

Article

Punishment and the Body

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Abstract: Suppose we accept that punishment can be legitimate. What form should it take? Many of us believe that it can be acceptable to fine or imprison someone, but that capital punishment, along with corporal punishment in its various manifestations, is wholly unacceptable. I suggest that it is hard to account for or justify this distinction. But granting that resistance to these latter forms is unlikely to be dislodged, and granting too that imprisonment in particular is hardly problem-free, it is worth considering whether there might be alternatives. And I argue here that we should consider enforced coma as a procedure having many advantages over the more familiar methods of delivering a penalty. Of course, there are disadvantages also. The aim isn't to offer a detailed and practical solution to the problem of crime, but to explore some of the presumptions and principles involved in our thinking about punishment.

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Crime and Punishment

Ideas of personhood, agency, and responsibility are linked together. Linked too is the notion of desert, and along with that the business of reward and punishment. To punish someone is surely in some way or other to harm them, and to harm them in such a way that they understand harm is being done in return for what, at least allegedly, they did.¹ Those being punished, the idea is, see the relation between their activity and this result, and understand the claim, whether or not they agree, that the harm is deserved. Hence we can only punish persons or quasi-persons—not babies, most animals, the seriously brain damaged—and, in contrast to taking revenge, we can punish only those who are at the time it is meted out aware that they are being punished. And hence the deeply distasteful business of reviving someone only then to execute them.

¹ Can we punish only the guilty? I want to say that legitimate punishment is constrained in this way, but when it is illegitimate, mistaken, unfair it is, I take it, punishment nevertheless. See here Anthony Quinton "On Punishment," *Analysis* 14 (1954): 133–42, for more on the logical and moral constraints on punishment.

While much punishment, especially in its more severe forms, is devised and delivered by the state, it would be a mistake to think of it only in connection with criminal activity. You can of course be punished for parking offences, late return of a library book, not keeping off the grass, and so on. Members of certain groups—criminal gangs, the armed forces, secret societies, churches—can suffer institutional or quasi-institutional punishment at the hands of other group members. Children are often punished, both by parents and teachers, for what they've done, or failed to do. Wrongdoing is widespread, and widespread too are the occasions for redress.

Some find the whole idea of punishment as sketched here deeply repellent. Elsewhere this might be discussed at length but I am going simply to assume that punishment, understood in this way—retributive, backward-looking, not a million miles from an eye for an eye—can be legitimate or appropriate. My questions are about its forms and amounts. And the focus is on punishment imposed by the state on those who have been found guilty of some crime.

Forms of Punishment

What are the constraints on punishment? It is desirable that we can deliver it to different degrees, so that, as we often say, the punishment might fit the crime. As well as this, we might want to be able to tailor punishment in order that it fits also the criminal. One obvious example—a fine of £100 will have a greater or lesser effect depending on the offender's financial situation, and the extent to which he or she likes to spend. It is surely desirable that punishment should have no unintended side effects, or at least, no unintended bad side effects, either on the criminal or on others at a greater or lesser distance from the criminal. This might be hard to achieve. What about intended side effects? Punishment, meted out or merely threatened, can function as a deterrent, persuading would-be criminals and repeat offenders alike that certain activities are best avoided. And it is clearly legitimate to want this, and so then in effect to advertise the connection between crime and punishment. Reform is also of concern. Suppose someone is made to perform some hours of community service. It might be hoped that in doing this their anti-social tendencies are to some extent curbed. Elsewhere the relation between punishment and reform may be less intimate, but prison allows for and often aims at education, rehabilitation and the like. Other things equal, it might be considered an advantage of some form of punishment that it gives space to the pursuit of such concerns. And a final point here: we surely want to ensure, so far as is possible, that punishment finds its proper target—that the punishment, and all of it, is inflicted on the guilty party, and not on someone else. There's an obvious sense in which this is true; and as I'll explain below it needs to be true in a less obvious sense also.

As there are different ways to harm someone, so punishment can take different forms. And as wrongdoing varies, so the forms of punishment should probably vary accordingly, so that not only in degree but also in kind there is the best match with the particular crime. Worldwide, the main forms of punishment practiced today involve fines, imprisonment, corporal punishment and capital punishment. All of these might be seen as depriving the wrongdoer of some good—financial resources and opportunities, liberty, well-being, life—which, as we hope, is seen by the punished as a good and which he or she is averse to losing. And all might be thought of as imposing some limitations on the body—what someone can do with it, where they might locate it—and then in virtue of that as having some harmful effects on the mind—causing pain, distress, frustration and the like.

