REJECTING RETRIBUTIVISM

REPLY TO LEO ZAIBERT

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I would like to begin by thanking Leo Zaibert for his thoughtful and challenging comments on my book, *Rejecting Retributivism: Free Will, Punishment, and Criminal Justice*. I have long respected Zaibert's work on punishment and consider his pluralistic version of retributivism, with its focus on forgiveness and balancing competing values, one of the most subtle. Unlike stronger versions of retributivism, Zaibert's account maintains that the value of punishing deserved wrongdoers needs to be weighed against other values and, as such, there will sometimes be good reason to refrain from punishing a deserving wrongdoer. While I welcome Zaibert's rejection of strong retributivism in favour of a more moderate approach, I nevertheless still fundamentally disagree with his account since it remains thoroughly committed to the core retributivist claim that "deserved suffering is *intrinsically* valuable" and "the fact that someone deserves punishment is, in itself, *important*" in justifying punitive responses to wrongdoing.

In *Rejecting Retributivism*, I argue against such claims and develop and defend a viable nonretributive alternative for addressing criminal behaviour that is both ethically defensible and practically workable. In the first half of the book, I argue that there are several powerful reasons for rejecting retributivism, not the least of which is that it is unclear that agents possess the kind of free will and moral responsibility needed to justify it. I also consider a number of alternatives to retributivism, including consequentialist deterrence theories, educational theories, and communicative theories, and argue that they have ethical problems of their own. In the second half of the book, I then develop and defend a novel nonretributive approach, which I call the *public health-quarantine* model. The model draws on the public health framework and prioritizes prevention and social justice. I argue that it not only offers a stark contrast to retributivism, it also provides a more human, holistic, and effective approach to dealing with criminal behaviour, one that is superior to both retributivism and other leading nonretributive alternatives.

In what follows, I will briefly outline my reasons for rejecting retributivism, sketch my public health-quarantine model, and respond to Zaibert's many objections.

To begin, we can say that the retributive justification of legal punishment maintains that, absent any excusing

conditions, wrongdoers are morally responsible for their actions and *deserve* to be punished in proportion to their wrongdoing. Unlike theories of punishment that aim at deterrence, rehabilitation, or incapacitation, retributivism grounds punishment in the *blameworthiness* and *desert* of offenders. It holds that punishing wrongdoers is intrinsically good. For the retributivist, wrongdoers deserve a punitive response proportional to their wrongdoing, even if their punishment serves no further purpose. This means that the retributivist position is not reducible to consequentialist considerations nor in justifying punishment does it appeal to wider goods such as the safety of society or the moral improvement of those being punished. As a result, the *desert* invoked in retributivism is *basic* in the sense that it is not in turn grounded in forward-looking consideration.

In the book, I present six distinct arguments against retributivism. The first, which I call the *Sceptical Argument*, maintains that agents lack the kind of free will and moral responsibility needed to justify retributive punishment. It is here that I defend a form of *free will scepticism* that maintains that who we are and what we do is ultimately the result of factors beyond our control and because of this we are never morally responsible for our actions in the basic desert sense – the sense that would make us truly deserving of blame and praise, punishment and reward. Since retributive punishment requires the kind of free will associated with basic desert moral responsibility in order to be justified, free will scepticism implies that retributive punishment lacks justification – i.e., free will scepticism undermines the retributivist notion that wrongdoers *deserve* to be punished in the backward-looking sense required. Insofar, then, as we demand *justified* legal punishment practices, the Sceptical Argument maintains that we should reject retributivism in light of the philosophical arguments against free will and basic desert moral responsibility.

