Journal of Ethics and Social Philosophy
VOL. 29, NO. 2 · JANUARY 2025
https://doi.org/10.26556/jesp.v29i2.3376

CRIME, PUBLIC HEALTH, AND INHUMANE OBJECTIVITY

Nadine Elzein

THE IDEA that we should reject retributivism and treat crime as a public health problem seems at least *prima facie* like an appealing stance. In recent years, it has been forcefully defended by Gregg Caruso and Derk Pereboom.[1] Many of the basic principles of this view have also been defended by Erin Kelly.[2]

Plausibly, retributive policies presuppose *basic desert*, and there are reasons to doubt that agents can be assumed to basically deserve punishment for their wrongdoings. But even those who are *not* doubtful about basic desert may think that public protection is a more important goal than enacting retribution, and these goals often conflict; highly retributive systems typically do a worse job with respect to public protection than more forward-focused systems.[3]

Caruso puts forward various policy recommendations inspired by the public health model.[4] These are supported by both evidence and common sense. There are, unsurprisingly, few critiques of these recommendations in the literature. Yet whenever discussion arises about the possibility of crime being treated as a public health problem, I find that the idea meets with resistance. For many, this suggestion rings alarm bells. This is partly because the project of

1 Caruso, "Free Will Skepticism and Criminal Behavior," *Public Health and Safety*, and *Rejecting Retributivism*; Caruso and Pereboom, "A Non-punitive Alternative to Retributive Punishment"; Pereboom and Caruso, "Hard-Incompatibilist Existentialism"; and Pereboom, *Living Without Free Will*, "Incapacitation, Reintegration, and Limited General Deterrence," and *Free Will, Agency, and Meaning in Life*.

2 Kelly, *The Limits of Blame* and "Criminal Justice Without Retribution."

3 I am more optimistic about the possibility of basic desert than Caruso or Pereboom. I think it is possible that we are sometimes retributively responsible for our choices and on those occasions may be blamable to the extent of the moral disparity between the alternatives we could have chosen between. See Elzein, "Undetermined Choices, Luck and the Enhancement Problem." But both the certainty and the extent of freedom are, on this model, more limited than ordinarily assumed. Following Vargas, I am skeptical about whether we could "trace" responsibility for all of our choices back to occasional choices for which we are directly responsibility. See Vargas, "The Trouble with Tracing."

4 Caruso, "Free Will Skepticism and Criminal Behavior" and *Public Health and Safety*.

treating crime as a health problem has a dark history and partly because of the worry that there is something impersonal or dehumanizing about approaches to crime that weaken the emphasis on personal responsibility. Nonetheless, I will argue that this fear is misplaced.

In what follows, I am going to argue for five claims:

1. There is a difference between taken responsibility and retributive desert. Skepticism about retributive desert does not entail skepticism either about the existence of taken responsibility or about its moral importance.
2. The ability to take responsibility is essential to our sense of personhood, and when we undermine the abilities that underscore taken responsibility or prevent an agent from having the opportunity to take responsibility, this is commonly experienced as dehumanizing, so practices that do either unnecessarily are unethical.
3. Skepticism about retributive desert (as entailed by the public health model and Caruso's policy suggestions) is not dehumanizing in any comparable way, except where it is (needlessly) coupled with skepticism about the existence or moral importance of taken responsibility.
4. Medical approaches to crime have often been unethical historically because medical practices *in general* have often been unethical. They have often involved unnecessarily undermining an agent's capacity or opportunity to exercise taken responsibility.
5. Instead of rejecting a public health approach to crime, we should seek to take a more ethical approach to public health—one that reflects a respect for taken responsibility and therefore avoids practices that are dehumanizing (both in the context of crime and in that of public health more broadly).

In section 1, I will give a brief outline of the Public Health Quarantine Model and Caruso's policy suggestions. In section 2, I will argue for claims 1 and 2: I will show that impersonal and dehumanizing treatment comes from undermining taken responsibility, and this need not follow from skepticism about retributivism. In section 3, I will address some objections to nonretributive and public health models, all of which broadly draw on accusations that such treatment would be in some way dehumanizing, and I will argue for claim 3: skepticism about retributive desert, Caruso's policy suggestions in particular, need not be dehumanizing in the way skeptical approaches to responsibility are often accused of being. In section 4, I will briefly consider the history of the association between crime and public health, making a case for 4, the claim that unethical practices in medicine have been common but are not uniquely

associated with medicalizing deviance or criminality. In section 5, I will argue for claim 5: we ought to approach medicine more ethically instead of excluding criminality from the realm of public health.

1. THE PUBLIC HEALTH QUARANTINE MODEL

For Caruso and Pereboom, the public health model of dealing with crime is motivated by free will skepticism.[5] What both take to be centrally in dispute between free will skeptics and their opponents is *basic desert*. This is the sort of responsibility that is relevant to desert of retributive blame and praise. There are various reasons why we might blame or praise an agent. But insofar as they are *basically deserving*, our reasons do not rest on any further good that might result from it. It is skepticism about responsibility in *this* sense that motivates the Public Health Quarantine Model and Caruso's policy suggestions.

In his 2017 book *Public Health and Safety*, Caruso gives a thorough analysis of the social determinants of crime and public health, drawing on considerable empirical evidence.[6] He proposes eight areas in which we could adopt policies that would enable us to deal with crime more effectively without relying on the assumption of basic retributive desert. These are summarized at the end of his discussion as follows:

1. "Invest in programs and policies aimed at reducing poverty, homelessness, abuse, and domestic violence."
2. "Increase funding for mental health services with a focus on the early and active treatment of mental illness."
3. "Secure universal access to affordable and consistent healthcare for all."
4. "Reject retributivism and purely punitive approaches to criminal justice and shift the focus to *prevention*, *rehabilitation*, and *reintegration*."
5. "End all policies that disenfranchise ex-offenders, making it more difficult for them to reintegrate back into society."
6. "Prioritize and properly fund education, especially in low-income areas, and support educational programs in prison."

5 Caruso, "Free Will Skepticism and Criminal Behavior," *Public Health and Safety*, and *Rejecting Retributivism*; Caruso and Pereboom, "A Non-Punitive Alternative to Retributive Punishment"; Pereboom and Caruso, "Hard-Incompatibilist Existentialism"; and Pereboom, *Living Without Free Will*, "Incapacitation, Reintegration, and Limited General Deterrence," and *Free Will, Agency, and Meaning in Life*.

6 Caruso, *Public Health and Safety*.

7. "Adopt policies that protect the environmental health of our communities by combating climate change, protecting air and water, and reducing/eliminating harmful toxins."
8. "Research more effective interventions and rehabilitation strategies for psychopathy."[7]

Since present public health failures often worse affect those already unfairly disadvantaged by factors such as class, race, ethnicity, lifestyle, and culture, Caruso proposes policies that are informed by an ethical awareness of issues of social justice. His ethical framework involves taking a capabilities approach to public well-being, grounded in Amartya Sen's idea of enabling people to function so as to protect the substantive freedom a person has "to lead the kind of life he or she has reason to value."[8] Acknowledging this ethical commitment will be important for what follows.

Discomfort about treating crime as a public health problem apparently does not derive from unease about the specific reforms Caruso recommends, which have attracted little criticism. Some critics proclaim to be broadly supportive of some of these policy reforms but skeptical about whether Caruso's ethical commitments are consistent with his skepticism about free will.[9] And while few have attacked Caruso's view directly, there is a body of criticism predating Caruso's work that continues to be influential within free will literature and that captures the basic motivations for continued unease about the association between crime and public health. These will be discussed in section 4.

When theorists talk about moral responsibility, it is not always clear what the term is taken to mean. While Pereboom and Caruso are careful to specify that they are concerned solely about basic retributive desert, commentators do not always clearly address the relation between retributive responsibility and broader uses of the term 'responsible'. In the following section, I will distinguish three different senses in which we might use the term 'responsibility' and will make a case for supposing that one variety of responsibility—what I call *taken responsibility*, or future-directed commitment—need not stand or fall with basic retributive desert.

7 Caruso, *Public Health and Safety*, 20, 21, 24, 26.

8 Sen, *Development as Freedom*, 87, quoted in Caruso, *Public Health and Safety*, 19.

9 Levy, "Let's Not Do Responsibility Skepticism"; and Lemos, *Free Will's Value*, 148–72.

2. RETRIBUTIVE DESERT VERSUS FUTURE-DIRECTED COMMITMENT

2.1. Three Types of Responsibility

The terms 'free will' and 'moral responsibility' lend themselves to several interpretations. Watson contrasts two notions of responsibility. The "self-disclosure view" captures *attributability* or the *aretaic* face of responsibility. In contrast, *accountability* captures the sort of responsibility that justifies desert of praise or blame.[10] We may contrast both of these with a *virtue* sense of the term, frequently associated with "taking responsibility" and less frequently discussed in relation to free will.