What are the key differences here? The most obvious is that we, now, are mostly very strongly opposed to punishment in the last two of these forms, but not similarly opposed to the first two. I say *we*, first of all meaning people like us, or people in ‘the West’. But it is true worldwide that opposition to these forms of punishment is pronounced and increasing.² And I say *now*, as we need to go back not far into history to discover a conspicuously different situation. Removals of capital punishment from the statute books have occurred mostly just in the last century, and one form of corporal punishment—birching—survived in the sleepy backwater of the Isle of Man until 1976.³ Caning or slipping in schools is only very recently frowned upon or outlawed, and the acceptability of physical punishments inflicted on children by their parents is now in sharp decline.⁴ Opposition to these forms of punishment can be linked to doubts about the suggestion above, that the important differences between punishment’s various forms are ones of degree, rather than kind. But it might be thought that to beat or to kill someone is not merely to deprive them of some good but to inflict upon them, and intentionally, a positive evil. And, of course related, it might be thought also that these forms of punishment engage with the body and compromise bodily integrity in more blatant ways than do fining and imprisonment. This hardly explains the opposition, though. After all we’re considering punishment, and as I said at the outset the central aim here is to do someone some harm. Why is the infliction of physical harm, in particular, thought to be objectionable?

Yet an oddity here should be noticed. I listed the forms of punishment in what might be thought of, other things equal, as an ascending order of severity, with fines as the least severe, and the death penalty, taking from us life—supposedly the greatest of goods, and the condition of all others—as the most severe. But consider corporal punishment. Whether this is thought of as inflicting relatively short term pain, as with whipping or beating—the short sharp shock⁵—or whether it involves some permanent incapacity—such as blinding someone or cutting off their hand—this is really off the agenda so far as our state’s penal system is concerned. There is, in contrast, still something of a lively debate about execution. What this might suggest is some tacit sympathy with the not uncommon view that death is a deprivation, and if brought about in certain ways doesn’t, contrary to what I’ve suggested might first be assumed, in itself involve any positive evil. We may be more averse to causing pain than causing death, even if, assuming the ranking is correct, it is worse to die than to be beaten.⁶ I’ll need to say more about corporal punishment. But the focus now is on capital punishment.

² There is much useful information here: https://en.wikipedia.org/wiki/Capital_punishment.

³ There is more information here: <https://en.wikipedia.org/wiki/Birching>.

⁴ Times change. It is interesting to note how recently Warren Quinn, “The Right to Threaten and the Right to Punish,” *Philosophy and Public Affairs* 14 (1985): 327–73, could see it as entirely uncontroversial that parents should be permitted to punish their children, focusing his legitimacy questions altogether on punishment by the state.

⁵ The allusion here is to the UK’s Margaret Thatcher/William Whitelaw discipline and punishment regime (described in the *Belfast Telegraph* as ‘army-style’) imposed on young offenders held in detention centres in the 1980’s. Nothing I say implies any support for such schemes. For more information see: <https://thatchercrisisyears.com/2013/01/14/short-sharp-shock-thatcher/>.

⁶ See here Mill’s contribution (John Stuart Mill (1868) “Speech on Capital Punishment,” in *Utilitarianism*, ed. George Sher (Indianapolis: Hackett, 2002) to a UK parliamentary debate on capital punishment, and note in particular his subtle observations on how things are, and how they seem, regarding death *versus* prison.

Capital Punishment

The case against capital punishment is not altogether well made. There's no plausible defence to be offered of the system currently in place in the U.S.—heavily weighted against young black men, and with inmates on death row for decades—but it hardly follows from this that it is wrong in principle. Assuming, as I've said, a place for punishment rather than, or as well as, rehabilitation or reform and assuming—easy one—that serious and violent crimes continue to occur, then it isn't clear why taking a life in return for lives taken shouldn't in some cases be legitimate. I stress "some"; almost everyone will agree that not all killings, and indeed not all murders, warrant the death penalty. A more interesting question is whether only killings might be punished in this way, or whether a case can be made for invoking this penalty for some supposedly lesser crime. I think it can, but have no need to pursue this here.⁷