In defence of the Sceptical Argument, I offer two distinct sets of arguments in support of free will scepticism. The first features distinct arguments that target the three leading rival views – event-causal libertarianism, agent-causal libertarianism, and compatibilism – and then claims the sceptical position is the only defensible position that remains standing. It's a form of *hard incompatibilism*, which maintains

that free will is incompatible with *both* causal determination by factors beyond the agent's control *and* with the kind of indeterminacy in action required by the most plausible versions of libertarianism. Against the view that free will is compatible with the causal determination of our actions by natural factors beyond our control, I argue that there is no relevant difference between this prospect and our actions being causally determined by manipulators. Against event causal libertarianism, I object that on such accounts agents are left unable to settle whether a decision occurs and hence cannot have the control required for moral responsibility. While agent-causal libertarianism could, in theory, supply this sort of control, I argue that it cannot be reconciled with our best physical theories and faces additional problems accounting for mental causation. Since each of these views fails to preserve free will, I conclude that free will scepticism remains the only reasonable position to adopt.

In addition to hard incompatibilism, I also defend a second, independent argument against free will which maintains that regardless of the causal structure of the universe, free will and basic desert moral responsibility are incompatible with the pervasiveness of *luck* – a view sometimes called *hard luck*. This argument is intended not only as an objection to libertarianism but extends to compatibilism as well. At the heart of the argument is the following dilemma, which Neil Levy calls the *luck pincer*: Either actions are subject to present luck (luck around the time of action), or they

are subject to constitutive luck (luck in who one is and what character traits and predispositions one has), or both. Either way, luck undermines free will and basic desert moral responsibility since it undermines responsibility-level control.

Consider, for instance, the problem constitutive luck raises for the compatibilist. Since our genes, parents, peers, and other environmental influences all contribute to making us who we are, and since we have no control over these, it seems that who we are is largely a matter of luck. And since how we act is partly a function of who we are, the existence of constitutive luck entails that what actions we perform depends on luck. A compatibilist could respond, as they often do, that as long as an agent *takes responsibility* for her endowments, dispositions, and values, over time she will *become* morally responsible for them. The problem with this reply, however, is that the series of actions through which agents shape and modify their endowments, dispositions, and values are *themselves* subject to luck – and, as Levy puts it, "we cannot undo the effects of luck with more luck". Hence, the very actions to which compatibilists point, the

actions whereby agents take responsibility for their endowments, either *express* that endowment (when they are explained by constitutive luck) or reflect the agent's present luck, or both. Hence, the luck pincer.

I find it both interesting and ironic that while Zaibert focuses the majority of his critical comments on my sceptical view, he never directly addresses the arguments for *either* hard incompatibilism or hard luck. Instead, he relies on exaggerated claims about the implications of the view, arguing that the sceptical perspective is "implausible" or "cannot actually be believed". This, however, is no substitute for careful consideration of the arguments, nor does it provide a defence of free will. In fact, retributivists who wish to ground their justification for punishment in the notion of *desert* must overcome *both* sets of arguments since each is sufficient on its own for undermining the kind of free will and moral responsibility needed. Hence, it's not enough to argue that one of these routes to free will scepticism fails, since if the right hand doesn't get you, the left hand will. Unfortunately, Zaibert does not respond to either set of arguments, leaving one wondering why he's so confident in his compatibilism.

My second argument against retributivism maintains that *even if* one is not convinced by the arguments against free will and basic desert moral responsibility, it remains unclear whether retributive punishment is justified. This is because the burden of proof lies on those who want to inflict intentional harm on others to provide good justification for such harm. This means that retributivists who want to justify legal punishment on the assumption that agents are free and morally responsible (and hence *justly deserve* to suffer for the wrongs they have done) must justify that assumption. And they must justify that assumption in a way that meets a high epistemic standard of proof since the harms caused in the case of legal punishment are often quite severe. The problem, I maintain, is that all extant accounts of basic desert moral responsibility fail to satisfy the high burden of proof required. I call this second argument the *Epistemic Argument* and it runs as follows: (a) Legal punishment intentionally inflicts harms on individuals and the justification for such harms must meet a high epistemic standard. If it is significantly probable that one's justification for harming another is unsound, then, prima facie, that behaviour is seriously wrong; (b) The retributivist justification for legal punishment assumes that agents are morally responsible in the basic desert sense and hence justly deserve to suffer for the wrongs they have done in a backward-looking, non-consequentialist sense. The problem, however, is that (c) the justification for the claim that agents are morally responsible in the basic desert sense provided by both libertarian and compatibilist accounts face powerful and unresolved objections and as a result fall far short of the high epistemic bar needed to justify such harms; hence (d) retributive legal punishment is unjustified and the harms it causes are prima facie seriously wrong.