2.1.1. Accountability or Retributive Desert

Being responsible in the accountability sense entails being basically deserving of blame or praise. Holding someone *retributively responsible* entails blaming and praising or punishing and rewarding *just* on the basis that it is deserved. This is what would be required to justify a retributive stance: we are justified in punishing wrongdoers *just* on the basis that they deserve it. Caruso and Pereboom endorse skepticism solely about responsibility in this sense. There is considerable disagreement among philosophers about what conditions an agent must meet in order to have this variety of responsibility.[11]

2.1.2. Attributability or Self-Disclosure

The features that ground attributability are reflected in various compatibilist (or partially compatibilist) accounts. Actions may be attributable to agents to varying degrees, depending on such features as whether

- the agent performed the action deliberately,[12]
- the agent was acting on desires that she endorsed through second-order volitions,[13]
- the agent's second-order volitions reflected her deepest or most wholeheartedly embraced system of values,[14]

10 Watson, "Two Faces of Responsibility."

11 Conditions for retributive responsibility range from supposing it merely requires that our actions are conscious, intentional, rational, and uncompelled (Morse, "Compatibilist Criminal Law") to supposing that it requires us to be "miracle-working godlike beings" (Waller, "Virtue Unrewarded," 433–34).

12 Hobbes, "Of Liberty and Necessity"; and Hume, *A Treatise of Human Nature*, 2.3.1–2, 257–65 and *An Enquiry Concerning Human Understanding*, sec. 8, 148–64.

13 Frankfurt, "Freedom of the Will and the Concept of a Person."

14 Watson, "Free Agency."

- the agent's deeper values were not misguided or were at least shaped by reasoned reflection,[15] or
- the agent's mechanism of decision-making was adequately reasons-responsive.[16]

These features capture whether an agent's actions express her true intentions, character, and values, and whether these values are embraced through rational reflection as opposed to being picked up thoughtlessly or through blind indoctrination. This indicates that an agent's choices are a true reflection of the sort of person she is.

Classically, agents are exempted or excused from responsibility in the attributability sense either because the *agent* lacks the general capacities required to perform actions that are attributable to her (e.g., she lacks the ability to reason about her values or to reliably translate her values into choices and actions) or because the *action* does not reflect her true character and values. The former category may include some addicts, the severely mentally ill, or children. The latter may include actions performed accidentally, involuntarily, or through ignorance.

It is less clear that there is a distinctive attributability sense in which we might hold agents responsible, though attributability seems essential to certain practices. For example, rewards and punishments aimed solely at incentivizing good behavior or disincentivizing bad behavior make sense only when aimed at agents who meet conditions of attributability. We usually cannot incentivize someone to do something involuntary.

2.1.3. Taken Responsibility or Future-Directed Commitment

Gaden contrasts the virtue sense of responsibility with the *capacity* sense.[17] Watson's two senses of responsibility both seem to fall into the capacity category. The capacity senses of 'responsible' are contrasted with 'not responsible', whereas the virtue sense of 'responsible' is contrasted with 'irresponsible'.[18] If we think about being able to take responsibility on a model akin to developing a virtue, this raises questions about how we develop this virtue, how we educate children to develop it, and how those who have developed a corresponding vice might cultivate it.

Taking responsibility is normally done prospectively and hence is predominantly forward-looking in a way that retributive responsibility is not. Doret de Ruyter notes that "a person who takes responsibility for the well-being of

15 Wolf, *Freedom Within Reason*, especially 67–93.

16 Fischer and Ravizza, *Responsibility and Control.*

17 Gaden, "Rehabilitating Responsibility."

18 Gaden, "Rehabilitating Responsibility," 27.

another tries to establish something, whereas the person who is responsible for her action is accountable for something she has already done or for something she should have done."[19] Bruce Waller uses the term 'take-charge responsibility' for something like this virtue sense.[20] Pereboom and Caruso also explicitly distinguish taking responsibility in the sense of sincerely committing to a task with the sort of responsibility relevant to basic desert of praise and blame.[21]

An agent "takes responsibility" when they exhibit *future-directed commitment.* An agent exhibits future-directed commitment only insofar as they are willing and able to commit prospectively, sincerely, and conscientiously to a project or aim. When we attribute the virtue of being a responsible person to someone, we are saying that that person reliably exhibits future-directed commitment, particularly where they are morally required to. When we describe someone as an irresponsible person, we are saying that they do not reliably exhibit future-directed commitment, especially where this involves moral negligence. A responsible person is one who can be relied upon to take responsibility when it is called for.

I will use the terms 'future-directed commitment' and 'taken responsibility' interchangeably. (The latter is more in keeping with common usage, while the former better marks the distinction between this concept and responsibility of the sort usually in question in disputes about free will.)

De Ruyter outlines a number of abilities required for an agent to count as responsible in the virtue sense. These include *rationality*, "because one has to be able to interpret the needs of others and reflect on one's possible responses"; *caring* about the needs of others; and having the *willpower* to act on this, even when we have countervailing interests.[22] When we talk about holding an agent responsible in the sense that corresponds to this sort of responsibility, this involves expecting the agent to take responsibility, e.g., expecting her to exhibit a future-directed commitment to behave better in future or to make amends for something done previously. This expectation need not involve retributive blame. If we call it "blame" at all, it may be something closer to T. M. Scanlon's *nonpunitive* form of blame.[23] But it is better captured by Hannah Pickard's notion of *responsibility without blame*. Pickard argues that this way of holding agents responsible is effective in improving behavior in both therapeutic

19 De Ruyter, "The Virtue of Taking Responsibility," 26.

20 Waller, *Against Moral Responsibility*, 105.

21 Pereboom, *Living Without Free Will*, xxi; and Caruso and Pereboom, *Moral Responsibility Reconsidered*, 3–4.

22 De Ruyter, "The Virtue of Taking Responsibility," 28–30.

23 Scanlon, "Interpreting Blame."

contexts and criminal justice contexts.[24] When we hold someone responsible in this sense, the goal is not to blame them but to foster the sorts of reflection that might enable them to better exhibit future-directed commitment.

Two questions arise here. The first is the question of what the relation is between future-directed commitment and the two capacity senses of responsibility. The second is the question of whether we can endorse skepticism about retributive desert without endorsing skepticism about one or both of the others.

2.2. The Relation Between Senses of 'Responsibility'

I want to suggest that while some degree of attributability is necessary in order for an agent to be able to take responsibility, these two sorts of responsibility are only weakly connected. And it is not necessary at all that an agent meets the conditions of accountability or basic retributive desert in order to exhibit future-directed commitment of the sort required for taken responsibility.

Waller points out that while it is often assumed that take-charge responsibility suffices for being responsible in the sense that justifies blame and praise, this assumption is unjustified. Establishing that someone has take-charge responsibility still leaves open the question of whether they would be blameworthy or praiseworthy for what they have done.[25] It might seem, on the face of it, that one cannot be entailed by the other since one of these essentially involves a future-directed mindset while the other is backward-looking. While the future-directed commitment that characterizes taking responsibility is something we exercise prospectively, it can also have a backward-looking aspect. When an agent is described as taking responsibility for a *past* action, this involves committing to future actions that express a willingness to make amends for it or to repair damage done by it. But this does not entail being retributively responsible.

David Enoch notes that we may be able to take responsibility for something we have previously done even when we are not to blame for it at all.[26] Consider cases of agent-regret, of the sort described by Bernard Williams, in the face of bad moral luck (e.g., a driver blamelessly hitting a pedestrian).[27] Such cases suggest an ability precisely to exhibit future-directed commitment in relation to actions that were outside of our control, by adopting a willingness to make recompense. Here, the agent is neither retributively accountable nor even attributable (except perhaps to a very weak degree). We would not regard them

24 Pickard, "Responsibility Without Blame: Empathy and the Effective Treatment of Personality Disorder," "Responsibility Without Blame: Therapy, Philosophy, Law," and "Rethinking Justice."

25 Waller, *Against Moral Responsibility*, 104–14.

26 Enoch, "Being Responsible, Taking Responsibility, and Penumbral Agency."

27 Williams, "Moral Luck."

as someone who deserves to suffer in proportion to the harm they have caused, even if we think it is not out of place for them to actively take responsibility by adopting a future-directed commitment to make amends.

Children may also be able to take responsibility for things despite not being retributively blamable if they fail. When a parent asks a child to take responsibility for feeding the hamster, the parent is certainly expecting the child to exhibit futured-directed commitment, but they need not suppose that were the child to fail and were the parent to end up having to feed the pet after all, the child would deserve to suffer retributively. If the parent scolds the child for it, any suffering would naturally be regarded as an instrumental rather than intrinsic good.