The objections are mostly well known. The death penalty can have no place in a civilised society. It is a cruel and unusual form of punishment, degrading and demeaning for all those involved. Punishment shouldn't be divorced from all hope of reform. Given that there are not infrequently wrongful convictions, any terminal or irreversible punishment is unacceptable. Nor can these various shortcomings be outweighed by any benefit in terms of deterrence. For, it is said, compared with a life sentence, it has no additional deterrent effect.⁸

All these objections admit of a response. The first point is little more than handwaving, and that in an altogether unpersuasive manner. It's not easy to defend the claim that there have been virtually no civilizations until the mid-20th century, nor to explain precisely why civilization is compromised by finding some place for the death penalty. Whether a punishment is unusual would seem to be merely a statistical point, and not one amounting to a point against. What of cruelty? This is not a characteristic of killing as such, but might be claimed to figure in the various attendant circumstances of an execution. An argument that has been insisted on recently is that the particular cruelty lies in requiring that someone should know precisely when death will come.⁹ But imagine we introduce, along the lines of the surprise exam, some uncertainty—his life will be ended some time in the next three months, but he won't know, until a moment before, precisely when. Or he might know that sooner or later he'll be killed in his sleep, but never know when. It's not clear to me why that would be an improvement, but if it is then the procedure could be amended

⁷ A recent case involving brutal gang rape might be thought to prompt such questions. See: <https://www.hindustantimes.com/world-news/bangladesh-president-signs-ordinance-on-capital-punishment-in-rape-cases/story-5aTqXVyAGqMGJQuUfznTfO.html> But see also Fn. 9 below.

⁸ For more detail on both these objections, and then the replies, see the respective chapters in a pair of volumes, decades apart, but equally useful; Jonathan Glover, *Causing Death and Saving Lives* (Harmondsworth: Penguin, 1977) and Torbjörn Tännsjö, *Taking Life: Three Theories on the Ethics of Killing* (Oxford: Oxford University Press, 2015). See here also Tännsjö, "Capital Punishment," in *The Oxford Handbook of Philosophy of Death*, eds. Ben Bradley, Fred Feldmann and Jens Johansson (Oxford: Oxford University Press, 2012). Much of the contemporary philosophical discussion of capital punishment tends to an abolitionist line. Tännsjö goes against the grain here. So too does Tom Sorrell, in both *Moral Theory and Capital Punishment* (Oxford: Wiley-Blackwell, 1987), and also "Aggravated Murder and Capital Punishment," *Journal of Applied Philosophy* 10 (1993): 201–13.

⁹ Derrida makes much of this point in *The Death Penalty*, eds. Geoffrey Bennington, Marc Crepon and Thomas Dutoit, translated by Peggy Kampf (Chicago and London: The University of Chicago Press, 2014). It is found also in Camus, "Reflections on the Guillotine," in *Reflexions sur la Peine Capitale*, eds. Albert Camus and Arthur Koestler, translated by Justin O'Brien (Paris: Calmann Levy, 1957) and Dostoevsky, *Crime and Punishment* (1866, many editions and translations available).

accordingly. Suppose it is objected, further, that cruelty resides in depriving someone of all hope, and in making their demise, and soon, altogether unavoidable. Again there is a remedy. The system could incorporate some randomly and frugally distributed get out of jail cards. Given equal chances, it might be unjust, but it wouldn't then be unfair if one in a thousand walks free. There's a further concern about the bureaucracy here. Not only is the condemned man cruelly treated. Lawyers, executioners, witnesses, prison staff are all, it is claimed, demeaned and degraded by involvement in this process. Again a point might be made about activities elsewhere—we wage war, aiming to kill combatants, and knowing we will inevitably kill innocent bystanders, many of them in unimaginably gruesome ways. But less often do we appear outraged by this, or very much concerned for the psychological well-being of those responsible.

