involves the least amount of harm to innocents, which makes it the *least bad* course of action. This conclusion means that the quarantine system can operate within a deontological system. It can quarantine criminal offenders without being required to compensate them in a way that leads to society collapsing.

An obvious objection is that weighing amounts of violations appeals to consequences, which is how a consequentialist system decides on a course of action. Such a procedure, the objection goes, is illegitimate for a deontological system.

I disagree that such a procedure is illegitimate for a deontological system. I agree with Ladd's position that when every course of action is problematic from a deontological perspective, other considerations must be appealed to in order to make a decision. The objection might grant me as much, but deny my next move that consequences are legitimate considerations to appeal to. As discussed above, it seems that Smilansky's argument pushes a hard line deontological view of this sort. Such a brand of deontology, however, need not represent all possible brands of deontology. A softer version of deontology, called moderate or *threshold* deontology, can get around this objection. Threshold deontology argues that a threshold can be passed when the foreseeable consequences of a particular action are so severe that it becomes legitimate to let the need to avoid the foreseeable consequences take precedence over the need to adhere to deontological principles. The kind of deontology being pushed by Smilansky might be referred to as *absolutist* deontology. However, according to a threshold deontology, "deontological options need not be absolute: when enough good or bad outcomes are involved, there is no longer an option not to further the good or avoid the bad" (Zamir 2010, p.46). Thus, in response to the objection, appealing to consequences *is* legitimate for a threshold deontological system.

A second objection is that my treatment of incompatible courses of action within the deontological framework is missing an important distinction: the difference between what an agent *intends* to bring about and what they *foresee* coming about as a result of their action. In the example where one must choose whether or not to lie to a murderer about the location of their

potential victim, lying would be morally problematic because it would involve the intention to lie, despite the foreseeable outcome of saving the victim. Telling the truth, on the other hand, would have the foreseeable outcome of bringing about the death of the victim, but would not involve the bad intention to lie. This line of thinking might argue that a particular agent need only be concerned with (or at least primarily with) what they intend through their actions, not the foreseeable outcomes of their actions.

The intending/foreseeing objection would favor no incarceration (option 1) or incarceration with compensation (option 2), because no incarceration would avoid bad intentions and only involve negative foreseeable outcomes (the effects on society), and incarceration with compensation would avoid bad intentions because the compensation would cancel out the wrong of incarcerating criminal offenders undeserving of punishment. On the other hand, incarceration without compensation would *not avoid* bad intentions (incarcerating innocent criminal offenders), despite avoiding negative foreseeable outcomes.

As was discussed in the response to the first objection, a more hard line version of deontology might hold that we are required to act with good intentions *regardless* of the foreseeable outcomes – it is what morality requires. Remember, however, that I am appealing to threshold deontology. If criminal offenders were incarcerated with compensation, or criminal offenders were not incarcerated, and society fell to ruin as a result, as Smilansky argues, surely these foreseeable outcomes would count, on some threshold deontological view, as crossing the threshold that makes appeals to foreseeable outcomes legitimate. The intending/foreseeing objection is based on an absolutist view of deontology, which I do not endorse.

A third objection is that throughout the above discussion I have assumed that the three competing scenarios all involve the same deontological violation – harm to innocents. Under this

assumption, I then weighed the amount of violations in each scenario to determine the proper course of action. One might object, however, that while each scenario involves harm to innocents, they might involve different types of harm to innocents. One might then argue that deprivation of liberty, which is the type of harm involved in incarceration without compensation, is a particularly bad harm. Since there is no deprivation of liberty found in the scenario involving no incarceration and there is heavy compensation for the deprivation of liberty found in the scenario involving incarceration with compensation, this objection might conclude that incarceration without compensation is not the proper course of action.

My response to this objection is that the types of harm to innocents involved in the scenarios of no incarceration and incarceration with compensation would be even worse than deprivation of liberty. In both scenarios, crime would run rampant. An increase in crime would involve an increase in murders (among other serious crimes). The taking of life is a very serious deontological violation, one that far outweighs the severity of depriving liberty.

