

## Chapter 13: Gregg Caruso on Free Will Skepticism

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Taylor: Thanks for joining us, Gregg! Could you start by telling us a bit about yourself, your work, and how you came to be interested in working on free will?

Gregg: First, let me just say thank you for interviewing me. *The Free Will Show* is a great show, and the first season is something that everyone interested in free will should check out if they haven't already listened to all those episodes.

I work primarily on issues related to free will, responsibility (and by that I mean both moral and legal responsibility), punishment, and philosophy of law, but particularly focused on normative jurisprudence—things having to do with justification of punishment. And I guess my interest in free will goes back to graduate school, as with many, but ironically, I never took a class on free will or moral responsibility. I did my PhD at the CUNY Graduate Center, which is in New York, and at the time, there really weren't any faculty members working on free will. That may have changed now, but it was heavy on philosophy of mind, cognitive science, and philosophy of language. I was primarily interested in issues of consciousness and cog-sci. But then I did a reading group with a few other graduate students on the first edition of Robert Kane's (2005) *Oxford Handbook of Free Will*. And we went chapter by chapter, week to week, taking turns leading the discussion, and that was an education and a learning experience. It also really kickstarted my interest in free will.

I ended up writing my dissertation by combining my interests: I wrote it on free will and consciousness. This eventually became my first book, which is titled *Free Will and Consciousness* (2012). But since then, I've just continued down the rabbit hole. I thought maybe I'd only work on issues related to free will for a couple years and then move on to something else, but I just never seem to move on. It's a complex problem with a number of different applications, and it overlaps with almost every area of philosophy, including metaphysics, agency, ethics, moral philosophy, social and political, and so on. I have explored all the different avenues over time, and now I'm primarily interested in issues having to do with public policy, punishment, and criminal justice, which I'm sure we'll talk about.

Matt: Yes, we will. To get started, though, free will skeptics deny that we have free will. What do you take *free will* to be?

Gregg: I define free will in terms of the control in action that's required for a particular type of moral responsibility, which is generally called *basic desert* moral responsibility. Derk Pereboom may have been the first to use this phrase (basic desert). For him, for an agent to be morally responsible for an action in this basic desert sense is for the action to be the agent's in such a way that they would either deserve to be praised or blamed, if they understood the moral nature of the act. In addition, the desert at issue would be basic, in the sense that the agent would deserve to be blamed or praised just because they performed the action, but not for consequentialist or contractualist reasons. Understood in this way, free will is a kind of power or ability an agent must possess in order to justify certain types of basically deserved judgments, attitudes, and treatments—things like resentment, indignation, moral anger, and retributive punishment. These reactions would be in response to decisions or actions the agent performed or failed to perform, but key to their being basic is that these reactions would be justified on purely backward-looking grounds. They are not deserved because of consequentialist or forward-looking considerations like future protection, future reconciliation, or future moral formation. So free will is the control in action required for us to be morally responsible in this basic desert sense.

Taylor: That's great. In earlier chapters, we talked a lot about free will in the sense of having the ability to do otherwise and why someone might think God's foreknowledge or causal determinism would rule out that ability. But we have also seen that a lot of people agree to use the term free will to refer to this control condition on moral responsibility, and then there's a further debate about whether moral responsibility requires the ability to do otherwise.

Gregg: Yes, and I should add that I think there are several distinct advantages of defining free will in this way. First, it provides a neutral definition that virtually all parties can agree to. You want a definition that doesn't beg the question or exclude various positions from the outset. One of the things you see quite often in (say) the scientific literature on free will, and even among scientific skeptics about free will, is that they simply define free will in terms of a libertarian ability to do otherwise or contra-causal control, and then compatibilism is excluded by definition. Likewise, you could define free will in terms of an absence of obstacles or constraints, or in terms of reasons-responsiveness, but I think it's better to have a definition that all parties can subscribe to at the beginning and that leaves open the central question of whether or not we have free will.