Two important points can be linked together. First, concerns over wrongful convictions are much less weighty than some claim. Although these occur in an alarming number of cases, we can nevertheless often be certain that we have identified the perpetrator, and are clear on just which crimes have been committed. And capital punishment can be restricted to just those cases. This, of course, is the obvious sense in which we will demand that this punishment in particular be delivered only to the guilty. Because there can be neither reversal nor compensation, it is of utmost importance that we get things right. But we can succeed in this. And here might be considered the second sense in which we need punishment to find its proper target. One powerful objection to capital punishment, at least as practised in the U.S., is that it involves, via the hyper-extended appeals process, ever increasing delays between sentencing and, in the few cases where it does in the end occur, execution. While from the criminal's point of view it might be considered good to put this off for as long as possible, it is here that charges of both unfairness and cruelty apply.¹⁰ Suppose there is a delay of 15 years. Under some accounts of personal identity you might suspect that in important respects the prisoner earlier convicted is not one and the same individual as the one now to be executed. For there may well have been significant changes in both memory and character in the interim. I don't want to defend such a robust conclusion here, but we still might hold that punishment is appropriate only insofar as the criminal, throughout the period of punishment, is sufficiently closely related psychologically to himself as he was at the time of the offence. Insofar as there are significant psychological discontinuities, there are at least important questions to be asked about how far he should now be held responsible for the earlier transgressions. So insofar as someone has forgotten the crime, now regrets it, or has changed in such ways that it is perhaps unthinkable that he would again be able to commit such crimes, then the validity of punishment is brought into question. Other things equal, then, the shorter the interval between criminal activity and the exacting of a sentence the better. And I'll say more about this in two places below.

The remaining objections concern deterrence and reform. Concerning the latter any defender of capital punishment needs to bite the bullet—a prisoner who is executed cannot thereafter be reformed. There might, of course, be efforts at reform prior to execution but as I've just suggested, insofar as these are successful they threaten the appropriateness of the punishment. So better, perhaps, that they are not at this stage attempted. And it isn't clear why someone should think not only that reform is, other things equal, a desirable feature overall, but that it is essential that it can be genuinely aimed at in every case. We might take a similar stance with deterrence, but it is possible to be more

¹⁰ See, for relevant information: <http://www.deathpenaltyinfo.org/time-death-row>.

bullish here, and maintain that capital punishment does surely have a deterrent effect, and moreover a greater such effect than imprisonment. And this relates to its being an obviously different, and apparently worse form of punishment than imprisonment. If killing someone is likely to bring about your death, and that is a very great evil, you are surely more likely to think about it than if it makes at worse some small additions to a prison sentence.¹¹ The evil of death, unlike that of being banged up, stares us in the face.

Alternatives

Arguments against capital punishment are strengthened insofar as there are other options which might take its place. Unfortunately, the main alternative—imprisonment—is almost equally open to objections. First, the extent to which it succeeds in actually punishing, and thus harming criminals, as opposed to rendering them for a period inoperative will vary considerably from case to case. It will depend on how liberal the prison regime is, what life would have been like outside, how far the inmates are able to work the system. Obviously this will impact on its deterrent effect also. But not only might it offer less than intended by way of punishment, it might in several ways offer more. Someone might, while in the ‘university of crime’ be further corrupted, taking on more of the criminal mentality than he had when sentenced. Alternatively, he might in various ways suffer abuse at the hands of staff and fellow inmates. Time spent inside can lead to a break-up of the family, and make for serious difficulties in resuming an earlier career.

A further objection, relating to points about identity made above, is that punishment in or through prison is necessarily temporally extended, and, the longer it goes on the less obviously fair it is to continue with the sentence. Again, the point here isn’t just about time in itself but about its likely effects on the prisoner’s psychology. A system in which old men, often sick, often forgetful, often in many ways (and as the system intended) reformed, die in prison is not obviously defensible.¹²

I mean these points to raise doubts about both the efficacy and justice of imprisonment. I certainly don’t claim that in all respects capital punishment (when, given the severity of the crime, this might be considered) is to be preferred. But now think again about corporal punishment. The downsides to prison are further highlighted. First, as with the death penalty, when quickly administered, all of such punishment’s evil is delivered directly and promptly and so fairly to the perpetrator, who is still fully aware of and knowledgeable about the crimes he has committed and who, even if repentant, is most likely unreformed. With side effects too, corporal punishment should appear advantageous. Criminals are less likely to suffer career or family breakdowns when their punishment detains them for at most days rather than decades. But this second point bears elaboration. These side effects are not simply random occurrences, but to a significant degree predictable. I’ve mentioned already the inequities relating to fines. We know ahead of time that fixed financial penalties unfairly impact on the poor. Conversely, the wealthy and career-minded will lose more through imprisonment. Could this be remedied? Perhaps there will be few objections to increasing fines for the rich, but suggestions that the poor or unemployed should spend longer inside should be roundly resisted. Both capital and corporal punishment avoid the problem here. Even if we are not

¹¹ There are reasons here not to call for the death penalty too readily. If killing a bank clerk is likely to result in a man’s execution, he may as well kill guards or police in order to escape.