I now take myself to have shown that Pereboom's quarantine system can overcome Smilansky's reductio by appealing to threshold deontology. In doing so, I have shown that the ethical applicability of Pereboom's quarantine system can be extended to include not only consequentialism, but also threshold deontology. In the next section, I will begin the discussion of how to implement the quarantine system in society. In particular, I will investigate to what extent the quarantine system should utilize direct brain interventions to rehabilitate criminal offenders.

4 Political, Legal and Social Concerns: Constraining the Use of Direct Brain Interventions in the Quarantine System

This section will engage with a number of concerns that arise when considering how to implement Pereboom's quarantine system in a liberal democratic society. While Pereboom does not address such concerns, it is important to do so because political, legal, and social considerations will always be relevant in discussions of how to deal with criminal offenders. In particular, this section will focus on the use of direct brain interventions for rehabilitative purposes. Pereboom says that it is a matter of fairness that we attempt to rehabilitate criminal offenders in the quarantine system; since they are being deprived of liberty, we should help rehabilitate them in order to prepare them for release. Using direct brain interventions to rehabilitate criminal offenders is a hot topic in neuroethics as technological capabilities and our understanding of the brain bring the idea closer to reality. As will be discussed, it can be assumed that Pereboom endorses the use of direct brain interventions to help rehabilitate criminal offenders. This section will culminate with a suggestion for how the use of direct brain interventions to rehabilitate criminal offenders in the quarantine system should be constrained. In putting forth this suggestion, I further extend the applicability of Pereboom's quarantine system by beginning the conversation about how to implement it in society.

Direct brain interventions, according to Neil Levy (2007), are interventions that bypass our rational capacities and directly alter our brain at a neural level (70). Bypassing rational capacities makes it near impossible for an individual receiving a direct brain intervention to resist the changes that it brings about. Direct brain interventions should be contrasted with indirect brain interventions, which include basically every interaction we have that does not bypass our rational capacities. Argumentation through the presentation of reasons is an obvious example of

an indirect brain intervention. The line between direct and indirect brain interventions can be difficult to draw. For the purposes of this thesis however, I will appeal to a set of paradigm cases for direct brain interventions. The interventions that I am taking to be paradigm cases of direct brain interventions are the administration of pharmaceuticals (such as Prozac) and brain surgery.

Direct brain interventions are notable for their speed and effectiveness (Vincent 2014). Such characteristics are appealing because of the potential they have for altering individuals — a consideration of particular note given that Pereboom's system places an emphasis on the rehabilitation of offenders. A quick intervention, which the offender will not be able to resist, can seem very enticing. However, there are a host of objections and concerns associated with direct brain interventions (see Levy 2007). For the purposes of this thesis, I will focus on concerns about the use of direct brain interventions for rehabilitative purposes in Pereboom's quarantine system.

Pereboom (2001) suggests that utilizing pharmaceuticals in order to increase a wrongdoer's reasons-responsiveness might be legitimate. Pereboom demonstrates this point by reference to an example wherein an individual suffers from outbursts of violence and anger. If such an individual were given Prozac, they would experience a decrease in violent outbursts and, as a result, their ability to respond to reasons would increase (180). Pharmaceuticals are an example of direct brain intervention because they directly affect the chemical functioning of the brain. Using this example as a precedent, we can attribute to Pereboom the position that the use of direct brain interventions is legitimate if it increases a wrongdoer's reasons-responsiveness. It might seem strange that direct brain interventions, which bypass rational capacities, would be used to increase rational capacities. The appeal of using them in this way is the speed with which they could bring about increases in rational capacities. 'Traditional' means of increasing rational

capacities are cumbersome and take more time. Direct brain interventions can achieve the same changes within a dramatically smaller time frame.