Where an agent exhibits future-directed commitment or takes responsibility for something despite not being retributively responsible for it, she must still possess certain abilities: the ability to care about something, to be sensitive to reasons, and to exercise strength of will. This suggests that some degree of attributability *is* required, even if retributive desert is not. But this is true only to a weak degree. Children can exhibit future-directed commitment despite the fact that they do not fully meet the conditions typically associated with attributability, since they lack mature capacities of reason and reflection, do not have a fully developed set of values, and do not reliably succeed in translating their underdeveloped values into choices and actions.

While a child who takes responsibility may perform actions that are attributable to her, she does not count as the sort of agent to whom the conditions of attributability generally apply. In contrast, the blameless but unlucky driver is the sort of agent to whom actions are typically attributable, but this particular action is not attributable to them. The driver has fully developed capacities for reason and reflection and can typically translate their values into choices and actions, but this particular action was accidental and not a true reflection of their values or intentions.

It seems impossible that an agent could exhibit future-directed commitment with respect to something if *neither* the agent nor their relevant actions qualified as attributable to some degree. So some degree of attributability is required for taken responsibility. But neither the child nor the unlucky driver would usually be thought to be fully responsible in the attributability sense. The capacity to take responsibility is distinct, then, from both attributability and retributive desert, even if it is weakly connected to the former.

2.3. Skepticism and Incompatibilist Doubts

For free will skeptics, the capacities associated with attributability are not sufficient for basic retributive desert. And it should be uncontroversial for all sides that the capacities required for taking responsibility or exhibiting

future-directed commitment do not suffice for retributive desert. We need retributive desert in order to justify the retributivist view that it would be an intrinsic good for guilty parties to suffer in proportion to their intentional wrongdoing just because it is deserved.

Skeptical worries typically arise in relation to perceived threats to free will, such as causal determinism, randomness, or pessimism about either one. The argument for regarding these as threats typically draws either on concerns about leeway (whether any agent is capable of choosing otherwise) or else on concerns about ultimate sourcehood (whether any agent is the ultimate source of her own choices) where one or both are taken to be further preconditions for retributive desert.

The arguments for skepticism about retributive desert do not rest on skepticism about whether any agent meets the conditions of attributability—whether, for instance, any agent is acting on purpose or really endorses the desires that motivate her. Even if we are acting on our deeply held values, if these are ultimately explained by factors entirely outside of our control, skeptics argue that this renders punishment purely for the sake of retribution morally suspect. Skepticism about retributive blame neither rests on nor entails skepticism about attributability.

Opponents of skepticism typically suppose that if an agent meets the conditions of attributability, this is sufficient for their meeting the conditions of retributive desert too. Skeptics deny this. Skepticism is usually motivated by some form of incompatibilism with respect to retributive desert (traditionally, seeing it as ruled out by determinism, though skeptics may be concerned that it is ruled out by indeterminism too). But even those who are incompatibilists about retributive desert are typically willing to accept compatibilism about attributability. They simply argue that compatibilism about attributability does not suffice to establish compatibilism about retributive desert.

While our standard desert-entailing practices seem to presuppose that attributability suffices for retributive desert, skeptics endorse revision of these practices and will therefore suppose that their validity cannot be taken for granted: it would be unfair to punish someone just for the sake of retribution if her choices are ultimately fixed by factors outside of her control. This need not entail that there is no difference, say, between actions performed voluntarily and those that are coerced. It just means that acting voluntarily is not sufficient for basic desert. It may be a *necessary* condition, but it cannot be a sufficient one as there are further necessary conditions (i.e., requirements of sourcehood or leeway) that may or may not be met.

While there is some controversy about whether compatibilism about attributability suffices for compatibilism about retributive desert, it should be far

less contentious to say that the sorts of incompatibilist challenge that prompt skepticism about retributive desert entail no corresponding skepticism about taken responsibility, since agents can exhibit future-directed commitment without even fully meeting the conditions of attributability, let alone meeting any further conditions potentially required for retributive desert. Agents like the child or the unlucky driver will not count as retributively blameworthy even by traditional compatibilist standards.

Given these ambiguities, it is important to keep in mind the distinction between different senses of 'responsibility' when assessing the implications of responsibility skepticism. It seems plausible that skepticism about taken responsibility would have terrible implications. But skeptics about retributive desert do not even endorse skepticism about attributability. They certainly do not (and need not) accept skepticism about taken responsibility.

2.4. Responsibility and Personhood

In defending Sen's capacity model of well-being, Caruso emphasizes protecting "the substantive freedom" a person has "to lead the kind of life he or she has reason to value."[28] This use of the word 'freedom' does not entail retributive responsibility. But it does plausibly entail placing moral and practical importance on protecting and encouraging certain capabilities, including those that enable us to exhibit future-directed commitment.

The skills required for taking responsibility are important for a range of reasons that are unconnected to retributive desert. Future-directed commitment is central to our sense of personhood, such that if this is undermined, it is experienced as dehumanizing. Taking responsibility is central to our sense of self-efficacy or our command over our own future behavior. We task children with taking responsibility when we are on the cusp of beginning to treat them as persons. When we do not allow an adult to take responsibility, this is experienced as patronizing. My claim below is that respect for personhood requires respect for the capacities that underscore taken responsibility or future-directed commitment.

3. SKEPTICISM AND DEHUMANIZATION

In this section, I will explore a collection of key worries that seem to underscore unease about public health approaches to crime, focusing on four arguments in particular: Peter Strawson's worries about alienating objectivity, Herbert Morris's concern about personhood and the right to be punished, Peter Conrad's

28 Caruso, *Public Health and Safety*, 19.

worries about the medicalization of deviance, and Ken Levy's criticism of Caruso's free will skepticism.[29] While these arguments present diverse considerations, there is a common thread underlying them. They all, in some way or other, suppose that there is something dehumanizing either about responsibility skepticism or about medicine-related approaches to crime—or both. Between them, I think these represent the main categories of argument that motivate unease regarding the public health quarantine model.

I hope to show that there is another common thread between them. They all, to some extent, presuppose that skepticism about retributive desert (and/or medicalized approaches to deviant behavior) must undermine taken responsibility as well. This assumption is essential to motivating the idea that such approaches are impersonal and dehumanizing. I want to argue (a) that we need not accept this assumption, as skepticism about retributive desert does not entail skepticism about taken responsibility, (b) that when we reject it, the public health approach no longer appears dehumanizing, and (c) that Caruso's policies in particular are not dehumanizing in any of the ways suggested by these lines of argument.

3.1. The Objective Attitude

Objections to treating crime as a public health problem often come from a Strawsonian outlook. Strawson argues that skepticism about moral responsibility and a suspension of backward-looking attitudes would be alienating. He equates holding others responsible with seeing them as appropriate targets of reactive attitudes, i.e., "the attitudes and reactions of offended parties and beneficiaries; of such things as gratitude, resentment, forgiveness, love, and hurt feelings."[30] These mark an attitude of "involvement or participation," which we adopt with those we hold morally responsible.[31]

In contrast, when we do not hold a person morally responsible, we adopt a more detached attitude, suspending feelings connected to social demands and expectations. We do not engage with the agent as a person. Rather, we "see him, perhaps, as an object of social policy; as a subject for what, in a wide range of senses, might be called treatment; as something certainly to be taken account, perhaps precautionary account, of; to be managed or handled or cured or trained; perhaps simply to be avoided."[32] This plausibly captures what is objectionable about denying an agent's responsibility. It is not entirely clear

29 Strawson, "Freedom and Resentment"; Morris, "Persons and Punishment"; Conrad, "Medicine as an Instrument of Social Control"; and Levy, "Let's Not Do Responsibility Skepticism."

30 Strawson, "Freedom and Resentment," 5.

31 Strawson, "Freedom and Resentment," 9.

32 Strawson, "Freedom and Resentment," 9.

what Strawson means by viewing someone "objectively."[33] But the key idea is that being subject to "treatment" or being "managed or handled or cured or trained" involves being treated in an objectionably impersonal manner.

The contrast can be nicely illustrated by reflecting on the plot of Anthony Burgess's novel *A Clockwork Orange* (famously adapted to film by Stanley Kubrick). Alex, a violent criminal, is subjected to two approaches to dealing with convicted criminals, one backward-looking and retributive and the other forward-looking and nonretributive. First, he is placed in a standard prison. It is grotty and unpleasant. He is treated with moral contempt by the prison guards, who enforce a regime of punishment and hold him accountable for his actions. The prison chaplain regularly talks to him and reasons with him. This captures what Strawson calls the "attitude of involvement or participation": Alex is seen as an appropriate target for attitudes like resentment and blame.