¹² There is information here: <http://www.telegraph.co.uk/news/uknews/law-and-order/9544445/Record-number-of-prisoners-dying-in-old-age.html>.

all equally averse to pain and death, variation is likely to be overall less pronounced, and certainly unlikely to track differences in income and social class. But third, and following from this, there is a seemingly obvious respect in which corporal punishment has the edge over the death penalty. It can be meted out to varying degrees, say five lashes or fifty. Execution, in contrast, is an altogether blunt instrument. So while this could replace prison in only a handful of cases, there is scope, where corporal punishment is concerned, for a wide-ranging overhaul of the penal system.

It has, of course, a further advantage. Even if it isn't reversible—the flogging or mutilation cannot be undone—injustices, where corporal punishment is concerned, can be compensated. So then the pressures which lead to inordinate delays in execution are avoided, and sentencing can be carried out within a reasonable time scale.

One question here: why, given these several downsides, is prison still, and increasingly, the punishment of choice through so much of the world? It has, of course, over both corporal punishment and fines the advantage of delaying any repeated offence. But insofar as this is a concern, many sentences are too long, while others are too short. Perhaps it is just too easily administered. As it is by its nature temporally extended so there is no one time when anything particularly bad happens to someone. And this bad is by most of us unseen. So it is perhaps relatively easy to disguise from ourselves the full import of the harm we are doing, or aiming to do, in issuing long, or life sentences. Imprisoning people better suits the squeamish.

Coma

If I am right to claim that the penal system is unsatisfactory on various fronts—prison has many disadvantages, but corporal punishment is a no-go area, and the objections to the death penalty are considerable, then it is worth asking whether some other forms of punishment might be introduced.

One alternative to the death penalty that might be suggested by those who insist we can never be justified in ending a life is that we should put the criminal into a deep and irreversible coma. Consciousness is altogether ended, but otherwise life functions are monitored and sustained in some quasi-clinical regime until, in the end, the criminal expires of disease or old age. But this at best a pointless innovation—given that it's irreversible it has all the disadvantages of the death penalty where absence of reform and miscarriages of justice are concerned. And in taking from us what is valuable about life—not the mere biological functioning, but consciousness, and personhood—then the irreversible coma is surely as bad as death. It may be seen as worse. Just as many seem to prefer, for themselves and for others, death of the entire organism to death just of the brain, or to surviving in a persistent vegetative state, so too might there be a similar preference—opting for the more, rather than the less natural condition—here. An additional even if lesser point: there will presumably be substantial costs involved in instituting and sustaining the coma regime. But there are no countervailing benefits. It is easier and cheaper to impose the death penalty, in its familiar form.¹³

¹³ The same can be said, surely, of another suggestion, that prisoners might where appropriate be offered some form of 'soft decapitation', or revamped lobotomy, whereby their vicious minds are destroyed, though their bodies remain alive. See Claudio Tamburrini and Torbjörn Tännsjö, "Soft Decapitation," in *Recidivist Punishment: The Philosopher's View*, eds. Claudio Tamburrini and Jesper Ryberg (London: Rowman and Littlefield, 2012).

But suppose we amend this initial suggestion, and ensure the coma is reversible. The criminal can always be restored to consciousness and so made able again to take up his life.¹⁴ Immediately there are advantages. The most obvious is that if it should turn out that there has been a wrongful conviction then he can be brought round from the coma and compensated for time lost. There will be questions, I hope, as to how effective any compensation might be when say, 10 or 15 years of your life have been forfeited, but the difficulty here arises also with imprisonment. Still, as revival is possible, so the risks attendant on a wrongful conviction are reduced. And thus there would be a diminished tendency to avoid what would otherwise be an appropriate sentence, for fear of doing what cannot be undone. Justice would be promoted. Moreover there will, given reversibility, be an impact on the appeals procedure. Just as those receiving a prison sentence begin on this even while an appeal is in process, and don't remain at liberty for the interim, so coma can be induced immediately after sentence is passed.¹⁵ The objectionable business of having prisoners for years or decades on death row, often, as I've argued, with decreasing fittingness for punishment, will be avoided. So again, justice is better served.