Here, Zaibert does offer a few direct replies. First, he challenges the notion that punishment involves *harming* wrongdoers. He writes: "This non-neutral term – 'harm' – is tendentious. Undeniably, the treatment that the wrongdoer is to endure is meant to be unpleasant, unwanted, and so on: that is a purely conceptual point of punishment. There could be, I guess, a sense in which anything unpleasant or unwanted is 'harmful.' But there is another obvious sense in which it needs not be". He goes on to recommend that we understand punishment, not in terms of intentional harm, but in terms of "pain or other consequences normally considered unpleasant".

This purely semantic point, however, does not cut one way or another since it leaves the core philosophical challenge of the Epistemic Argument in place. In his book *Rethinking Punishment*, Zaibert acknowledges that punishment "will necessarily have to (seek to) make the wrongdoer suffer". He writes: "To punish, then, is to (try to) inflict suffering (or pain or misery or a bad thing, etc.) on someone as a response to her wrongdoing. Punishment without trying to inflict suffering is like gifting an object without intending to transfer any right over the thing gifted or like feeding someone without intending to give her some nourishment". Regardless, then, of whether we replace the term *harm* with another, there's no avoiding the fact that to punish is to *intentionally* and *deliberately* seek to inflict some suffering, pain, misery, or bad thing on someone as a response to their wrongdoing. And the core philosophical question remains: Is the retributivist justified in intentionally inflicting suffering, pain, or some other harsh treatment on perceived wrongdoers based on the highly questionable assumption that they are free and morally responsible (in the basic desert sense) and hence justly deserve to suffer for the wrongs they have done?

The Epistemic Argument maintains that the answer is "no", since there remain powerful and unresolved objections to both libertarian and compatibilist accounts of free will – including the manipulation argument, consequence argument, no-forking-paths argument, basic argument, luck argument, disappearing agent objection, luck pincer, and others – and as a result they fall far short of the high epistemic bar needed to justify such harms. As my fellow free will sceptic Benjamin Vilhauer explains, "if it can be reasonably doubted that someone had free will with respect to some action, then it is a requirement of justice to refrain from doing serious retributive harm to him in response to that action". Zaibert disagrees because he does not believe retributivism should be held to the beyond-a-reasonable-doubt standard, but he is fundamentally mistaken about this.

In his second reply to the argument, Zaibert writes: "The main weakness of this argument is that reasonable doubts are possible about all sorts of things, things that we nonetheless need to do, and are justified in doing". He goes on to write that there are "important differences between adjudicating guilt in a court of law

and ascertaining the merits of a theory (philosophically or otherwise)", and as a result "retributivism – like any other theory – cannot be simply rejected by pointing out that there are doubts – even serious doubts – about its truth". What Zaibert seems to be missing, however, is that other theoretical beliefs are not used to *justify* intentionally harming or inflicting pain and suffering on others in the form of state punishment!

Of course, when it comes to theoretical debates over, say, realism about the external world or the abstract nature of numbers, there will always be room for reasonable doubt. These theoretical debates, however, have very little costs associated with a wrong answer and are therefore significantly different than adopting compatibilism to justify intentional harm and institutional punishment. Given, then, the importance of free will and basic desert moral responsibility to retributive punishment, as well as the gravity of the harm caused by legal punishment (not only to the individual punished but also to those who depend upon them for income, care, love, support, and/or parenting), I maintain that the proof-beyond-a-reasonable-doubt standard is the appropriate epistemic standard to apply.