Second, I also think that by defining free will in terms of moral responsibility the definition captures the practical importance of the debate. It anchors the philosophical question to things that are obviously practical and comparatively concrete and that are undeniably important to our lives—things like our moral practices, including punishment as well as our interpersonal reactions like resentment and indignation.

And then I'll just add that rejecting this kind of definition makes it difficult to understand the nature of the substantive disputes between the disputing parties in the free will debate. In my debate book with Dan Dennett (2021), Dan adopts a definition of free will that's connected to responsibility, but his notion of moral responsibility is different from mine. It's what I would call a *non-basic* desert definition. One of the problems I find with that definition is that everyone can agree that certain consequentialist or forward-looking considerations justify some responsibility practices. We can talk more about that later. But that "compatibilist" position is kind of uncontroversial, and then there isn't much room for distinguishing the skeptic from the compatibilist. For the compatibilist thesis to be controversial—to be something worth debating—I think that really they must have in mind something like basic desert.

Taylor: Some free will skeptics think that free will is impossible, whereas others think that free will is possible but that no one in fact has free will. How would you characterize your own skeptical position?

Gregg: My view is that free will is possible. I think that agent-causal libertarianism, if true, would provide the kind of control in action required for basic desert moral responsibility. I just think there are good philosophical and scientific reasons for rejecting agent-causal libertarianism, i.e., for concluding that we lack the kind of agency posited by agent-causal libertarians, but I don't think the notion is incoherent. It may depend on how you interpret possibility-talk here. I think agent-causal libertarian free will is conceptually possible, and I even think it's metaphysically possible—in some possible world, agents have this kind of free will. I just think that, in the actual world (our world), with the way the laws of nature work, we have good reasons for concluding that we don't have that freedom. But I don't personally see it as an impossible option.

Matt: In early chapters, we've discussed arguments for incompatibilism about free will and determinism (the Consequence Argument and the Manipulation Argument), and we've also talked about challenges for the compatibility of free will and indeterminism (the problem of luck for libertarianism and the general problem of moral luck). Do you base your free will skepticism on these arguments, or is there some other reason for your skepticism?

Gregg: My particular case for free will skepticism borrows from many of the arguments you have discussed. I'll lay it out, briefly, for review, but readers can go back to those earlier chapters for the details. My case for free will skepticism features distinct arguments that target the leading rival views, including event-causal libertarianism, agent-causal libertarianism, and compatibilism. I argue that each of those views fails, though for different reasons. As a result, I maintain that the skeptical position is the only defensible position left standing. I view my position as a form of what's called *hard incompatibilism*.

In the past, the main kind of free will skepticism was what was called *hard determinism*, which is the view that determinism is true and precludes free will.

Determinism is the thesis that every event, including human action, is the inevitable result of preceding events in combination with the laws of nature. Hard determinists affirm that thesis, and they also say that it precludes free will, either because it's incompatible with the ability to do otherwise (sometimes called *leeway incompatibilism*) or because it's incompatible with the agent being the ultimate source of their actions (sometimes called *source incompatibilism*).

There are very few hard determinists these days. Most of us skeptics are what you might want to call hard incompatibilists. We leave open the possibility that the universe may be indeterministic, but we argue that we would lack free will either way, whether or not determinism is true. And, as I said, the argument unfolds by cutting off all of the various non-skeptical options.

Taylor: Could you say how you argue against compatibilism, event-causal libertarianism, and agent-causal libertarianism?

Gregg: My view is that there's no relevant difference between our actions being causally determined by natural factors beyond our control and our actions being causally determined by manipulators. So I endorse the manipulation argument, which you discussed with Derk Pereboom (Chapter 8). I take this argument to show that causal determinism is incompatible with agents being the appropriate source of their actions, and so, like Pereboom, I am a source incompatibilist.