There is a second and profoundly important advantage that the reversible coma has over the death penalty, one linked to a pair of concerns that might be raised about ending a life. Thus far I've given, as it will appear, tacit support to the widespread view that death is in all cases the greatest of evils. (Some version of this view is dominant in opposition to the death penalty—no crime, the claim has it, can justify us in exacting so great a punishment). But this view has to go. Someone might think, correctly, that were it not for death we would live forever and, contentiously, that not being immortal is very bad for us. But the issues here have no place in most of our thinking about death's badness, where the concern is with particular instances or tokens of death and so where if this death doesn't occur another death occurs some time, and often only a short time, later. How bad is it to die? This depends, not only but most obviously, on the quantity and quality of life lost. So then given average life spans it is usually considerably worse to die at 25 than at 55, while dying at 95, for those who live that long, is probably not that bad at all. And it can in some cases be good to die, or at least better to die than to live. Any token death takes from us some quantity of life, but this can be of zero or negative quality. Hence the case for euthanasia, or assisted dying.

Death's pickings are, then, highly variable. Thus it is with accidental deaths, with death from illness or disease, and similarly too with death construed as punishment, and brought about as a punishment, by the state. So consider Matt and Nick, equally responsible for some dastardly slaughter. Matt is 25, Nick 45. Both are expected to live to 80. Lawyers believe first that neither of them deserves to die. But they believe also that it is unfair that two people, partners in the same crime yet decades apart in age, should both be given the same terminal sentence. Their guilt is the same, but their consequent losses very different, with Matt suffering by far the greater harm. Coma, as an alternative to death, is of benefit here. Suppose they are each given a twenty year sentence. Matt is

¹⁴ Some have suggested to me, in conversation, that cryonics (supposing this can be developed) is an alternative to this reversible coma. But as the aim here is to arrest rather than allow physical decline this isn't so. Certainly to freeze and later thaw someone will in many cases involve harm—you are deprived of the experiences you wanted and anticipated, and given others, unchosen, in their place—but it is a lesser harm than having fewer experiences overall. The difference is somewhat akin to that between life imprisonment and transportation.

¹⁵ One objection (and we can consider its weight) is that the prisoner cannot in these circumstances be involved in the appeals process.

revived at 45, Nick at 65. Both have many years ahead of them. Whatever else we say, it should, I think, be agreed that in opting instead for coma there is (and as was intended) more equity in these sentences than there would have been had they both been executed.

There is a further benefit to this coma punishment that can be noted here. Not only does it have advantages over the death penalty for the most serious of crimes but, as its duration can be finely controlled, its use might be recommended for lesser crimes also. And here it can be noted how it avoids both the pain-related objections to corporal punishment and, more importantly, several of the downsides to prison. There's no risk of influence or interference from fellow inmates, no need to compensate for inequalities in wealth or income, and, as psychological change is arrested during the coma, no need for concerns about punishment becoming increasingly inappropriate as time passes.¹⁶ There are questions, of course, about equivalences. A week in a coma might well be preferable to a week in jail, just as it might similarly be preferable to the tedium of long haul flights, while for a sentence of, say, five or more years this ranking should probably be inverted.

Elaborations

Imagine there are further culprits. Oliver is 60. Like Matt and Nick, he is given a twenty year sentence. Like them he is expected to, and in fact does, live to 80. So he dies just as he is about to be brought round. Paul, 30, also gets twenty years. Unfortunately he dies at 35, early into the coma. Let's suppose that in one version his poor health is known about, and so this is half expected, while in the other it comes (though of course not to him) as a complete surprise. What should we think about equity in these more complex cases?

We might believe that Oliver suffers more than is appropriate. For, as I've said, coma from which you never recover is effectively the same as death. So, contrary to what was intended, Oliver has in effect been given a death sentence and so treated worse, harmed more, than his fellows. But with Paul we may be tempted in the opposite direction. The court intended to deprive him of twenty years. That, they believed, was the appropriate sentence. In dying earlier he has to a very considerable degree escaped justice. So he's suffered, it seems, a lesser harm than was intended. Obviously, there is some sorting out to do here.

