

MANUFACTURED GOODNESS

SEAN HUFF
Georgia State University

The goal of the criminal justice system is twofold: to heal a maladjusted will, and to punish offenders. The pursuit of these goals often come into conflict. Rather than seeing two opposing projects, curing the criminal on one hand and punishing the criminal on the other, we should synthesize these two *prima facie* opposing concepts into a project that allows us to heal the criminally sick while preserving the idea of punishment as “just deserts”. Biomedical moral enhancement makes this possible. Moral enhancement shows promise as a category of neuroenhancement that avoids the conceptual pitfalls that plague biomedical enhancement in general. However, when we talk about forcibly altering the minds of others the issue of abridging autonomy arises. We can harness this harm inherent in altering the minds of others by understanding it as punishment. Thus, we are able to heal and punish at the same time. We heal via biomedical moral enhancement by correcting the maladjusted will that led to the criminal transgression; we punish by stripping away freewill in a degree comparable to the heinousness of the crime.

In section α , I will sketch an operant idea of what moral enhancement, biomedical and otherwise, might look like. Section β will address C. S. Lewis’s distinction between humanitarian and retributive justice and show why they need not be opposed to one another because we can conceive of forced moral enhancement as punishment. Penultimate section δ will address and vanquish a

worry by Vincent regarding our inability to see these newly, forcibly morally enhanced individuals as discrete moral agents worthy of praise or blame. The conclusion will conclude. But first, a necessary axiom to my argument: biomedical moral enhancement must be more effective at reducing recidivism than the punishment norm currently accepted in the criminal justice system. Until this holds, and the advance of neuroscience makes this seem inevitable, there is no good reason to begin medically fiddling with criminal brains.

[α] Moral enhancement is any activity that seeks to improve the moral reasoning or the moral outcomes for an agent. It can be achieved through many different means, some commonplace: parental instruction and social conditioning, and some more esoteric: deep brain stimulation, medications, and other biomedical interventions. The commonplace moral enhancements that we typically see in the world around us mostly fall into the class of indirect moral enhancement. Indirect moral enhancement occurs when a subject is given reasons, such as careful arguments or threat of punishment, and she can choose whether or not these reasons affect what she does (Focquaert 144). The more esoteric moral enhancements that are being addressed in this paper fall under the class of direct moral enhancements. This is when the subject has little to no active choice in how these interventions affect her moral reasoning. All of the biomedical moral enhancements that I will be addressing are direct moral enhancements.

The exact method of biomedical moral enhancement used by the criminal justice system is not vital to the strength of the overall argument (all that matters is its effectiveness), but in order for us to have some common conceptual ground to work from I will borrow the idea of moral enhancement put forth by Douglas in his paper “Moral Enhancement”. Improving the way in which an agent morally reasons is problematically nebulous. In the future, a truly robust method of moral enhancement would likely include improvements in the way an agent parses morally relevant facts as

well as the complex and mysterious moral calculus that properly functioning moral agents engage in when pondering ethical dilemma. With our current understanding of the mind we cannot specify a mechanism for improving moral reasoning in a precise way, but Douglas offers that by attenuating “counter-moral emotions”, such as a predilection toward violent behavior, we could biomedically morally enhance (231). So, if we had a criminal who has a history of violent assault, perhaps we could put device in her brain that would respond to an aggressive impulse by chemically suppressing it.

The criminal justice system is already in the business of moral enhancement, but it is only indirect moral enhancement. A criminal sitting in prison has an autonomous choice in whether she wishes to reform or not. By biomedically intervening, the criminal justice system is removing her choice in the matter, to a degree. The degree to which her autonomy is reduced is a function of the type of direct moral enhancement that the criminal justice system chooses to inflict. Treating a prisoner with selective serotonin reuptake inhibitors (SSRIs) to help them control anger, as Australia is considering (Vincent 26), would impact her autonomy to a lesser degree than a partial lobotomy. Rather than attempting to convince an agent with flawed moral reasoning to change her ways, the criminal justice system should make her change with a direct moral enhancement proportional to weight of the crime. For example, if someone frequently gets into bar fights, perhaps mandatory SSRIs. Whereas if someone serially rapes and tortures children, then we rewire their brain with a knife.