And then against event-causal libertarianism, which posits indeterminism simply at the level of individual events, I object that, on those kinds of accounts, we're left unable to settle whether a decision occurs, and hence, we don't have the control in action required for basic desert. Some people view this as a version of the luck argument, which you discussed with Al Mele (Chapter 6). But I like to put it more in the terms of Derk Pereboom's disappearing agent argument, which I guess is a variant of the luck argument, though it differs from other versions of the luck argument. Basically, the concern is that the agent "disappears" at the crucial junction in the production of action, i.e., at exactly the moment when its occurrence is to be settled—when which outcome is going to occur is to be settled. And by *settling* I have the following in mind: for an agent to settle which outcome occurs, they have to be able to determine which of those actions occurs, and they have to be able to make a difference to which of those actions occur. But it doesn't seem that the event-causal libertarian view allows for that kind of a control in action. And I argue that that's exactly the kind of control in action that would be required for agents to be morally responsible in this basic desert sense.

There are problems with particular versions of event-causal libertarianism, too. We could discuss Robert Kane's famous version, which requires something called *dual willings*, where an agent is simultaneously willing two different outcomes. I'm not sure that concept is even coherent. It also posits a bunch of empirically questionable requirements. A lot of the event-causal libertarians don't necessarily argue that we have good reason for thinking the world is as their views describe it; instead, they're giving us a particular account that would make the notion plausible or conceivable. But for the view to work, assuming it could get around the luck argument (the disappearing agent concern), indeterminacies would

have to be able to percolate up to certain levels within the brain. For Kane, indeterminacies would have to reach the level of neural networks, and they would have to be present at a very particular moment in time. So there are a lot of empirical constraints that the view posits, and we have no real good reason for thinking that those empirical constraints are actually met. But to continue to engage in certain types of practices that may do potential harm, like blame practices and retributive punishment, on the off-chance that all of these requirements are met, and that the view can address the philosophical concerns, would be a kind of moral malpractice, in my view.

I think agent-causal libertarianism could, in theory, supply what's missing from the event-causal accounts, i.e., I think they could supply the kind of control that would be needed. But I argue that their requirements can't be reconciled with our best physical theories about the world. I also think they face additional problems accounting for mental causation. And they require rather controversial metaphysical commitments.

That leads to a version of what's called hard incompatibilism. Regardless of whether determinism is true, none of the leading accounts of free will are acceptable, and so the only reasonable position left to adopt, according to people like Pereboom and myself, is the skeptical view.

But unlike Pereboom, I've pushed a version of the *hard luck* line as well. Drawing from issues having to do with moral luck, like those you discussed with Dana Nelkin (Chapter 9), Neil Levy (2011) argues that the pervasiveness of luck undermines free will and basic desert regardless of whether the universe is deterministic or indeterministic, and however it's causally structured. The core of this concern is something that Neil Levy calls the *luck pincer*, which starts with the distinction between *present luck* and *constitutive luck*. Present luck is luck around the time of action, and that can include indeterminacy in the causal stream leading to action, as libertarians posit, or other things around the time of action, like what reasons become most salient to the agent, what kind of situational effects of the environment might affect decision-making, and more. Constitutive luck is the kind of luck in who one is and what character traits and dispositions one has. These are usually matters of contingencies of birth, things like how you were raised, what family you grew up in, what your socio-economic background was—all these factors that make you the sort of individual that you are. And then the luck pincer says that all of our actions are either the result of present luck, constitutive luck, or both, and that either way luck undermines moral responsibility in the basic desert sense.

I don't know if anyone else pushes both of these skeptical lines simultaneously, but I've defended both in print (both the Pereboom-style hard incompatibilist line and the Levy-style hard luck line). Defenders of free will, whether compatibilist or libertarian, need to overcome both sets of arguments, since each is sufficient on its own for establishing free will skepticism. But my view is that if the right hand doesn't get you, the left hand will.

Taylor: That's a helpful history of the debate and a nice way of laying out your position. Perhaps now we can turn to a few common objections to giving up our view of

ourselves as free and morally responsible in the basic desert sense. Maybe the most common is that endorsing free will skepticism would be a radical revision of our ordinary beliefs and practices. What do you take to be some of the implications of accepting your position? And do you regard them as especially radical?