Recall that Pereboom's quarantine system has an interest in rehabilitating criminal offenders as a matter of fairness. Furthermore, it seems that Pereboom would accept the use of direct brain interventions, under certain conditions, to achieve rehabilitative aims. Direct brain interventions could increase the speed and effectiveness of rehabilitative efforts. C.S. Lewis (1953) worries that a treatment program for criminal offenders focused on rehabilitation will have unacceptable consequences. Lewis worries that if punishment comes to be seen as therapy, then a precedent will be created that has the possibility of dehumanizing criminal offenders in such treatment programs (225). Lewis expresses his worries in response to a humanitarian theory of punishment according to which therapy and deterrence are the only legitimate motives for punishment (224). I want to focus on two of Lewis's concerns because I think they are relevant to the kind of system proposed by Pereboom. These concerns will not bear directly on my discussion of direct brain interventions, but insofar as I take myself to be preparing the quarantine system for implementation in society, they are concerns that require a response.

One concern for Lewis is that those in authority may classify people as in need of rehabilitation based on inappropriate criteria (229). This concern takes on even more weight in the quarantine system because there is a possibility of indefinite detention. Those in authority, by employing inappropriate criteria, could wrongfully detain an individual for the extent of their lifetime. This concern is relevant to Pereboom's system because it is not entirely clear how it would be decided whether an individual should be placed in the quarantine system. Lewis worries that individuals who have not committed crimes, but instead possess characteristics that

are undesirable for noncriminal reasons, e.g., political reasons, will be rehabilitated for their undesirable characteristics.

Given that Pereboom discusses the quarantine system as a way of responding to criminal behavior, it seems that court systems would play a large role in deciding who is placed in the quarantine system. Pereboom doesn't explicitly state what kind of governing authority would be in charge of making such decisions. However, if we look to the principles for treating criminal offenders that he draws from the quarantine analogy, other ethical principles, and the assumption that the quarantine system would take place in a society similar to our own, then it seems that Pereboom has a satisfying response to the concerns of Lewis. Recall that the less dangerous an offender is, the less restraint would be employed in dealing with the offender. Additionally, as far as preventative detention is concerned, it would only be used for especially dangerous cases due to concerns about using people as means and violating an individual's right to liberty (169).

Lewis's concern about the abuse of authority might not be satisfactorily answered by appealing to such principles. After all, those in authority could change determinations of dangerousness to fit their needs. Imagine an authority that considers homosexuality or particular religious beliefs to be especially dangerous and institutes policies that require preventative detention and indefinite detention until 'criminal offenders' who have such a sexual orientation or religious affiliation are rehabilitated. Lewis's worry is that having such a system in place opens the door for such misuse. There are steps that could be taken to prevent such possible misuse. A panel of professionals from relevant fields (law, philosophy, psychology, medicine, etc.) could be used to determine what characteristics should be considered criminally dangerous. Additionally, almost any system of criminal treatment is open to misuse by those in authority. It

is a feature shared by all proposals for treating criminal offenders and so should not be considered a decisive objection to systems focused on rehabilitation, such as Pereboom's.

Another concern is that criminal offenders may be subject to indefinite detention if therapy does not bring about desired results (226). What happens if rehabilitation efforts fail and the wrongdoer still poses a threat to society? Or what if an individual decides that they do not want to be rehabilitated? Consider a murderer who fully endorses her actions and desires not to have any aspects of her personality altered. Respect for autonomy or authenticity might suggest that we should respect this decision and not subject the individual to rehabilitation aimed at altering those aspects of her personality that she values. However, given that this person is a danger to society, she will be incarcerated until the problematic aspects of her personality are altered, which means she could be indefinitely detained.

Lewis points out that on a retributivist model, which he supports, the murderer would only serve the term assigned by the dictates of justice – she would be punished only to the extent that she deserves as a result of her wrongful actions. After her punishment is complete, she would regain her liberties and be able to rejoin society. From one angle, it seems that Pereboom has an easy enough response: basic desert does not exist, so retributive punishments are out of the question. Thus, we are unable to give her a sentence based on what she deserves. Intuitively, however, it seems that there is something problematic about the notion of indefinite incarceration despite the lack of basic desert. Pereboom cites fairness as a reason why we should prepare criminal offenders for release as soon as possible (171). Indefinite incarceration because the state cannot figure out a successful rehabilitation plan or because the criminal offender rejects an offer of rehabilitation might seem unfair.