Start with some business left hanging concerning death's badness. I said earlier that this is a function of, but not only of, the quantity and quality of good life lost. What else matters? We might think in broadly hedonist or mental state terms and hold that our interest is in the net sum of pleasures lost. But consider Jane and Judy. Both are killed in a car crash and, given their respective life expectancies, both lose 60 years of what would have been equally good lives. But Jane is a mother and Judy her newly born daughter. Many believe it is much worse for Jane to die as she alone of the two currently has desires for, interests and investments in, plans and projects regarding her future life. Their car hits a van carrying Kathy and Kiera. Both die, and both lose 5 years of good life. But Kathy is 30 and Kiera 80. Kiera's death is less bad, we may think, not because the quality of life ahead is in her case somewhat reduced, but because its quantity is, in relative though not in absolute terms, much lower. In a similar case Lucy and Layla both

¹⁶ I am grateful to Jeff McMahan for urging the making of this point. He has, I should note, further and subtle views about the merits, or otherwise, of coma punishment which will in time be explored in his own work but which I cannot engage with here.

die at 70, both losing 10 years of good life. But for Lucy these years would have been on average better than those preceding, while for Layla they would have been worse. We might think that Lucy's is the greater loss. Or a coma case. Maddy and Mysia both lose a year to a coma during which they'd both have gone deep into Euripides. But on recovery Maddy's interest persists while Mysia moves on to pantomime. Because of the coma Maddy fails, in subsequent years, to benefit as otherwise she would. There could be further examples, but the general point here is that we should distinguish between the intrinsic value of the period lost, and its overall contribution to the value of the life as a whole. And these will only rarely be the same.

Go back now to Oliver and Paul. Should we be tempted to say that Oliver, as he dies just before the coma is over, is more severely punished than Matt and Nick? The intrinsic value of his loss to coma is, let us suppose, the same as theirs, and is undoubtedly the same also whether he dies at 80 or 90. Suppose the four of them were on the run for 5 years. Had they been caught earlier he'd have been comatose from 55 to 75, and then existed in a revived state for the next five years. Would that have been better for him? One thing to note here is that even if we agree that, as things are, what happens to him at 60 is in effect as bad as dying, we can ask, how bad is that, when he will otherwise die at 80? And one not very helpful answer is that it's as bad as being in a coma for the same period. But I can be more helpful. Even granting that death and coma equally eliminate experience, and granting too that the quantity of life available to Oliver is the same, wherever the comatose state is located, we should allow that the overall value of that life might be affected by this location. In some respects coma later might be preferred. Anticipation of coma and anticipation of death are both bad. But if coma starts at 60, and continues until death, then Oliver endures this badness just the once. And the later the coma the less time there is to suffer its negative impacts. Unlike Maddy, Oliver won't miss out on the benefits of lost experience if he will in any event be dead. But now there are further respects that might suggest the earlier coma should be preferred. Suppose the precise nature and timing of death at 80 is unknown. Oliver may prefer this, for his final exit from the world, to the certainty of the coma's onset. Related, coma later entails that this exit occurs in prison conditions, and so is vastly unlike, and inferior to, death with family and friends.

Thus far the focus has been on consequences for experience deriving from the coma's temporal location. But it can be argued that there's more to consider. So, some believe it is worse to be murdered than to die in an accident, even when this makes for no felt difference for the victim. And it might similarly be claimed that a state-imposed death, aimed at punishment, is more harmful than one deriving from natural causes, even if impacts on experience are the same. So then the earlier coma, and thus the clearer separation of punishment from annihilation, might be preferred.

Consider Paul. Should we think that in dying only five years into a twenty year coma, he manages to evade most of his punishment? And should we then think that he suffers a lesser harm than intended, and so believe that justice has been ill-served? Well, it is surely clear, first, that he is overall much worse off, and has a poorer life, than all of Matt, Nick and Oliver. He is harmed, by this combination of legal and natural causes, more than any of them. What the state intended here, that he should be in a coma for twenty years and then recover, has not come to pass, but the actual outcome is far worse. No one will think, I hope, that as plans for punishment are in large part thwarted so then we should seek to inflict further punishment by different means, perhaps by confiscating now his money and property, or, supposing his death was expected, by some addition of flogging or torture before the truncated coma begins. Admittedly Paul could believe, if he knows

of his condition, that he has somehow cheated the system, but we should probably pity here this clutching at straws.¹⁷ And in the variant case, where no one has an inkling of what lies in store, this paltry consolation is unavailable.