Gregg:

Well, I'll leave it for others to decide if they want to call it *radical*. But I'm generally optimistic about the implications of the view. I actually label my view *optimistic skepticism*, because I'm optimistic about the implications of adopting the skeptical perspective. And I'm not the only one—I'm obviously following in the footsteps of people like Derk Pereboom, Neil Levy, and Bruce Waller, who also adopt a kind of optimistic skepticism.

In my work, I have looked systematically through different domains, considering what the implications would be, for example, in morality, in criminal law—even for issues having to do with creativity and our interpersonal relationships. And I have argued that, in general, we can preserve most of what we care about even if we adopt free will skepticism. So, as an optimistic skeptic, I basically argue that the prospects of finding meaning in life or sustaining good interpersonal relationships wouldn't be threatened, and that morality and moral judgments would largely remain intact. However, retributivism and severe punishment, like the death penalty, would have to be ruled out. And some people may see that as a kind of radical implication, though I actually think it's a good thing. I believe that there are other options like incapacitation, rehabilitation, and different ways of dealing with criminal behavior that would still be justified, and I think these are actually preferable to retributive punishment.

But maybe we could take some of these one at a time and consider them in more detail. Let's start with interpersonal relationships. Maybe a lot of people have taken the view of P. F. Strawson (1962) here and wondered what taking the skeptical perspective would do to what he calls our *reactive attitudes*—attitudes like resentment, indignation, and moral anger—which seem to be really central to our interpersonal relationships. I would agree that certain types of moral anger, specifically, the two I mentioned—resentment and indignation—those would be undercut if free will skepticism were true. But I would argue that those were suboptimal to begin with and that there are alternative attitudes that we could adopt that would serve just as well in our interpersonal relationships. For example, instead of moral anger, you might feel sorrow, or moral disappointment, and those kinds of attitudes are consistent with the rejection of free will and are able to preserve most of what we care about in terms of our interpersonal exchanges.

Morality is a hard one, but even if we lack free will, I think we could still say that what a serial killer does is morally bad. Even if they're suffering from, say, some brain ailment and, by all accounts, this degenerative brain disease would mean they're not morally responsible, I don't think that would affect our ability to label the actions as either morally good or morally bad. So, free will skeptics would argue that we can preserve what are called *axiological judgments*—judgments about moral goodness and badness. So, in general, I think you could preserve most of what we care about.

I also want to stress that basic desert moral responsibility is not the only kind of moral responsibility. Free will skeptics reject only *that* kind of responsibility, and that leaves intact all these other notions of responsibility. There are what theorists call *attributability* and *answerability*, or what Derk Pereboom calls a forward-looking, conversational approach to responsibility. So instead of thinking of an agent's responsibility as based in backward-looking desert claims, we could, for example, engage in a kind of moral exchange. If somebody does some kind of immoral behavior, the skeptic could argue that it's perfectly legitimate to respond in some form of moral protest, or to ask the agent why did it and whether they thought it was the right thing to do. And if we think their answer is morally unsatisfying, we could engage in some form of evaluative criticism or moral protest. But the difference in this account would be that on this forward-looking approach to moral responsibility, moral protests and exchange would be grounded, not in basic desert, but in particularly three non-basic desert *desiderata*: future protection, future reconciliation, and future moral formation.

Here's another example. If my daughter does something that I disapprove of, I can engage her in a conversation where she could acknowledge the wrongness of the act, maybe identify some flaw in her own character, and then promise to work, moving forward, on trying to change that character trait or that disposition. And those kinds of exchanges, I would argue, are perfectly legitimate and perfectly available for free will skeptics to embrace, because they're focused not on this backward-looking desert but on, in my daughter's case, future moral formation (I want her to be a good person) or, in other cases, future reconciliation (if we want to reconcile with the wrongdoer) or for our own protection (we have to instill some sort of moral sensibility in people to protect ourselves and civil society). My view is that most of what we care about when it comes to morality, meaning in life, and different approaches to responsibility would all be preserved. The radical implications of free will skepticism are in terms of law, punishment, and the criminal justice system, but maybe we could talk about those separately.