Pereboom's response is going to appeal to his axiological moral theory and the fact that there are a number of values at play. Fairness is important in Pereboom's moral theory, but it can be tempered by other values. The biggest value that is going to restrict appeals to fairness is the right of individuals in society to protect themselves (169). Remember that individuals in the quarantine system have either perpetrated dangerous criminal acts or, in the case of preventative detention, there is a very high likelihood that they will commit an especially violent or damaging crime. The right to self-protection can be seen as taking precedence over considerations of fairness. Once the protection of society is in place, then considerations of fairness can come in to make up for the undeserved treatment. If Pereboom's principles for treatment of criminal offenders in the quarantine system are followed, then indefinite incarceration will occur to only a very small set of dangerous individuals, which does not seem unfair given the value placed on the right of society to protect itself.

In summary, Lewis has two concerns that apply to Pereboom's system. The first concern is that individuals might be placed in the quarantine system for noncriminal reasons (such as political reasons). These individuals might then undergo forced rehabilitation, through direct brain intervention, to change characteristics of themselves that are not problematic from a criminal justice perspective. The second concern is that if rehabilitation does not work or an individual refuses rehabilitation, she may end up being incarcerated indefinitely. I argued that both of these worries can be addressed by Pereboom, thereby clearing away some theoretical impediments to the quarantine system being implemented in society. I will now move on to consider a legal worry about the use of direct brain interventions to rehabilitate criminal offenders.

How should legal considerations influence the use of direct brain interventions on criminal offenders in the quarantine system? Jan Christoph Bublitz and Reinhard Merkel (2012) argue that a legal right to mental self-determination has precedence in legal thinking and should be a recognized legal right. Their arguments can be used to begin framing conditions for the legitimate use of direct brain interventions to rehabilitate criminal offenders in the quarantine system.

Before discussing Bublitz and Merkel, it will be helpful to consider the contrasting view of Neil Levy (2007). Levy proposes a parity principle for thinking about direct and indirect brain interventions. The parity principle is that “unless we can identify ethically relevant differences between internal and external interventions and alterations, we ought to treat them on a par... [T]he mere fact that one kind of intervention is internal is not a ground for objection” (62). In contrast, Bublitz and Merkel (2012) argue that direct and indirect interventions are not on an ethical par.

Bublitz and Merkel propose what they call the *normative dualism of interventions*: “indirect interventions are normally permissible while direct interventions are prima facie prohibited” (21). Bublitz and Merkel recognize that direct and indirect interventions have the same effects – both types of interventions end up changing our underlying neural structure (21). However, Bublitz and Merkel introduce the normative dualism of interventions because they argue that what needs to be considered is *how* the effects of interventions are produced (21). How the effects are produced is important because the transformations that occur in indirect interventions “are somehow more in accordance with the existing personality structure and preserve the authenticity of the individual” (20). As discussed above, indirect interventions interact with an individual’s rational capacities while direct interventions do not.

Bublitz and Merkel are motivated by legal concerns and propose what they argue to be a human right that should be given legal protection – the right to mental self-determination (14). This right, by appealing to the normative dualism of interventions, would rule out direct brain interventions as a protected form of intervention into the minds of other individuals. Bublitz and Merkel appeal to a number of considerations that support the right to mental self-determination. They argue that it is “among the basic assumptions on which liberal legal orders are built” (12). They also appeal to the intuition that it is obviously problematic for a state to have access to the mental life of citizens. Such access would open the door to all manner of troubling possibilities such as accessing and manipulating thoughts, emotions, values and preferences (11). Another consideration to which they appeal is the value of human dignity, which respects the autonomy of persons and an “individual’s values, preferences and conceptions of a good life” (13). Finally, they argue that the right to self-determination is also supported by the freedom of religion, thought and conscience (13-14).