Before moving on from the Epistemic and Sceptical Arguments, I would like to make one final comment. In several places, Zaibert accuses me of "arrogance" for concluding that free will scepticism remains the only reasonable position to adopt. He also implies that I've been inconsistent since my position allows for "*either* 'doubting or denying' moral responsibility". Both of these charges are wildly uncharitable. They also reflect a radical misunderstanding of my view. It's not arrogant to conclude – after careful, detailed, and prolonged argument – that since all the leading libertarian and compatibilist accounts of free will fail to preserve the control in action required for basic desert moral responsibility, free will scepticism remains the only defensible position left standing. If Zaibert wants to defend compatibilism, he needs to respond to the arguments against it rather than calling his opponents arrogant for denying free will after prolonged argument.

Second, it is not inconsistent to offer two distinct arguments against retributivism that rely on stronger and weaker varieties of scepticism. Yes, my own variety of free will scepticism denies the existence of free will and maintains that who we are and what we do is ultimately the result of factors beyond our control. But for maximum persuasive power, I wanted to offer a second argument against retributivism, the Epistemic Argument, that required only a weaker notion of scepticism, namely one that holds that the justification for believing that agents are free and morally responsible in the basic desert sense is too weak to justify the intentional suffering caused by retributive legal punishment. There's no conflict or waffling here.

JUDGMENTS OF MORAL GOODNESS AND BADNESS NEED NOT REQUIRE AN AGENT WHO IS BLAMEWORTHY OR PRAISEWORTHY

In addition to the Sceptical and Epistemic Arguments, I also develop and defend four additional reasons for rejecting retributivism in the book, all of which are independent of worries over free will and basic desert moral responsibility. Sadly, Zaibert discusses none of these. They include the *Misalignment Argument*, which maintains that it is philosophically problematic to impart to the state the function of intentionally harming wrongdoers in accordance with desert since it's not at all clear that the state is capable of properly tracking the desert and blameworthiness of individuals in any reliable way. This is because criminal law is not properly designed to account for all the various factors that affect blameworthiness, and as a result the *moral criteria of blameworthiness* is often misaligned with the *legal criteria of guilt*. I also present a closely related argument, which I call the *Poor Epistemic Position Argument (PEPA)*. It argues that for the state to be able to justly distribute legal punishment in accordance with desert, it needs to be in the proper epistemic position to know what an agent basically deserves, but since the state is (almost) never in the proper epistemic position to know what an agent basically deserves, it follows that the state is not able to justly distribute legal punishment in accordance with desert.

My final two arguments against retributivism are the *Indeterminacy in Judgment Argument* and the *Limited*

Effectiveness Argument. The former maintains that how the state goes about judging the gravity of wrong done, on the one hand, and what counts as proportional punishment for that wrong, on the other, is wide open to subjective and cultural biases and prejudices, and as a result, the principle of proportionality in *actual practice* fails to provide the kind of protections against abuse it promises. The latter argues that there are good additional pragmatic reasons for rejecting retributivism since it has limited effectiveness in promoting important social goals such as rehabilitation and reforming offenders.

Given Zaibert's silence on these arguments, his failure to defend compatibilism against the arguments for incompatibilism as well as the luck pincer, and his unconvincing replies to the Epistemic Argument, I conclude that we have more than ample reason for rejecting retributivism – despite Zaibert's protestations to the contrary.

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That said, I would like to briefly respond to some of Zaibert's other, more general concerns about my free will scepticism before moving on. Regarding morality, Zaibert writes: "A 'morality' that jettisons moral responsibility, and that affirms that no one is deserving of anything, strikes me as implausible". In response, I would point out that free will sceptics need not reject *axiological judgments* of right and wrong, good and bad, behaviour. For instance, even if we came to hold that a serial killer was not blameworthy due, let's say, to a degenerative brain disease, we can all still justifiably agree that his actions are morally bad. This is because judgments of moral goodness and badness need not require an agent who is blameworthy or praiseworthy – they simply require grounds by which we can differentiate between the two types of judgments.