Alex is then taken out of this institution and placed in another one. The second institution is a nice, shiny clinic. Here, he is intermittently subjected to a program of conditioning whereby he is forced to watch films of violence while given a drug that makes him feel like he is suffocating (a plot no doubt inspired by real-life examples in which criminals were "conditioned" with drugs like succinylcholine chloride).[34] The goal is to produce an aversion to violence, rendering his future behavior harmless. In this institution, Alex is not blamed or resented, merely, as Strawson would put it, "managed or handled or cured or trained." He is rarely spoken to, since his thoughts are largely irrelevant to what they are doing. This seems a good illustration of Strawson's objective attitude. The fact that this attitude seems dehumanizing is also reflected in the novel, with Alex's anguished plea: "Me, me, me. How about me? Where do I come into all of this? Am I just like some animal or dog?"[35] The worry is that adopting an impersonal attitude across the board would be dehumanizing for us all.

While this "treatment" gives us a clear illustration of an agent being regarded "objectively" in Strawson's sense, it also involves more than just a rejection of retributive blame. Alex's capacity for taken responsibility is also undermined. He is robbed of the power to exhibit future-directed commitment with respect to his own behavior. While Alex's treatment exemplifies the sort of strained objectivity of attitude identified by Strawson, it is not obvious that such strained objectivity is entailed merely by the rejection of retributive desert. We can see this if we think about policies that involve rejecting retributivism

33 On this point, see Tadros, "Treatment and Accountability."

34 We will return to these nonfictional examples in section 4 below.

35 Burgess, *A Clockwork Orange*, 104.

but retaining a strong emphasis on the capacities underlying taken responsibility. This is precisely what Caruso's positive proposals do.

Conditions such as poverty, homelessness, abuse, and domestic violence are factors that can significantly undermine a person's capacity for developing and exercising taken responsibility. They undermine the ability to develop sensitivity to others or to exercise self-mastery. For example, evidence suggests that poverty makes people more impulsive and weak willed and makes it harder to reason about the long-term consequences of one's actions.[36] There is clearly nothing dehumanizing about taking people out of poverty. If anything, being subjected to poverty, homelessness, and abuse is dehumanizing. Tackling these problems strengthens the capacity for taken responsibility rather than weakening it. On my analysis, this reflects a correspondingly strengthened rather than weakened respect for personhood. Similarly, most mental illnesses are commonly acknowledged to be a barrier to the capacities needed for future-directed commitment, so increasing provisions for early treatment and securing free health care are also policies that would strengthen rather than weaken the capacity for taken responsibility. Again, this is hardly dehumanizing.

Caruso suggests that we ought to shift our focus from retribution to "prevention, rehabilitation, and reintegration."[37] Rehabilitation and reintegration essentially require helping offenders to become capable of taking on responsibilities in life outside of prison. This capacity may be best served by being encouraged to take responsibility for one's environment and take on employment roles that better mirror the outside world (opportunities that are typically more limited in prison systems with a heavy emphasis on retribution). Similarly, education improves our capacity to think critically and make informed choices, and hence, education strengthens the abilities that are central to taken responsibility. Again, it seems plausible to think that a lack of access to education rather than increased access is dehumanizing.

Exposure to environmental toxins also reduces one's capacity for taken responsibility, as well as making one more vulnerable to criminality. For example, lead poisoning causes damage to the brain, which affects reasoning ability; those who suffer from it are typically impulsive and less able to exercise self-control. Again, it is hardly dehumanizing to limit the exposure risk of vulnerable populations.

Finally, psychopaths also tend to act impulsively, lack self-control, and be insensitive to others' interests and so are hampered from being able to

36 Mullainathan and Shafir, *Scarcity*; Pepper and Nettle, "The Behavioral Constellation of Deprivation."

37 Caruso, *Public Health and Safety*, 21.

effectively take responsibility. More research into effective interventions and rehabilitation strategies would potentially lead to an increase rather than a decrease in these abilities, and hence this policy also respects personhood.

While Caruso's policy suggestions can hardly be regarded as "objectifying" in the way Strawson takes to be problematic, there remains a worry that the view prevents us from seeing anyone as an apt target for reactive attitudes. Pereboom suggests we could retain *some* reactive attitudes, namely those that are not morally problematic. By substituting resentment or guilt with shock and disappointment or regret at being an agent of a wrong, we may be able to avoid any alienating detachment.[38] But it is not obvious that the reactive attitudes, even those tied to blame, like guilt or resentment, entail *retributivism*. Retributivism is usually understood as the view that the proportionate suffering of a wrongdoer is intrinsically good on the basis that it is deserved. Strawson never mentions retribution in his famous article, so it is not at all clear that Strawson's prime target is skepticism specifically about retributive desert, as opposed to skepticism about weaker forms of responsibility.

In personal relationships, attitudes like resentment do not obviously have retributive implications. If my spouse makes a hurtful comment, feeling resentful may be an unavoidable implication of adopting the attitude of participation. But it is hardly obvious that I must thereby want my spouse to suffer or, even if I do, that I must want this on the basis that I regard such suffering as an *intrinsic good* because it is deserved. In a healthy relationship, we are likely to regard any suffering that comes from expressing resentment as instrumental to fostering greater mutual understanding and empathy rather than seeing it as a means of enacting *retribution*. (The latter goal would be regarded more naturally as a sign of bitter relationship breakdown than as a marker of meaningful engagement.)

There seems to be no central sense, then, in which skepticism about retributivism alone entails the strained objectivity of attitude that Strawson suggests would be so alienating.

3.2. The Right to Be Punished

Morris argues that being retributively punished for our crimes is a *right*; if we are not held responsible as agents, our wrongdoings are inevitably seen as illness, warranting treatment rather than punishment.[39] He gives four reasons for supposing that this is objectionable. First (echoing Alex's lament from *A Clockwork Orange*), if we are not held responsible for our behavior, our status is reduced to that of animals; second, it robs us of the capacity to enjoy any sense of achievement in

38 Pereboom, *Living Without Free Will*, 187–213, and "Free Will, Love, and Anger."

39 Morris, "Persons and Punishment."

relation to what we do; third, "what we receive comes to us through compassion, or through a desire to control us"; and finally, "the logic of cure will push us toward forms of therapy that inevitably involve changes in the person made against his will."[40] This involves being treated like animals or machines—being controlled and manipulated—whether we consent to it or not. Moreover, Morris argues that we have the concept of *cruel punishment* but not that of *cruel treatment* (as opposed to merely painful treatment). Hence, there is no need for procedural safeguards in medicine of the sort we have in the legal system.[41]

The claim that we have a right to exercise taken responsibility would follow more plausibly from these arguments than the claim that we have a right to be retributively punished. It is not at all obvious that a failure to hold others retributively responsible has any of these implications, at least not once we see that this need not involve skepticism about the existence or the moral importance of taken responsibility.

Moreover, Morris seems to endorse a picture of medical ethics according to which it is always permissible for the sake of treatment to bypass an agent's wishes and consent and to inflict manipulative treatments as if we are training an animal or programming a machine. But why should we suppose that this is an ethical approach even to medicine? We now recognize a range of health problems connected specifically to agency—obesity, addiction, eating disorders, depression, anxiety disorders, obsessive compulsive disorders, etc. I would not think much of a doctor who supposed that in treating any of these conditions, it would be okay to treat patients as animals, manipulate them, or inflict treatments on them against their will.

Nor is it obvious that insofar as we regard these as illnesses, a patient who succeeds in getting through a program of recovery is unable to feel any sense of achievement. Programs aimed at treating addiction or obesity commonly involve marking and celebrating achievements, like meeting weight-loss goals or being clean for a year.

And while we may have lacked the concept of cruel treatment at the time Morris was writing, we certainly *do* have this concept now. Many practices that were once considered acceptable (such as forced unsedated electroconvulsive therapy) have since come to be regarded as unduly cruel, and we now recognize a need for legal safeguards.

Historically, problems like addiction and obesity *were* thought to warrant moral contempt rather than treatment. It would be counterintuitive to regard the move away from this attitude and towards a treatment model as a violation

40 Morris, "Persons and Punishment," 486–87.

41 Morris, "Persons and Punishment," 485.

of anyone's rights. Illnesses relating to agency (addiction, depression, compulsion, etc.) typically weaken an agent's ability to effectively assume responsibility for her own behavior. An effective treatment may correspondingly strengthen it. If this capacity is thought to matter morally, this provides a strong moral imperative *not* to inflict entirely manipulative fixes against an agent's will. Such moral imperatives have not always been recognized in the past (as will be further explored below), but a modern medical practitioner is unlikely to suppose that merely classifying something as a medical problem would justify inflicting painful and manipulative treatments on a patient without her consent.