The right to mental self-determination has obvious consequences for a system of criminal incarceration that might attempt to utilize direct brain interventions to rehabilitate criminal offenders. Despite incarceration, criminal offenders still enjoy basic legal protections, so the right to mental self-determination would seem to rule out the use of direct brain interventions. However, Bublitz and Merkel allow that direct brain interventions can be legitimate if the criminal offender gives consent (24). Perhaps direct brain interventions could be a legitimate rehabilitation option in the quarantine system for criminal offenders who consent to such an intervention.

The work of Bublitz and Merkel suggests how the use of direct brain interventions might be restricted for legal reasons if the quarantine system was implemented in society. In particular,

Bublitz and Merkel argue that the right to mental self-determination imposes a legitimate legal restriction on the use of direct brain interventions for rehabilitative purposes: direct brain interventions are only legitimate when the consent of the criminal offender is given. I will now move on to consider additional restrictions on the use of direct brain interventions and further consider the role of consent.

In a paper discussing the use of brain interventions on criminal offenders, Elizabeth Shaw (2012) argues that direct brain interventions are acceptable to use on criminal offenders only if they satisfy particular conditions. Shaw also argues that the consent of criminal offenders is not enough to legitimize certain types of direct brain interventions.

The three conditions set out by Shaw for the legitimate use of direct brain interventions on criminal offenders are: 1) interventions should only increase an offender's capacity responsibility, 2) interventions "should never *replace* attempts to engage the offender in human relationships" and 3) the offender's consent is required (14). *Capacity* responsibility, as is mentioned in the first condition, refers to our capacities for understanding and self-control. Capacity responsibility is understood in contrast to *virtue* responsibility, which refers to whether an individual has values that consistently help them perform the right actions (2). The first condition can be understood as requiring that we do not tamper with an individual's values. Instead, we may increase their reasons-responsiveness so that they can better reason about what values to hold.

The second condition can be understood in light of worries that Shaw discusses regarding the objectification of offenders and the need for dialogue with offenders. Shaw argues that the use of direct brain interventions on offenders might objectify offenders and lead to a division between offenders and non-offenders in society. The objectification would portray offenders as

“radically deficient in some fundamental respect” (12). Attempting to rehabilitate offenders through dialogue is a way of counteracting potential objectification by recognizing the personhood of offenders. Dialogue recognizes the personhood of offenders by giving them a voice and allowing them to tell their side of the story. Furthermore, if offenders were not able to put forward their side of the story, society would not have the opportunity to grapple with the circumstances that affected the criminal offender and influenced their decision to commit a particular crime (13). It is for these reasons that Shaw discusses dialogue and engagement in human relationships as a condition for the use of direct brain interventions. Enhancing capacity responsibility should never *replace* engaging an offender in human relationships, but may be used to enhance the criminal offender’s capacities for engaging in rational dialogue in human relationships.

Direct brain interventions aimed at altering a criminal offender’s values, even when the offender gives consent, are illegitimate on Shaw’s account. Shaw argues that consent cannot legitimize direct brain interventions aimed at altering values because of the message that such a policy would send to society: “the values of criminal offenders may permissibly be changed through intervention instead of dialogue.” If offenders consent to such interventions, it would have a negative effect on how society views offenders as a group (13).

One might worry that even consenting to an increase in *capacity* responsibility would be illegitimate in the quarantine system because criminal offenders would be presented with a coercive offer. Criminal offenders could find themselves in a position where they have to choose between incarceration, perhaps indefinitely, and undergoing a direct brain intervention. The issue of coercive offers being presented to criminal offenders as a condition of early release or parole has been around for some time in bioethics discussions about criminal offenders participating in