[β] This brave new world where the government directly modifies people’s brains would have famous writer C. S. Lewis looking for a magical wardrobe that allows escape into a land of thinly veiled allegory. In his essay “The Humanitarian Theory of Punishment”, Lewis lays out compelling reasons to be weary of a justice system that seeks to ‘cure’ criminals. He highlights the dichotomy of

humanitarian versus retributive justice. In humanitarian justice, the aim is to ‘cure’ the criminal. In retributive justice, it is to punish. As a consequence of these postulates, in the humanitarian project, justice is in the hands of technocrats and experts because only they know how to properly ‘cure’ a malformed will. Punishment does not matter to the humanitarian, because criminals are merely sick and to punish someone for something outside of their control, such as being sick, is cruel. One of the bedrock ideals enshrined in our constitution’s bill of rights is that when faced with criminal prosecution, we will be judged by a jury of our peers. C. S. Lewis points out that juries can convict or not convict based on their understanding of the likely punishment the accused will face if found guilty (225). By replacing punishment with ‘cure’, justice is removed from the hands of the common man. If we are concerned with ‘cure’, it no longer matters what the criminal deserves by virtue of their crime, only what is effective in changing behavior. We lose the idea of “just deserts” which is preserved in retributive justice.

Despite sounding like a bit of an alarmist, reactionary nut in his essay, C. S. Lewis is correct that retribution is an important concern of the criminal justice system. If biomedical moral enhancement causes us to lose retributive justice entirely, our justice system is impoverished in a worrisome way. Luckily, we can preserve punishment while still attempting to ‘cure’ the malformed wills of criminals. We currently give someone a longer prison sentences for worse crimes, which can be seen as a way reducing someone’s autonomy by physically restraining them. Rather, we could punish by restricting someone’s autonomy mentally, through biomedical moral enhancement, to a degree that correlates with the badness of their crime. C. S. Lewis is correct that the punishment should fit the crime. Under this heuristic, his worry would be ameliorated. Thus, we can be humanitarian in our department, but preserve the concepts of “just desert” and punishment from retributive justice that would inform and limit the severity of our ‘cures’.

[8] So, we just cured a murderer of their evil impulses via direct moral enhancement and have let them back out into the world. If he overcomes his programming and murders yet again is the individual at fault or, as Vincent points out in her article “Restoring Responsibility”, is a manipulated subject no longer a legitimate target of “praise and blame” (33)? Vincent is primarily concerned with the manipulation of a subject’s capacity for moral behavior. However, as she states, “when one person meddles with another’s mind, the former (the “manipulator”) becomes at least partially responsible for what the latter one (the “manipulated subject”) does for at least some period of time afterwards” (33). If this morally reeducated murderer murders again, then, in some sense, the state is at least partially complicit in committing murder. This would be highly problematic for direct moral enhancement as punishment to the point where it would derail the project entirely. To combat this, the state cannot merely fiddle with someone’s wiring and send them on their way.

Since, for a time at least, the state is partially responsible for the ex-con’s behavior, an extensive department that is in charge of re-adjusting the ex-con and re-integrating him into society would be necessary. However, Vincent also calls into question the idea that after manipulation a subject would be able to take responsibility for their new self (34). This taking responsibility for himself would be an important step that would transition the ex-con out of the state’s control and into a position for him to become a discrete moral agent that can once again be praised or blamed for his actions. The way out of this quandary lies in the parallel between the forced programming from the state and the forced programming we undergo as children. As children we are all implanted with values and beliefs in virtue of our environment and biology, neither of which is under our control nor do they depend on our consent. As we, at some point, are considered to eventually be moral agents worthy of praise or blame there must be a mechanism at work inside of our psyche by which we take the values and emotional reactions given/forced onto us and make them our own. In order for the state to no longer be culpable for the actions of the treated murderer, this process of

internalizing and owning values or emotional reactions that have been thrust upon him would have to be made explicit and systematized. This is a tall order, but the authority to mess with someone's mind should not be given out lightly. With this program in place, we can now hold morally enhanced individuals as fully responsible for their actions.

Directly, forcibly morally enhancing criminals as both punishment and treatment may seem frightening to many. Despite my argument, I doubt that C. S. Lewis would be convinced. However, fixing the malformed will that allows for the execution of heinous crimes is already a goal of the criminal justice system. Allowing for biomedical moral enhancement is to make the criminal justice system more effective. The loss of autonomy to which our intuitions object that happens due to these interventions is exactly why it is a good punishment. Punishment should be unsettling. Why not offer the freewill of the most terrible among us as a sacrifice to save the lives of innocents? Important considerations that must remain are that we must retain the idea of the punishment fitting the crime and that we must be able to re-establish a treated individual as responsible for their own actions. Constructing a system that establishes and metes out justice will always be problematic, but we have a duty to future potential victims to make it as robust and effective as possible.

Works Cited

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