Matt: Does your daughter ever pull the line, "Well, Dad, I'm just not responsible for any of this stuff!"

Gregg: Well, I could respond by attributing various characteristics to her, judging her actions as wrong, and, even if she doesn't deserve blame in this basic desert sense, I could still blame her for the action in order to move toward some forward-looking good. I don't actually talk to her in those terms. But it is interesting to think about the implications for parenting. I think my wife parents more from a retributive approach, whereas I tend to parent more consistently with my commitments. I don't know if I'm perfectly consistent.

Matt: Let's go back to the reactive attitudes for a second. You mentioned the negative reactive attitudes, like resentment and indignation, and you offered plausible alternatives, like sadness and disappointment. What do you think about the positive reactive attitudes (if that's the right term)? Does your view have room for reactive attitudes like gratitude?

Gregg: I think there are two things one could say here. I'll say what someone could say, and then I'll say what I say.

There's a view that has been defended by another free will skeptic, Benjamin Vilhauer, who takes an asymmetric approach towards blame and praise—blame being the negative and praise being the positive reactive attitudes. He's a skeptic in a slightly different sense than I am. He's a skeptic in the sense that he thinks that we don't know if we have free will and that we're not in an epistemic position to settle the issue. Given this uncertainty, he says that we shouldn't engage in practices that could potentially do harm, as our blaming practices do. But he thinks that praise—the positive type of reactive attitudes—does not cause harm in the same way. Sure, perhaps we can over-praise our children; this is the worry about every kid getting a trophy and not learning the lessons they need to. But, for the most part, praising behaviors are innocuous. So he thinks that blame and praise may not stand and fall together, since the bar is lower for justifying praise than it is for blame.

I think that that line is open, but I tend to go with Derk Pereboom and some others here in thinking that they stand and fall together. Although most discussions about moral responsibility theory are conducted in terms of the bad reactive attitudes, I would say the same is true for praise. I don't think people deserve praise in this basic sense. This may sound radical, but I'm not so sure. There's a great interview that was conducted with Einstein, who was a type of free will skeptic (he was a hard determinist), and as he talks about his scientific achievements, he says that he doesn't deserve praise for any of them. He's very clear about it, too. People find that relatively odd, but if you drill down, you'll find that it's not that odd of a view. Sometimes when people talk about, say, their good moral character, they might say, "Well, thank my mom for that," or "I was raised in the right kind of way." And just as I think we should not blame (in the basic desert sense) those who commit criminal acts, the flip side is that I think we should also view praising behavior as unjustified when it's grounded in that purely backward-looking sense. So that's my own view, but I do think that the asymmetric view is open.

Taylor: Interesting that there's that difference between two kinds of free will skeptics. I guess Vilhauer is more of a skeptic and you're more of a free will nihilist in that sense?

Gregg: Yes. That's interesting. People have taken issue with the term *skeptic*, since many of us are free will *deniers*, but I actually like the phrase. I think it captures a class of views that should go together. We can compare free will skepticism with epistemic skepticism, or skepticism about knowledge. There are those who say, for any given proposition, we may not be able to determine whether we have knowledge of that proposition, and that's a kind of neutral view. And then there are more global or radical skeptics who say that knowledge is impossible. And I think the same is true in the free will area. There are skeptics who argue that, in any given situation, we may not be able to determine whether an individual was free. And then there are others, myself included, who think that who we are and what we do



are ultimately the result of factors beyond our control, and because of this we're never morally responsible in the basic desert sense. I tend to be a denier, then, but I don't mind using the term *skeptic* to refer to my view or to those who are skeptics in the more general sense of being *doubters*.