And once again, the abilities that underscore taken responsibility are threatened rather than strengthened by factors such as poverty, exposure to abuse, lack of mental health support and medical care, lack of education, exposure to toxins, etc. So Caruso's policy proposals certainly do not reflect Morris's picture of impersonal or medicalized treatment, since they all aim to strengthen rather than to bypass rational agency.

3.3. *Medicalizing Deviance*

There is a longstanding worry about deviant behavior being encompassed within the realm of medical treatment. Thomas Szasz and Nicholas Kittrie each give influential early critiques to this effect, but I am going to focus on Conrad's succinct summary of some of the key dangers associated with the "medicalization" of deviance, which takes into account some of the main lines of arguments developed by earlier theorists.[42]

Conrad identifies at least six categories of problem.[43] First, when a person is seen as ill, Conrad maintains that they are not encouraged to take responsibility. This causes a significant drop in status, as they are essentially tainted with their condition and dependent on those classed as "non-sick." Second, the use of medical language often obscures the value judgments behind medical practices, hiding the moral and political agendas driving public health policy. Third, once something is classed as falling under the remit of medicine, this means it gets taken out of the realm public debate and put into the hands of experts. Fourth, "defining deviant behavior as a medical problem allows certain things to be done that could not otherwise be considered; for example, the body may be cut open or psychoactive medications given."[44] Fifth, once we see something as a medical problem, this pushes us towards an emphasis on the individual,

42 Szasz, *Law, Liberty and Psychiatry*; Kittrie, *The Right to Be Different*; and Conrad, "Medicine as an Instrument of Social Control."

43 Conrad, "Medicine as an Instrument of Social Control," 248–51.

44 Conrad, "Medicine as an Instrument of Social Control," 249–50.

discouraging us from considering the social causes of the problem. Finally, the medicalization of deviant behavior can rob that behavior of political meaning, removing the category of "evil" from our understanding of the world.

Worries about "medicalizing" deviant behavior are not necessarily misplaced. But that term may be given broad or narrow readings. Read narrowly, it encompasses only policies that involve treating an individual's behavior as an illness and seeking to alter it with treatment, ignoring broader societal factors. This *can* be problematic, but the public health model does not count as medicalizing crime on this narrow reading. Read broadly, the term encompasses any strategy that puts something within the broad remit of public health policy. On that reading, the public health model *does* count as medicalizing crime, but this becomes unproblematic.

Is it true that once someone is seen as ill, they are not encouraged to take responsibility and are essentially tainted with their condition? This may be true of some (though hardly all) physical ailments, but there are few courses of treatment for problems like addiction or obesity that do not essentially require an agent to take responsibility and aim to increase the degree to which an agent is able to do this. For example, cognitive behavioral talking therapies aim precisely at enabling agents to exercise future-directed commitment and to more effectively translate their wills into action. Moreover, many public health measures aimed at tackling things like obesity and addiction do *not* essentially taint individuals with their illnesses. Measures for tackling obesity include things like reducing the sugar and fat content in foods, putting clearer and more informative labelling on packages, restricting advertisements for junk food on children's television, adding health and nutrition education to school curricula, removing sweets from next to the checkout in supermarkets, etc.

Relatedly, the idea that individuals must be the sole focus of health interventions is somewhat outdated. For example, Virginia Chang and Nicholas Christakis have examined changes to the entry for 'obesity' in the *Cecil Textbook of Medicine* over a period of one hundred years and found significant shifts over time.[45] In 1927, the focus was entirely on the individual, who was also held personally responsible for overeating. In later editions, the focus shifts towards societal factors that make individuals vulnerable to obesity, such as the wide availability and aggressive marketing of junk foods. By 2000, there is also a focus on the damaging repercussions of blaming individuals for obesity, as this makes them vulnerable to victimization and mental health problems. The picture of public health care in Caruso's model better reflects the trend towards taking a less individualistic approach to health care and addressing societal risk factors.

45 Chang and Christakis, "Medical Modelling of Obesity."

It is perhaps true, as Conrad contends, that the use of medical language *can* obscure value judgments, taking debate out of the public sphere and putting it into the hands of experts, especially where medicalization is construed narrowly. But it is not obvious that all matters of public health policy are like this. Measures that affect the whole public (e.g., sugar and alcohol taxes, low emission zones, smoking bans, pandemic policies, etc.) often spark a great deal of public debate, and the political values in dispute are often transparent—for example, it is often clear that we are weighing personal or commercial freedoms against public safety.

Defining something as a health problem also seems neither necessary nor sufficient for allowing procedures such as cutting open the body or administering psychoactive drugs. Cosmetic surgery involves cutting open the body to "treat" problems that no one regards as illnesses (like small breasts or a crooked nose). And even when something *is* a medical problem, this does not automatically entail that such procedures are justified. We might think that some such procedures are and were *never* justified (e.g., frontal lobotomies and bloodletting). And except in extreme cases, any procedure that goes against the wishes of a patient may be regarded as unjustifiable even if the patient is ill.

Finally, should we worry that Pereboom and Caruso's model removes the category of "evil" from our understanding of the world? Even if we were to regard no one as deserving punishment aimed purely at retribution, we could still class *actions* that aim to harm others as morally wrong and those actions that aim to cause atrocious harms as evil. But the view calls into question whether *people* count as evil. This is a bullet that free will skeptics are typically willing to bite. Those of us who are not skeptics (but are merely doubtful about whether we have adequate epistemic justifications for extensively attributing basic desert to others) need not suppose no one is evil, merely that we should have limited confidence in assessing them as such.

And once again, if we turn specifically to Caruso's policy suggestions, we find that they are not vulnerable to Conrad's worries. They focus predominantly on societal factors, and they aim at increasing an agent's capacity for taken responsibility rather than removing it. (Again, poverty, lack of health care, exposure to toxins, etc. weaken this capacity.) So once again, these policy suggestions do not seem vulnerable to the objection.

3.4. Skepticism About Skepticism

Similar themes recur in Ken Levy's recent critique of Caruso's view.[46] Levy argues that given universal skepticism about desert, "the traditionally recognized excuses—automatism, duress, entrapment, infancy, insanity, involuntary

46 Levy, "Let's Not Do Responsibility Skepticism."

intoxication, mistake of fact, and mistake of law—are suddenly far too limited." Responsibility skeptics "are committed to replacing the recognized excuses with a much broader excuse, a 'universal nonresponsibility' excuse that applies to everybody not because of any cognitive deficiencies or situational constraints but simply because of a metaphysical deficiency: their universal human inability to be genuinely responsible for their crimes."[47]

Echoing Strawson, Morris, and Conrad, Levy argues that the skeptic's position is dehumanizing and threatens human dignity: "Most adults believe that their dignity, which they deeply value, would be severely impaired by others' perception that they are not responsible for their choices and behavior. Such impairment tends to yield devastating effects, including learned helplessness (i.e., fatalistic resignation), diminished cognitive self-efficacy, and lower self-esteem."[48]

He also supposes that Caruso's reasoning would lead to a massive increase in incarceration because it would make sense to preventatively incarcerate those who have committed no crimes so long as they fall into categories that render it likely that they will offend, e.g., having pro-criminal attitudes and values, acquaintances who share these pro-criminal values, personality traits such as hostility and lack of empathy, family problems such as childhood neglect and abuse, low educational attainment, and alcohol or drug problems.[49] Once we stop engaging with someone's behavior as an expression of their own considered and responsible choices, it will inevitably be viewed just like any other impersonal source of danger that might be targeted with risk assessments. The fact that it is a person's own deliberate doing will lose all moral significance.

Levy's claim that Caruso's skepticism about desert entails that all of the traditionally recognized excuses must be thrown out and replaced with a "universal nonresponsibility" excuse fails to take into account the difference between skepticism about *retributive desert* (which free will skeptics are committed to) and skepticism about varying degrees of attributability and taken responsibility (which free will skeptics are not usually committed to). These distinctions would still be incredibly important legally, given that agents can be expected or encouraged to take responsibility only for behavior that is deliberate, informed, uncoerced, etc.

Moreover, we have "learned helplessness" only insofar as we are unable to prospectively take responsibility. It is not obvious that this requires being held *retributively* blameworthy for our past behavior. Again, consider the move away from viewing obesity as a moral failing for which individuals should be

47 Levy, "Let's Not Do Responsibility Skepticism," 3.

48 Levy, "Let's Not Do Responsibility Skepticism," 4.

49 Levy, "Let's Not Do Responsibility Skepticism," 6.

blamed and towards viewing it as a medical problem that calls for effective public health measures. Most such measures presuppose an ability to prospectively take responsibility (as is the case with, e.g., better package labelling and dietary education in school curricula); aim to strengthening agents' ability to exercise strength of will (as is the case with, e.g., cognitive behavioral talking therapies and support groups); or aim to limit exposure to factors that weaken agents' ability to exercise strength of will (as is the case with, e.g., regulations that limit aggressive marketing of junk food).