If one were a Calvinist, for instance, one could point to the transcendent moral law as a way to judge while simultaneously rejecting all moral responsibility. Less exalted moral systems, such as utilitarianism or Kantianism, provide alternative ways of grounding moral judgments. Of course, if one were to adopt a Kantian test of universalizability while rejecting the rest of Kant's moral views (which do presuppose agents are morally responsible), it would hardly be an orthodox Kantian view. But, as several sceptics have noted, the denial of moral responsibility is not inconsistent with the principles of Kantian moral rationalism. It is arguable, then, that axiological judgments of moral goodness and badness would not be affected by moral responsibility scepticism, and this may be sufficient for moral practice.

AS A FREE WILL SCEPTIC, I DO NOT DENY THAT THERE ARE IMPORTANT DIFFERENCES BETWEEN AGENTS WHO HAVE THE KIND OF CONTROL COMPATIBILISTS HAVE IDENTIFIED
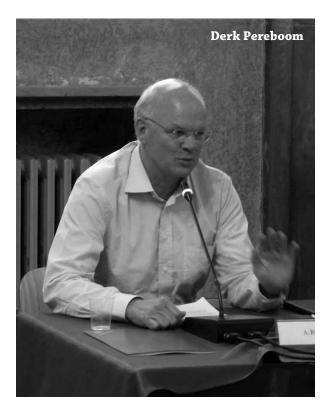
A second concern Zaibert notes is that "we *cannot* really treat each other as Caruso would have us do". Quoting P.F. Strawson, Zaibert contends that on the sceptical perspective, wrongdoers would be seen, "merely as 'object[s] of social policy', as 'subject[s] for treatment', as needing merely to be 'managed or handled or cured or trained'". This, however, is mistaken. In fact, I spend a good deal of time addressing this concern in the book. In brief, I maintain that rejecting basic desert moral responsibility does not require one to adopt what Strawson calls the "objective attitude" toward wrongdoers. As Derk Pereboom and I have argued elsewhere, Strawson may be right to contend that adopting the objective attitude would seriously hinder our personal relationships (though some philosophers have challenged this claim). However, a case can be made that it would be wrong to claim that this stance would be appropriate if determinism did pose a genuine threat to the reactive attitudes. While certain kinds of moral anger such as resentment and indignation would be undercut if free will scepticism were true, I maintain (following Pereboom) that these attitudes are suboptimal relative to alternative attitudes available to us, such as moral concern, disappointment, sorrow, and moral resolve. My view, then, is that the reactive attitudes we would want to retain either are not undermined by a sceptical conviction because they do

not have presuppositions that conflict with this view, or else they have alternatives that are not under threat. And what remains does not amount to Strawson's objectivity of attitude and is sufficient to sustain the personal relationships we value.

There is a lot more to be said here, but given the limited space I have, I would now like to turn to Zaibert's criticisms of my non-retributive alternative – the *public health-quarantine model*. The core idea of the model is that the right to harm in self-defence and defence of others justifies incapacitating the criminally dangerous with the minimum harm required for adequate protection. The model begins with Derk Pereboom's famous quarantine analogy, which draws on a comparison between treatment of dangerous criminals and treatment of carriers of dangerous diseases. In its simplest form, it can be stated as follows: (1) Free will scepticism maintains that criminals are not morally responsible for their actions in the basic desert sense; (2) plainly, many carriers of dangerous diseases are not responsible in this or in any other sense for having contracted these diseases; (3) yet, we generally agree that it is sometimes permissible to quarantine them, and the justification for doing so is the right to self-protection and the prevention of harm to others; (4) for similar reasons, even if a dangerous criminal is not morally responsible for his crimes in the basic desert sense (perhaps because no one is ever in this way morally responsible), it could be as legitimate to preventatively detain him as to quarantine the non-responsible carrier of a serious communicable disease.