Matt: We've talked about moral responsibility a lot, but, as you've mentioned, your view also has implications for criminal punishment. In your recent *Stanford Encyclopedia of Philosophy* entry on skepticism about moral responsibility, you talk a lot about punishment. In one part, you consider the following objection to skepticism:

One last practical concern about moral responsibility skepticism is that it is unable to adequately deal with criminal behavior and that the responses it would permit as justified are insufficient for acceptable social policy. This concern is fueled by two factors. The first is that one of the most prominent justifications for punishing criminals, retributivism, is incompatible with moral responsibility skepticism. The second concern is that alternative justifications that are not ruled out by the skeptical view per se face independent moral objections. Critics contend that these moral objections are decisive. Skeptics about moral responsibility, on the other hand, argue that non-retributive alternatives exist that are both ethically defensible and practically workable. (Caruso 2022)

Could you say a little bit more about this worry and explain how you respond?

Gregg: That's a big one. In the context of the criminal justice system, one of the leading justifications for legal punishment, both historically and currently, is what we can call *retributivism*. The retributive justification for legal punishment maintains that, absent any excusing conditions like insanity, wrongdoers are in general morally responsible for their actions and deserve to be punished in proportion to their wrongdoing. In other words, retributivists say two things: the justification for punishment is backward-looking, and it's grounded in the notion of just deserts—the individual needs to be given their just deserts. So, unlike theories of punishment that appeal to the goods of deterrence, incapacitation, or rehabilitation, retributivists ground punishment in the blameworthiness and desert of offenders.

If free will skeptics are correct, however, then one of the leading justifications for punishment—namely retributivism—is off the table. According to the free will skeptic, it's not just the criminal, but *no one* is really deserving of blame in the basic desert sense, and it's exactly the basic desert sense of responsibility that retributivism needs. This is made clear by a number of retributivists. To give one classic example, Immanuel Kant was a retributivist, and he introduced a very famous thought experiment to motivate the view. Imagine that a desert island society is going to disband, and all its members are going to scatter around the world. But there's one remaining prisoner in jail, and they're a murderer. Kant asks whether the members of this society would be morally justified in executing that last prisoner before they left the island, rather than leaving the person

alone on the island. And Kant says not only that it would be permissible but that justice *requires* executing the murder. Now, think about how purely backward-looking this is. There's no one left on the island to deter, so you're not punishing this person to deter future crime. You're not punishing this person to help in their moral development, because you're *killing them*. It's not to keep anyone safe; there's no one left to keep safe. It's purely backward-looking desert. And that's the kind of basic desert that the skeptic denies. So, if skeptics are right, then retributive justification for punishment is unsound, and that's a major part of the criminal justice system that will need to be revised.

But there are other justifications for punishment that are consistent with the skeptical view. One of the more famous ones is a kind of consequentialist deterrence-based approach, and that's forward looking. Instead of punishing an individual because they deserve it, you could punish the individual because it will deter other would-be criminals from performing a similar crime. Alternatively, you could punish in order to help in moral formation. Those are forward-looking reasons.

The problem with some of those forward-looking justifications, however, although they're consistent with free will skepticism, they suffer from other powerful moral objections. One problem with deterrence-based justifications, for example, is that they may seem capable of justifying the punishment of innocent people, or coming down excessively harsh on one individual, if such treatment would successfully deter other potential criminals. Let's say there's a petty crime spree, and each petty crime isn't very significant in itself, but collectively it's doing a whole lot of damage to society. And let's just say, hypothetically, we could effectively prevent and deter all would-be petty criminals if we just gave this one petty criminal life in prison. Deterrence-based consequentialist views would have a hard time explaining why that would be a bad thing, whereas it's intuitive that that's an excessively harsh punishment for such an insignificant or small crime.

Another moral objection is the *use* objection, which is an objection to utilitarianism in general that some people may be familiar with. The problem is that some forward-looking justifications for punishment may allow us to use certain people as a means to an end. One classic example is the use of three-strikes laws. Those were largely implemented in the United States not for retributive reasons but for consequentialist reasons. The idea was that, if you put someone in prison for life for committing three felonies, this would deter would-be felons. This has contributed significantly to mass incarceration and has many practical negative effects, but beyond those it also suffers, I think, from a kind of use objection. Let's say they do effectively deter (just hypothetically). There was a guy in California who was given life in prison essentially for stealing about \$30 worth of VHS tapes from Walmart—because he was convicted of two felonies and had a prior conviction, which entails life in prison in California. Even supposing that this did deter other would-be felons, I would say that that's an illegitimate use of this individual. This individual is being sacrificed as a means to some further end.