Throwing away taken responsibility would plausibly produce fatalistic resignation and low self-esteem as Levy supposes. But measures aimed at strengthening agents' capacities for taken responsibility are often at odds with measures aimed at enacting retribution. This is true in relation to crime as well as in relation to traditional health problems: for example, those who wish to make prisons less retributive typically also wish to make them more effective for rehabilitation. In standard UK and US prisons, inmates live in austere cells, are banned from personalizing their spaces, and often have more limited access to mental health support, fewer opportunities for education and training, and fewer opportunities to develop work skills. In contrast, in Norwegian prisons, which are far less focused on punitive measures, inmates are actively encouraged to take responsibility for the spaces they live in, are offered greater opportunities for education and training, and may be given the chance to actively take on work responsibilities mirroring those of outside workplaces.

Punitive systems do not necessarily do anything to encourage inmates either to take more responsibility for their environment and development or to develop skills that will better enable them to take responsibility on their release. If we undermine the capacity for taken responsibility, this really does create fatalistic resignation. But support for retributive blame is often, at best, completely orthogonal to encouraging and enabling greater taken responsibility or, at worse, directly in conflict with it.

Finally, if we suppose that encouraging and enabling taken responsibility is morally important (a stance that we can plausibly adopt consistently with skepticism about retributive blame), then we will have strong reasons not to incarcerate people merely on the basis that they fall into various categories associated with a higher risk of criminality. This obviously robs agents of the opportunity to prospectively take responsibility for their own future behavior by rendering their intentions with respect to their own future behavior irrelevant.[50] There are also other factors that would count against this policy,

50 A related claim by Lemos is that if public safety is the goal, we may have reason to lower the standard of evidence required for conviction from guilt being established beyond reasonable doubt to it merely being likely on the preponderance of evidence. See Lemos,

including some forward-looking considerations that Levy mentions himself, such as the fact that "the resulting rage and terror that would spread throughout the community, would arguably outweigh the public benefit."[51]

Moreover, most of the risk factors themselves are ones that Caruso's policies are directly aimed at tackling (poverty, traumatic childhood experience, addiction, poor access to education, etc.). There is a big difference between policies that aim to prevent people from becoming vulnerable to these risk factors and a policy of incarcerating those who have already been exposed to them. The first strengthens the agents' ability to exhibit future-directed commitment by strengthening the ability to exercise strength of will and make better informed and less impulsive decisions. The second, in contrast, weakens or completely removes this ability. While it is dehumanizing to undermine an agent's ability to take responsibility, it is not dehumanizing to withhold retributive blame, and the second stance does not entail the first.

All the theorists discussed in this section seem to share an assumption: that viewing crime as a public health problem and/or rejecting retributive principles entails that we must also be blind to the moral importance of the sorts of abilities that underlie taken responsibility. I have argued that there is no such entailment and that without this entailment, accusations that this approach would justify impersonal or dehumanizing treatment are baseless. If so, we might wonder where the persistent worry about this comes from.

Levy acknowledges that Caruso provides moral reasons why skepticism about retributive responsibility would not justify locking up great swathes of the population who have committed no crime, but he nonetheless claims that "once culpability was abandoned, such reasons would be inadequate barriers to punishment for suspected dangerousness. Given human nature, at least humans' track record for the past few centuries, it is quite likely that even a morally advanced responsibility-skeptical society would simply override these moral principles by filling the space previously occupied by culpability with a much more robust, single-minded concern for public safety."[52] In fact, suspicion that treating crime as a public health problem would have dehumanizing implications is certainly encouraged by the actual history of projects aimed

"A Moral/Pragmatic Defense of Just Deserts Responsibility" and *Free Will's Value*, 149–56. This would not leave huge segments of the population powerless over their lives (as per Levy's suggestion), but it would increase the risk of having our capacities for taken responsibility undermined. If this is a serious harm in itself, then it is not clear that the safety gains will be worth the increased risk, especially if we want to promote not mere safety but also the substantive freedom to lead the kind of life we have reason to value.

51 Levy, "Let's Not Do Responsibility Skepticism," 6.

52 Levy, "Let's Not Do Responsibility Skepticism," 6.

at treating crime as a public health problem. Levy is justly discouraged by our "track record for the past few centuries." It may be this history that continues to provoke unease. We will turn to this point next.

4. CRIME, MEDICINE, AND ETHICS

4.1. The Dark History of the Association of Medicine and Crime

The troubling *Clockwork Orange* picture of what might be entailed by "treating" criminality is not restricted to fiction. Ralph Schwitzgebel documents a host of behavior modification techniques that have been used to treat offenders, including methods that draw on classical and operant conditioning.[53] Some rely on positive reinforcement through token economies or tier systems. Notably, however, some rely on various forms of negative reinforcement, including "aversive suppression" techniques involving the administration of electric shocks or the use of succinylcholine chloride, described as "a curare-like drug that rapidly produces complete paralysis of the skeletal muscles, including those which control respiration," resulting in "great fright about being unable to breathe and a fear of suffocation."[54] Such negative reinforcement techniques were used to treat a great many "crimes," including homosexuality, transvestitism, and fetishism.

Psychiatry has been used throughout history as an instrument of social control, from Samuel Cartright's notorious diagnosis of *drapetomania* (the supposed "disorder" of slaves who wished to escape slavery) to the psychiatric internment of Soviet dissidents in the USSR.[55] Moran notes that medicalizing criminality has been associated with numerous morally and scientifically dubious interventions that aim to identify the "born criminal"—a project frequently steeped in racism and classism.[56] Dubious historical attempts to give medical explanations of crime include physiognomy and phrenology, both pioneered in the early nineteenth century. The former sought to diagnose criminality through features of the face, while the latter sought to diagnose criminality through the shape of the skull.[57] Some historical attempts to think

53 Schwitzgebel, *Development and Legal Regulation of Coercive Behavior Modification Techniques with Offenders*.

54 Schwitzgebel, *Development and Legal Regulation of Coercive Behavior Modification Techniques with Offenders*, 10.

55 Cartwright, "Report on the Diseases and Physical Peculiarities of the Negro Race"; and Fareone, "Psychiatry and Political Repression in the Soviet Union."

56 Moran, "The Search for the Born Criminal and the Medical Control of Criminality."

57 Lavater, *Essays on Physiognomy*; and Spurzheim, *The Physiognomical System of Drs. Gall and Spurzheim*.

of criminology in biological terms are absurd to the point of comedy, such as Richard Dugdale's 1870s inquiry into whether pauperism (alongside other elements of "degeneracy" and "criminality") might be hereditary.[58]

These projects have often had racist motivations. Earnest Hooton's study of the link between biology and crime involved comparing prison populations to those outside of prison and concluding that some races were inherently criminal and should be counted as inferior. He began with overtly racist commitments and assumed without question that the process via which some people ended up in prison in 1930s America was neutral and free of bias.[59]

The goal of reducing criminality has also been implicated in the liberal use of involuntary sterilization, particularly in the United States. Targeted "crimes" or "sins" include homosexuality and masturbation. Forced sterilization was associated with racism and eugenics, alongside more well-meaning goals.[60] One of the earliest explicit statements of the claim that "violence is a public health problem" is from Vernon Mark and Frank Erwin.[61] They, along with William Sweet, proposed, initially in response to urban riots, that psychosurgery should be considered for use on large segments of the population as a means of preventing crime.[62] There is some justice in Peter Breggin's description of such proposals as a sort of "psychiatric totalitarianism."[63]

Worries about the "psychiatric totalitarian" potential of associating crime with health are thus not unfounded. Medicine has often been a mask for social control and has been associated with appalling policies and interventions, often inflicted without consent on those deviating from norms. As Emily McTernan argues, this sort of history ought to provoke some moral concern, particularly about certain sorts of medical interventions for deviance such as "neurointerventions."[64]

4.2. The Dark History of Medicine Itself

It is evident even from this very brief summary that the history here is troubling. Nonetheless, I want to suggest that what is troubling about it actually has very little to do with treating crime as a public health problem. The trouble arises from a morally suspect approach to medicine more generally. Many of

58 Dugdale, *The Jukes.*

59 Hooton, *Crime and the Man.*

60 See Largent, *Breeding Contempt*, especially 11–38.

61 Mark and Ervin, *Violence and the Brain*, 160.

62 Mark, Erwin, and Sweet, "Role of Brain Disease in Riots and Urban Violence."

63 Breggin, "Psychosurgery for Political Purposes," 847.

64 McTernan, "Those Who Forget the Past."

the treatments for illnesses that most of us accept ought to be counted within the realm of medicine also have a dark history. Perhaps the problem is not that such illnesses (along with criminality) are regarded as matters of public health but that governments and experts have often exercised poor moral judgment about medicine.