The first thing to note about the theory is that although one might justify quarantine (in the case of disease) and incapacitation (in the case of dangerous criminals) on purely utilitarian or consequentialist grounds, Pereboom and I resist this strategy. Instead, we maintain that incapacitation of the seriously dangerous is justified on the ground of the right to harm in self-defence and defence of others. That we have this right has broad appeal, much broader than utilitarianism or consequentialism has. In addition, this makes the view more resilient to a number of objections and provides a more resilient proposal for justifying criminal sanctions than other non-retributive options. One advantage it has, say, over consequentialist deterrence theories is that it has more restrictions placed on it with regard to using people merely as a means. For instance, just as it is

illegitimate to treat carriers of a disease more harmfully than is necessary to neutralize the danger they pose, treating those with violent criminal tendencies more harshly than is required to protect society will be illegitimate as well. In fact, the model requires that we adopt the *principle of least infringement*, which holds that the least restrictive measures should be taken to protect public health and safety. This ensures that criminal sanctions will be proportionate to the danger posed by an individual, and any sanctions that exceed this upper bound will be unjustified.

In addition, the model also advocates for a broader approach to criminal behaviour that moves beyond the narrow focus on sanctions. Most importantly, it situates the quarantine analogy within the broader justificatory framework of *public health ethics*. Public health ethics not only justifies quarantining carriers of infectious diseases on the grounds that it is necessary to protect public health, it also requires that we take active steps to *prevent* such outbreaks from occurring in the first place. Quarantine is only needed when the public health system fails in its primary function. Since no system is perfect, quarantine will likely be needed for

Derk Pereboom

the foreseeable future, but it should *not* be the primary means of dealing with public health. The analogous claim holds for incapacitation. Taking a public health approach to criminal behaviour would allow us to justify the incapacitation of dangerous criminals when needed, but it would also make prevention a *primary function* of the criminal justice system. So instead of myopically focusing on punishment, the public health-quarantine model shifts the focus to identifying and addressing the systemic causes of crime, such as poverty, low social economic status, systematic disadvantage, mental illness, homelessness, educational inequity, exposure to abuse and violence, poor environmental health, and addiction.

Since the *social determinants of health* and the *social determinants of criminal behaviour* are broadly similar, or so I argue, the best way to protect public health and safety is to adopt a public health approach for identifying and taking action on these shared social determinants. Such an approach requires investigating how social inequities and systemic injustices affect health outcomes and criminal behaviour, how poverty affects health and incarceration rates, how offenders often have pre-existing medical conditions including mental health issues, how homelessness and education affects health and safety outcomes, how environmental health is important to both public health and safety, how involvement in the criminal justice system itself can lead to or worsen health and cognitive problems, and how a public health approach can be successfully applied within the criminal justice system. I argue that just as it is important to identify and take action on the social determinants of health if we want to improve health outcomes, it is equally important to identify and address the social determinants of criminal behaviour.

Against my model, Zaibert offers a number of objections. First, he correctly notes that "Caruso wants to replace [our current] criminal justice systems with a public health-quarantine system that, more than non-retributive, is explicitly non-punitive". That's correct. The public health-quarantine model is not only non-retributive, it is also non-punitive in that it offers an alternative to legal punishment rather than a justification of it. Zaibert considers this "terribly untenable" but doesn't explain why. Without further argument, then, I will simply dismiss this gibe as a failure of imagination.

Zaibert also makes a number of other unfounded gibes or mocking remarks – most of which I will simply ignore. There are, however, at least four objections worth commenting on. First, Zaibert claims: "Caruso sees no important normative difference between our hospitals, our prisons, and indeed our lightning rods, our sump-pumps, and so on". I'm not sure what lightning rods and sump-pumps have to do with institutions like prisons and hospitals, but I do acknowledge a normative difference between prisons and hospitals. I just think that traditional prisons – understood as punitive institutions aimed at giving wrongdoers their just deserts – fail to be justified on retributive grounds. And since most prisons in the United States, United Kingdom, and Australia are inhospitable and unpleasant places specifically designed for punitive purposes, the public health-quarantine model would require us to redesign the physical environments and spaces we incapacitate people in so as to better serve the goal of rehabilitation and reintegration. If Zaibert wishes for our prisons to remain the same – cold and inhospitable places that not only incapacitate but seek to punish offenders – then that's on him, not me. In fact, it only further highlights a major difference between the retributive approach to criminal behaviour and the public health-quarantine approach – one aims at giving wrongdoers their just deserts, while the other aims at rehabilitation and reintegration.