medical experiments. More recently, the issue has been revived in discussions about criminal offenders agreeing to neurointerventions in exchange for reduced sentences, parole, etc. (for examples, see Focquaert 2014 and Glannon 2014). *Quasi-coercion*, borrowing terminology from Focquaert (2014), might be a proper label for the choice between a direct brain intervention and indefinite incarceration, but I do not think it is problematic in the context of the quarantine system. As Focquaert notes, coercion comes on a continuum and is always present in some way or another in decisions regarding the treatment of criminal offenders (65). Some amount of coercion should be expected, especially with criminal offenders who are faced with the possibility of indefinite incarceration. According to Pereboom, these will likely be violently dangerous individuals. Additionally, criminal offenders in the quarantine system would have the option to refuse a direct brain intervention according to Shaw's requirements. Even if the offer was "too good to refuse," Shaw's conditions would restrict the use of direct brain interventions to increasing a criminal offender's reasons-responsiveness. By increasing reasons-responsiveness and not altering values, it is hard to see how such an intervention could be problematic even if it is quasi-coercive.

Shaw's conditions for the legitimate use of direct brain interventions on criminal offenders are based on social concerns regarding the proper treatment of criminal offenders. The implementation of Pereboom's system in a liberal democratic society should avoid objectifying criminal offenders. It should also avoid silencing and devaluing criminal offenders. Shaw's conditions would help prevent such problems in the quarantine system.

The concerns of Lewis, Bublitz and Merkel, and Shaw highlight aspects of criminal incarceration and treatment that are not discussed in Pereboom's account. Pereboom does not discuss the political, legal, and social aspects of implementing his quarantine system. Perhaps

this was an intentional move by Pereboom in order to focus on the moral aspects of such a system and avoid problems that could arise from political and legal critiques. After all, political and legal systems vary, so providing a purely moral account avoids a number of contingent constraints that could arise depending on what society is being considered. That being said, political, legal, and social concerns will always be relevant for systems of criminal incarceration.

Between the political concerns expressed by Lewis, the legal concerns expressed by Bublitz and Merkel, and the social concerns expressed by Shaw, I arrive at the following proposal for the legitimate use of direct brain interventions to rehabilitate criminal offenders within the quarantine system: direct brain interventions may only be used to increase an offender's reasons-responsiveness, the offender must give consent, and direct brain interventions can never replace engaging offenders in human relationships. These criteria seem well founded in a liberal democratic society. Among other things, they avoid hampering public discourse and the marketplace of ideas by protecting the values of offenders from manipulation, they protect the right to self-determination, and they help prevent further objectification of a vulnerable class of citizens.

I suggest that Pereboom make these three conditions required for the legitimate use of direct brain interventions on criminal offenders. Accepting the conditions is not problematic for Pereboom because they do not contradict his position or his discussion of the quarantine system. Additionally, the conditions, by combatting political, legal and social concerns, begin the process of making the quarantine system fit for implementation in a liberal democratic society.

5 Conclusion

In this thesis, I have extended Pereboom's quarantine system for the incarceration and treatment of criminal offenders in two main ways. Through engaging with Smilansky's practical reductio of Pereboom's position, I showed that we can extend the ethical applicability of Pereboom's quarantine system to include threshold deontology. I then further extended the quarantine system's applicability by beginning the process of considering how it could be implemented in society. I considered political, legal and social concerns that might arise when attempting to prepare Pereboom's system for implementation in a liberal democratic society. In particular, I focused on the use of direct brain interventions for rehabilitative purposes. I suggested that Pereboom add the following three conditions for the legitimate use of direct brain interventions on criminal offenders: 1) interventions should only increase an offender's capacity responsibility, 2) interventions should never *replace* attempts to engage the offender in human relationships, and 3) the offender's consent is required.

If it turns out that human beings are not morally responsible, a plan for the treatment of criminal offenders that respects this fact will be needed. Pereboom's quarantine system offers such a plan. By extending the ethical, political, legal and social applicability of Pereboom's quarantine system, I have started the conversation about how such a system might actually be implemented in a liberal democratic society. This is an important conversation to begin if it turns out that human beings are not morally responsible and society needs to alter its criminal practices as a result.

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