Negative reinforcement in the form of aversive stimuli such as electric shocks and paralyzing drugs has been used to treat not only those behaviors regarded as criminal but also true medical conditions. For example, emetic drugs and succinylcholine chloride have been used in conditioning treatments for alcoholism.[65] Forced and unanesthetized electroconvulsive therapy (ECT) and psychosurgeries, such as frontal lobotomies, have been used to treat mental health problems, including depression, anxiety, addiction, and schizophrenia. For a long time, it was rare to seek the consent of patients at all.[66] Even after laws were introduced requiring informed consent for psychosurgery (which was as late as the 1950s), the extent to which patients were able to count as meaningfully consenting is contentious.[67] Forced sterilization was used to treat various mental health conditions. For example, hysterectomies were used to treat "women's hysteria," which could include psychiatric conditions and epilepsy.[68] Forced sterilizations were also seen as appropriate for preventing the spread of "drunkenness."[69] Some authors advocated castration to stop the breeding of "imbeciles and paupers."[70]

Unsurprisingly, some critics of the use of medical approaches in relation to crime are also skeptical about the treatment of mental illness across the board, arguing that the mind should be entirely outside the sphere of health care. Szasz has written critiques of both the use of medical methods in relation to crime and the inclusion of mental health within the realm of medicine.[71] This stance on mental health is rarely regarded as plausible. Moreover, it seems to misidentify the source of the moral concern. When we contemplate what is wrong with forcing hysterectomies on nonconsenting women as a treatment for epilepsy, the thing that troubles us is not that epilepsy is being erroneously regarded as a medical condition. Epilepsy plausibly *is* a medical condition. Clearly, that

65 Schwitzgebel, *Development and Legal Regulation of Coercive Behavior Modification Techniques with Offenders*, 14.

66 Ottosson and Fink, *Ethics in Electroconvulsive Therapy*, 33–48.

67 Raz, *The Lobotomy Letters*, 69–100.

68 Largent, *Breeding Contempt*, 18–19.

69 Largent, *Breeding Contempt*, 26.

70 Baldwin, "Whipping and Castration as Punishments for Crime," 382.

71 Szasz, *Law, Liberty and Psychiatry* and *Ideology and Insanity.*

alone does not entail that "treating" it with forced hysterectomies is justifiable, either morally or medically.

The danger of patients having treatments inflicted on them without informed consent is something that has increasingly come under scrutiny in medicine. Elizabeth Symonds argues that forced psychotropic treatments should be regarded as a "cruel and unusual punishment" both in penal and in nonpenal settings such as psychiatric units.[72] We now accept, *contra* Morris, that "treatment" can be cruel in addition to merely being painful. Many previously commonplace practices in psychiatry are rejected now precisely on this basis, and we recognize (also *contra* Morris) the need for procedural safeguards.

It is also far from obvious that the dangers that arise in relation to medical treatment of psychiatric ailments are fundamentally different from those that arise in relation to treatment of physical health conditions. There was no clear notion of informed consent in *any* area of medicine until the 1950s, and there is evidence that before that point, while some practitioners consulted patients on whether they wanted to undergo procedures, others regularly failed to.[73] Across the board, history has been patchy with respect to allowing patients to exercise agency and autonomy over the treatments they undergo. Across all areas of medicine, this has improved through increased moral scrutiny and legislation.

But there is probably nothing inherently special about medicine here. If we closely examine the history of marriage, religious organizations, educational establishments, families, workplaces, military organizations, or virtually any other human social institution, we find similar patterns: frequent abuses of power and exploitation of the vulnerable with little regard for individual autonomy or consent—until increased moral scrutiny brings about legislative changes. While medicine has often been an instrument of social control, so has almost everything.

5. Ethics, Responsibility, and Public Health

If almost everything has a dark history, this has some implications for how we ought to respond to the dark history of the association between crime and public health. Instead of seeking to stop anything from falling within the remit of public health, we should instead ask why public health initiatives have often been unethical and corrupt. The answer is not, I suspect, because such initiatives are not governed by principles of retributive blame. After all, retributive punishment plainly has an even darker history. Forced unanesthetized ECT is

72 Symonds, "Mental Patients' Rights to Refuse Drugs."

73 Faden, et al., *A History and Theory of Informed Consent*, 53–85.

probably *less* dehumanizing than being publicly disemboweled, burned alive, or crucified.

It is also a false dichotomy to suppose that if we do not view something as a matter of retributive blame, we must view it as entirely outside the realm of taken responsibility. It is false that if we do not treat alcoholism as a moral failing that ought to be punished, then we must instead support forcing alcoholics into programs of aversive conditioning and inflicting horrors on them like electrocution or succinylcholine chloride.

From an ethical perspective, there is a critical difference between emphasizing public policy measures that reduce the risk to vulnerable groups of developing certain problems (whether it be criminality, obesity, addictions, heart disease, seasonal flu, or whatever) and policy measures that needlessly weaken agents' abilities to assume control over their own future behaviors. The reason why Caruso does not move from a lack of retributive blame directly to an endorsement of mass incarceration for those who fall into various risk categories or to a program of coercive drugging or conditioning of offenders is because skepticism about retributive blame does not entail that the capacity of agents to exercise future-directed commitment with respect to their own behavior is no longer a valid moral concern. Nor does it entail that consent is never required for any effective intervention. If we think that these *are* valid moral concerns, then we will have every reason to class these strategies as unethical methods of both crime prevention *and* medical treatment.

6. CONCLUSION

This paper has sought to challenge a common source of uneasiness about treating crime as a public health problem. It is an uneasiness that derives from a history of medicalizing crime that is indeed ethically problematic. The worry is that once we put crime within the remit of medicine, we must endorse impersonal, manipulative, and dehumanizing measures of tackling crime.

The mistake, I maintain, does not consist in our putting crime within the broad remit of public health but in supposing that impersonal, manipulative, and dehumanizing measures would become morally acceptable the moment that crime (or anything else) is placed within the boundaries of public health. The problem is that we have often had a lax moral approach to health measures. Critiques that continue to be highly influential, such as Strawson's and Morris's, emerged in the 1960s, after several decades, if not centuries, in which standard practices for dealing with mental health problems included measures that we now view as shockingly unethical and inhumane. Perhaps at that time, it seemed obvious, as Morris contended, that we could treat those with illnesses

like animals, ignore their consent, inflict cruel treatments, etc., but we should not have thought this was justifiable in the name of medicine then, and we need not suppose that this is an acceptable approach to medicine now.

One major virtue of Caruso's policy suggestions is that they reflect an ethically sensitive picture of what good public health policy should look like. Public health measures across the board should adhere to defensible ethical standards. While many of these standards are tied to some recognition of the moral importance of protecting and cultivating the capacities that underlie taken responsibility or future-directed commitment, they are not tied essentially to retributive blame.[74]

University of Warwick
nadine.elzein@warwick.ac.uk

REFERENCES

Baldwin, S. "Whipping and Castration as Punishments for Crime." *Yale Law Journal* 8, no. 9 (1899): 371–86.

Breggin, Peter R. "Psychosurgery for Political Purposes." *Duquesne Law Review* 13, no. 4 (1975): 841–62.

Burgess, Anthony. *A Clockwork Orange*. Banned Books series. Paperview, 1962.

Cartwright, Samuel A. "Report on the Diseases and Physical Peculiarities of the Negro Race." *New Orleans Medical and Surgical Journal* 7 (1851): 691–715.

Caruso, Gregg D. "Free Will Skepticism and Criminal Behavior: A Public Health-Quarantine Model." *Southwest Philosophy Review* 32, no. 1 (2016): 25–48.

———. *Public Health and Safety: The Social Determinants of Health and Criminal Behavior*. ResearchLinks Books, 2017.

———. *Rejecting Retributivism: Free Will, Punishment, and Criminal Justice*. Cambridge University Press, 2021.

Caruso, Gregg D., and Derk Pereboom. *Moral Responsibility Reconsidered*. Cambridge University Press, 2022.

———. "A Non-punitive Alternative to Retributive Punishment." In *The Routledge Handbook of the Philosophy and Science of Punishment*, edited by Farah Focquaert, Elizabeth Shaw, and Bruce N. Waller. Routledge, 2020.

Chang, Virginia W., and Nicholas A. Christakis. "Medical Modelling of Obesity:

74 I am grateful to Dr. Tuomas K. Pernu, Professor Victor Tadros, Dr. Robyn Repko Waller, anonymous reviewers, and *JESP*'s anonymous associate editor for incredibly helpful comments on earlier drafts of this paper.