Second, Zaibert repeatedly accuses me of some kind of Wittgensteinian contradiction when I claim that it is fundamentally unfair and unjust to hold people truly deserving of blame and praise, punishment and reward. This is because, according to Zaibert, the sceptical perspective entails that "nothing is ever 'truly' unfair or unjust". This, however, is mistaken. While some critics have argued that free will sceptics are not entitled to appeal to justice and fairness, since talk of justice presupposes deontological and/or desert-based claims that we are not entitled to, I have never quite understood this charge. Unless one were to think that all theories of justice had to be desertist (i.e., grounded in desert), there is no reason to think this claim has any merit. Yes, there are desertist theories of justice that hold that justice is fundamentally a matter of receipt in accord with desert. The idea seems to be present, for example, in certain passages in Aristotle, Leibniz, Mill, Sidgwick, and Ross. There are, however, several prominent theories of justice that are not desertist,

including the well-known theory of John Rawls. And in Chapter 6 of the book, I defend a *capabilities approach to social justice* and argue that it is perfect consistent with the rejection of free will and basic desert moral responsibility. As long, then, as we understand justice in terms of a non-desertist theory, there is no reason free will sceptics cannot appeal to the notion of justice and all that it entails.

Third, Zaibert complains about my appeal to autonomy and its importance. He writes: "does not the very talk of autonomy – i.e., self-rule, self-determination – presuppose precisely the sort of free will that Caruso denies? Truly a leitmotif in Caruso's book, the inconsistency of which Wittgenstein famously discussed, whereby Caruso criticizes a practice by presupposing notions constituted by that very practice, reappears yet again". Here again, Zaibert is being uncharitable and attacking a strawman. As a free will sceptic, I do not deny that there are important differences between agents who have the kind of control compatibilists have identified. Such distinctions are undeniable. A normal adult who is responsive to reasons, for instance, differs in significant ways from one who is suffering from psychopathy, Alzheimer's, or severe mental illness. I have no issue, then, with acknowledging various degrees of "control" or "autonomy" – in fact, I think compatibilists have done a great job highlighting these differences. My disagreement has more to do with the conditions required for what I call basic desert moral responsibility. As a free will sceptic, I maintain that the kind of control and reasons-responsiveness compatibilists point to, though important, is not enough to ground basic desert moral responsibility – i.e., the kind of responsibility that would make us truly deserving of blame and praise, punishment and reward in a purely backward-looking sense. There is no inconsistency, then, in free will sceptics talking about degrees of autonomy or pointing to the importance of reasons-responsiveness. They simply deny that these abilities are sufficient for basic desert moral responsibility.

Finally, Zaibert points to the fact that not all wrongdoers continue to be threats after doing wrong. He writes: "Nothing prevents a wrongdoer from having an epiphany – or from having an accident that leaves her paralyzed and unable to cause any further harm – immediately after doing wrong". He goes on to ask, "why should we quarantine wrongdoers who no longer pose threats?" My answer would be we shouldn't. If we were absolutely certain that a violent offender poses absolutely no forward-looking threat, then I would bite the bullet and say incapacitation would not be justified in such a case. I know this is unsatisfying for those with strong retributive impulses, but I reject retributivism. My justification for incapacitation is grounded in the right of self-defence and prevention of harm to others, and in this case, there would be less restrictive measures available short of incapacitation to protect public health and safety. That said, in most real-world cases, prior behaviour is our best guide to future risk, and some period of incapacitation would most likely be required to assess and determine the continued threat posed by seriously violent offenders. We may also be justified in engaging in other non-punitive measure, such as those aimed at fact finding, restorative justice, and/or civil liability.

While there is much more I would like to say in defence of the public health-quarantine model, I hope I have done enough to entice readers to check out the book and to see my more extended replies to critics in the *Journal of Legal Philosophy*. I leave it to readers, then, to decide for themselves whether we should embrace or reject retributivism.

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