What to do? Given an aversion to capital punishment and the deliberate ending of a human life, there are reasons at least to hope that in all cases coma is ended well before death occurs. If either age or a medical condition is likely to frustrate this then there are reasons to end the coma beforehand. So, aware of their situation in advance, the court determines that Oliver will serve, say, eighteen of his twenty years, Paul just three. In the variant case where Paul's condition is initially unknown the court will aim at remedial steps once this is revealed. Such interventions will help ensure we treat like cases alike.

Similar questions about equity and fairness can, of course, be asked about cases where death curtails a prison sentence. Ought we here, also, prefer that someone should, before the end, be released? There are differences. For if the reversible coma isn't intended to be reversed, then it is in effect a death sentence. And granted opposition to capital punishment, this should be disallowed. But intending that someone should remain confined until they die, whether or not this is objectionable, isn't at all to impose upon them either a death sentence or its equivalent. Nor does intention play a decisive role here. To know, or even to suspect, that one will never again walk free, is to have a concern different in kind from one about the ending of all consciousness. And to address the latter is more pressing. So then while, with imprisonment, a case for early release appeals to compassion or mercy, the situation with coma is more squarely concerned with justice.

Summary

I've wanted here to raise a number of questions, first, about the penal system as it stands and, second, about a further form of punishment that might conceivably be introduced. So, why do very many of us accept punishment but not so many accept capital punishment? There are arguments against the death penalty but, I've claimed, they are far from decisive. And why do considerable numbers accept capital punishment but only negligible numbers accept corporal punishment? There is, I've suggested, something deeply puzzling about this. Our tendency strongly to favour imprisonment over forms of punishment that much more directly involve harms to the body is, at bottom, very likely a result more of squeamishness than anything else.

The further suggestion is that we might contemplate artificially induced and reversible comas as an additional form of punishment, and one that has several advantages over both prison and the death penalty. Will we be squeamish about this? Many, I'm sure, will find the suggestion abhorrent. But the familiar objections to killing and hurting are not available here, and it isn't obvious that there is any comparable alternative.¹⁸ Recall

¹⁷ Other cases are different. We might sympathise with those who believe Fred West evaded justice by killing himself before his 1995 trial for multiple murders in Gloucestershire was able to begin. And the distinction here has bearing on an earlier comment. Assume that capital punishment is permitted. Reviving someone simply in order to execute them, when the need for revival is not of their choosing, is distasteful. When, as in a case like West's, their aim is to evade justice, this charge is less easily made.

¹⁸ Further objections can be made, but are, I think, less weighty. Here are three: it is much more difficult to sustain someone in a coma than I imply; it will be difficult to find medical personnel willing to be involved in such procedures; there is a neglect here of reform. I can readily concede the first two points, but the third invites more comment. I've implied already that a clearer separation of punishment and reform might be desirable. But there is room for both. So prisoners might choose a longer coma with no reform, or a shorter coma with a rehabilitation or reform to follow—classes in literacy or (and opportunities for underemployed

too an earlier point. There is no suggestion being made of any like-for-like durational equivalence between prison and coma. But as it is hard to see how suffering even a short coma can be worse than years in jail, so surely if we can ever legitimately lock someone away for decades then there is a coma of some length which, equally legitimately, we might impose as an alternative. Such comas might be reversed, and prisoners revived before death, or they might in some cases be allowed to overlap with death. Even if the result is that some prisoners get less than they deserve I claimed, somewhat tentatively, that we should in all cases try to end coma before death.¹⁹

philosophers) moral education. The idea here—you must choose between A and B, but A is a punishment, B not—is not unfamiliar. You might elect to attend a speed awareness course, rather than pay a fine, after being ticketed. Similarly, though dubious from the outset, and with tragic consequences, chemical castration was offered to Alan Turing as an alternative to his 1952 prison sentence for 'gross indecency'.

¹⁹ I gave a talk on this topic at a conference on death and dying at Syracuse in 2016. Many thanks to organisers and discussants there. I reviewed Derrida's book in the *Times Literary Supplement* (2014). More recently, conversations and communications with John Benson, Carrie Mercier, Andrew Ward, and Lorenza Muller have helped give this paper its current shape. Finally I want to thank the editors of and anonymous referees for the *Journal of Controversial Ideas* for their much needed input. And an especial thanks here to Jeff McMahan for his very careful reading of and detailed comments on every page.