But if you reject these alternative justifications for punishment, then free will skepticism really is a problem. If you reject retributivism, and these other views suffer from all these moral problems, where does that leave us? The focus of a lot

of my recent work is to develop an alternative that avoids both retributivism and also the moral failures of these other views.

Taylor: Could you say a little bit about your alternative to the retributivist and the deterrence-based justifications for punishment?

Gregg: Sure. It's called the *public health quarantine model*. It begins with an analogy, first developed by Derk Pereboom, and then I placed that within the larger context of the public health framework and public health approaches to crime in general. I'll just give the sort of nuts and bolts of it.

It begins with a comparison with quarantine, and it can be presented as a quick three-premise argument:

1. Criminals are not morally responsible for their actions in the basic desert sense.

The reason for thinking this first premise is true is because, according to the free will skeptic, nobody is morally responsible in this sense.

2. Many carriers of dangerous diseases are not responsible in this or any other sense for having contracted these diseases.

Let's say I get on a plane to come visit you guys in person and that somehow I contract Ebola, and this is discovered when I get off the plane. I haven't done anything morally wrong. Retribution or retributive punishment seems unjust in this context. And yet, I think we'd all agree:

3. We are justified in quarantining carriers of dangerous diseases for the safety of society.

The justification for quarantining such an individual would not be deterrence or retributive punishment. In fact, you don't need to appeal to free will or moral responsibility at all to justify quarantining this individual. Instead, the justification for quarantine would be grounded in some sort of a right of self-defense and protection of harm to others. We quarantine this individual on the grounds that we must do so to protect public health, perhaps to prevent a pandemic.

As an interesting aside, when we first developed this view, most people didn't have any familiarity with public health issues or quarantine. But now, on this side of 2020, everyone has a lived experience with these kinds of justification. I don't know if that makes my view more appealing or less—we'll see.

In general, the idea would be that you can also provide an incapacitation account for why we are justified in incapacitating, say, serial killers or child-molesters, namely on grounds analogous to quarantine, i.e., it'd be an incapacitation account grounded in the right of self-defense and protection of harm to others analogous to the justification you would use, say, for quarantining someone with a communicable disease.

But there's a number of really important implications of this view. One is that, as less dangerous diseases justify only preventative measures that are less restrictive than quarantine, less dangerous criminal tendencies would justify only moderate restraints. We don't quarantine people for the common cold; we accept a certain amount of risk as acceptable risk within society. We'll restrict quarantine to very prescribed, special cases. This is consistent with what we call the *principle of least infringement*, which says that you would have to adopt the least restrictive measures possible to protect public safety. In most cases, there are measures short of incapacitation that are available within the criminal justice system. My view is consistent, then, with the decriminalization of a lot of things we currently incarcerate people for. It's consistent with alternative measures like supervision or less invasive ways to protect society.

Second, if you were to hold me at the airport because I have Ebola, the story doesn't end there. You would have a moral duty to treat me and then to release me the minute I'm no longer a threat to society, and that's because your justification for limiting my liberty evaporates the minute I'm no longer a public health threat. In my view, the criminal justice system would have to consider the well-being of those being incapacitated, and the focus of the criminal justice system then would have to shift from a punitive system—one that doles out punishments—to one that aims at rehabilitation and reintegration. And the minute that an individual is no longer a threat to society, we no longer have grounds for limiting their liberty.

Matt: That's an interesting model. Do you think that this is really a model of a justification for punishment, though, or just for some kind of non-punitive treatment?