A Transition from Action to Experience in a 20th-Century American Medical Textbook." *Sociology of Health and Illness* 24, no. 2 (2002): 151–77.

Conrad, Peter. "Medicine as an Instrument of Social Control: Consequences for Society." In *Deviance and Medicalization: From Badness to Sickness*, edited by Peter Conrad and Joseph W. Schneider. Temple University Press, 1992.

De Ruyter, Doret. "The Virtue of Taking Responsibility." *Educational Philosophy and Theory* 34, no. 1 (2002): 25–35.

Dugdale, R. L. *The Jukes: A Study in Crime, Pauperism, Disease, and Heredity*. G. P. Putnam's Sons, 1877.

Elzein, Nadine. "Undetermined Choices, Luck and the Enhancement Problem." *Erkenntnis* 88, no. 7 (2023): 2827–46.

Enoch, David. "Being Responsible, Taking Responsibility, and Penumbral Agency." In *Luck, Value, and Commitment: Themes from the Ethics of Bernard Williams*, edited by Ulrike Heuer and Gerald Lang. Oxford University Press, 2012.

Faden, Ruth R., Tom L. Beauchamp, and Nancy M. P. King. *A History and Theory of Informed Consent*. Oxford University Press, 1986.

Faraone, Stephen. "Psychiatry and Political Repression in the Soviet Union." *American Psychologist* 37, no. 10 (1982): 1105–12.

Fischer, John Martin, and Mark Ravizza. *Responsibility and Control: A Theory of Moral Responsibility*. Cambridge University Press, 1998.

Frankfurt, Harry G. "Freedom of the Will and the Concept of a Person." *Journal of Philosophy* 68, no. 1 (1971): 5–20.

Gaden, Gerry. "Rehabilitating Responsibility." *Journal of Philosophy of Education* 24, no. 1 (1990): 27–39.

Hobbes, Thomas. "Of Liberty and Necessity." In *Hobbes and Bramhall on Liberty and Necessity*, edited by Vere Chappell. Cambridge University Press, 1999.

Hooton, Earnest Albert. *Crime and the Man*. Harvard University Press, 1939.

Hume, David. *An Enquiry Concerning Human Understanding*. Edited by Tom L. Beauchamp. Oxford University Press, 1748/1999.

———. *A Treatise of Human Nature*. Edited by David Fate Norton and Mary J. Norton. Oxford University Press, 1740/2000.

Kelly, Erin I. "Criminal Justice Without Retribution." *Journal of Philosophy* 106, no. 8 (2009): 440–62.

———. *The Limits of Blame: Rethinking Punishment and Responsibility*. Harvard University Press, 2018.

Kittrie, Nicholas N. *The Right to Be Different: Deviance and Enforced Therapy*. John Hopkins Press, 1971.

Largent, Mark A. *Breeding Contempt: The History of Coerced Sterilization in the United States*. Rutgers University Press, 2011.

Lavater, Johann Caspar. *Essays on Physiognomy: For the Promotion of the Knowledge and the Love of Mankind*. Vol. 1. C. Whittingham, 1804.

Lemos, John. *Free Will's Value: Criminal Justice, Pride and Love*. Routledge, 2023.

———. "A Moral/Pragmatic Defense of Just Deserts Responsibility." *Journal of Information Ethics* 28, no. 1 (2019): 73–94.

Levy, Ken M. "Let's Not Do Responsibility Skepticism." *Journal of Applied Philosophy* 40, no. 3 (2023): 1–15.

Mark, V. H., and F. R. Ervin. *Violence and the Brain.* Harper and Row, 1970.

Mark, V. H., W. H. Sweet, and F. R. Ervin. "The Role of Brain Disease in Riots and Urban Violence." *Journal of the American Medical Association* 203, no. 5 (1968): 368–69.

McTernan, Emily. "Those Who Forget the Past: An Ethical Challenge from the History of Treating Deviance." In *Treatment for Crime: Philosophical Essays on Neurointerventions in Criminal Justice, Engaging Philosophy*, edited by David Birks and Thomas Douglas. Oxford University Press, 2018.

Moran, Richard. "The Search for the Born Criminal and the Medical Control of Criminality." In *Deviance and Medicalization: From Badness to Sickness*, edited by Peter Conrad and Joseph W. Schneider. Temple University Press, 1992.

Morris, Herbert. "Persons and Punishment." *Monist* 54, no. 2 (1968): 475–501.

Morse, Stephen J. "Compatibilist Criminal Law." In *The Future of Punishment*, edited by Thomas A. Nadelhoffer. Oxford University Press, 2013.

Mullainathan, Sendhil, and Eldar Shafir. *Scarcity: Why Having Too Little Means So Much*. Macmillan, 2013.

Ottosson, Jan-Otto, and Max Fink. *Ethics in Electroconvulsive Therapy*. Brunner-Routledge, 2012.

Pepper, Gillian V., and Daniel Nettle. "The Behavioral Constellation of Deprivation: Causes and Consequences." *Behavioral and Brain Sciences* 40 (2017): e314. https://doi.org/10.1017/S0140525X1600234X.

Pereboom, Derk. *Free Will, Agency, and Meaning in Life*. Oxford University Press, 2014.

———. "Free Will, Love, and Anger." *Ideas y valores* 58, no. 141 (2009):169–89.

———. "Incapacitation, Reintegration, and Limited General Deterrence." *Neuroethics* 13, no. 1 (2020): 87–97.

———. *Living Without Free Will*. Cambridge University Press, 2006.

Pereboom, Derk, and Gregg D. Caruso. "Hard-Incompatibilist Existentialism: Neuroscience, Punishment, and Meaning in Life." In *Neuroexistentialism: Meaning, Morals, and Purpose in the Age of Neuroscience*, edited by Gregg D. Caruso and Owen Flanagan. Oxford University Press, 2018.

Pickard, Hannah. "Responsibility Without Blame: Empathy and the Effective Treatment of Personality Disorder." *Philosophy, Psychiatry, and Psychology*

18, no. 3 (2011): 209–24.
———. "Responsibility Without Blame: Therapy, Philosophy, Law." *Prison Service Journal* 213 (2014): 10–16.
———. "Rethinking Justice: The Clinical Model of Responsibility Without Blame." *Howard League for Penal Reform: Early Academics Network Bulletin* 36 (2018): 4–10.
Raz, Mical. *The Lobotomy Letters: The Making of American Psychosurgery*. University of Rochester Press, 2013.
Scanlon, T. M. "Interpreting Blame." In *Blame: Its Nature and Norms*, edited by Justin D. Coates and Neal A. Tognazzini. Oxford University Press, 2012.
Schwitzgebel, Ralph K. *Development and Legal Regulation of Coercive Behavior Modification Techniques with Offenders*. National Institute of Mental Health, Center for Studies of Crime and Delinquency, 1971.
Sen, Amartya. *Development as Freedom*. Oxford University Press, 1999.
Spurzheim, J. G. *The Physiognomical System of Drs. Gall and Spurzheim*. 2nd ed. Baldwin, Cradock and Joy, 1815.
Strawson, Peter F. "Freedom and Resentment." *Proceedings of the British Academy* 48 (1962): 187–211.
Symonds, Elizabeth. "Mental Patients' Rights to Refuse Drugs: Involuntary Medication as Cruel and Unusual Punishment." *Hastings Constitutional Law Quarterly* 7 (1979): 701–38.
Szasz, Thomas S. *Ideology and Insanity: Essays on the Psychiatric Dehumanization of Man*. Syracuse University Press, 1991.
———. *Law, Liberty and Psychiatry: An Inquiry into the Social Uses of Mental Health Practices.* Macmillan, 1963.
Tadros, Victor. "Treatment and Accountability." In *Lanson Lectures in Bioethics (2016–2022): Assisted Suicide, Responsibility, and Pandemic Ethics*, edited by Hon-Lam Li. Palgrave Macmillan, 2024.
Vargas, Manuel. "The Trouble with Tracing." *Midwest Studies in Philosophy* 29, no. 1 (2005): 269–91.
Waller, Bruce. *Against Moral Responsibility.* Massachusetts Institute of Technology Press, 2011.
———. "Virtue Unrewarded: Morality Without Moral Responsibility." *Philosophia* 31 (2004): 427–47.
Watson, Gary. "Free Agency." *Journal of Philosophy* 72, no. 8 (1975): 205–20.
———. "Two Faces of Responsibility." *Philosophical Topics* 24, no. 2 (1996): 227–48.
Williams, Bernard. "Moral Luck." *Aristotelian Society Supplementary Volume* 50 (1976): 115–35.
Wolf, Susan. *Freedom Within Reason.* Oxford University Press, 1990.