Gregg: This gets semantic, to some extent, but I view it as a non-punitive approach to crime. In the literature on punishment, and legal punishment in particular, theorists posit various conditions that must be met in order for treatment to count as punishment. When we punish individuals, not only do we usually cause them harm, or reduce their well-being in some way, but it involves intentional harm. When the state doles out legal punishment, it is intentionally imposing some sort of penalty on an individual—some sort of harsh treatment. Now, it doesn't have to be physical hardship. It might just be a deprivation of liberty or a fine, but it's a reduction in overall well-being. So, punishment involves intentionally harming individuals. It also usually involves the state communicating disapproval, so there's a communicative component.

But my approach—the public health quarantine model—doesn't preserve any of that. There's a difference between what I would call *foreseeable harm* and *intentional harm*, and there's a difference between using someone as a means to an end and what we might call *preventative harming*. When I quarantine the individual with Ebola, I am limiting their liberty. But I don't think that we are *punishing* them in any intuitive sense of punishment. No one really thinks of that as punishment, just like if I trip and knock over an elderly person and cause them harm, I haven't punished them. Punishing requires more than just harming someone; it includes some kind of intentional harm imposed on the person for some perceived wrongdoing. None of that is really happening here.

And the fact that it's not punitive has a number of really important ripple effects in terms of policy. The institutions in which we incapacitate people, for example, would need a different design. Prisons in the United States, the UK, and Australia are punitive places. They're designed for punitive purposes. They will need a different architectural nature for the purposes of rehabilitation. And they would need to be built with the aims of rehabilitation and reintegration in mind. This will affect the way we treat individuals in these institutions, the kind of freedoms they would have within the institution—all of this would have to be drastically altered. There are a number of other policy implications that I spell out in detail in the book, but that's the basic idea.

Taylor: Thanks for explaining the model. Does thinking about addressing crime in a way that's analogous to public health have any other important implications, on your view?

Gregg: Yes, and really this is the main thing. I want to shift the discussion from the myopic focus on punishment into more of a preventative approach. One of the things that the public health framework allows us to do is reorient things away from the focus on responding to past criminal behavior and to shift to what I call prevention and social justice. Public health already has a long track record and a number of methodologies that are really well-developed for these purposes.

One of the things I argue, for instance, is that the social determinants of poor health are essentially analogous to the social determinants of criminal behavior. Poor health outcomes are often the result of poverty. We know, for example, that people in low socioeconomic status environments tend to have higher rates of type 2 diabetes, heart disease, and morbidity. If you want to address that public health outcome, i.e., the poor health, you have to address those social inequities. And we also know that poverty drives incarceration rates. We know that exposure to violence in the home affects not only poor health but also incarceration rates. There are a number of social determinants identified—things like poverty, abuse, housing, mental illness, health care, education, nutrition, environmental health, etc.—that not only affect health outcomes but also affect criminality and violent behavior.

If we adopt a public health approach, then, we must look at these social determinants of criminal behavior. This is a matter of social justice because addressing the health and criminal outcomes requires addressing certain social inequities. I think this is a benefit of my view. We can't successfully address criminal justice without simultaneously addressing issues of social justice. And the public health framework provides us with mechanisms and tools for doing so, and in my work I spell out a whole bunch of ways in which we could adopt public health approaches and implement them in effective ways. But the goal for me is to move away from the reactive approach to a proactive approach.

Taylor: Well, this has been fascinating. Thanks so much for joining us, Gregg.

Matt: Yeah. Thanks again for being with us.

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## *Suggestions for Further Reading*

Other chapters of this book:

- For a discussion of the problem of luck for libertarianism, see:
  - Chapter 6: Alfred Mele on the Problem of Luck
- For a discussion of the manipulation argument against compatibilism, see:
  - Chapter 8: Derk Pereboom on the Manipulation Argument
- For a discussion of moral luck, see:
  - Chapter 9: Dana Kay Nelkin on Moral Luck

Outside of this book:

- For two important and influential books developing and defending free will skepticism, see:
  - Pereboom, Derk. 2001. *Living Without Free Will*. Cambridge: Cambridge University Press.

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