

Crime Prevention in a World without Free Will: Derk Pereboom's Quarantine Analogy

by

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Abstract

The purpose of this paper is to evaluate Pereboom's attempt to use his quarantine analogy to justify his theory of crime prevention and the use of preventative detainment in place of punishment. Specifically, I will examine the quality of the analogy drawn between quarantining and preventative detainment and its ability to provide acceptable practical conclusions on the nature of preventative detainment. First, I will argue that the analogy is promising because the two practices share appropriate and relevant similarities. And since the analogy is shown to be promising, I agree with Pereboom that the justification of quarantining can be transferred to preventative detainment. In the second chapter, I will discuss feasible approaches to justifying quarantining. After examining two plausible and contemporary ways of determining when quarantining is just, I will dedicate the third chapter of this paper to applying these justifications to preventative detainment and assess the acceptability of these applications. In doing so, I will discuss the problems that arise when contemporary quarantine justifications are applied to preventative detainment. However, I will argue that these problems are not the result of some flaw in the analogy, but rather stem from a reluctance to accept free will skepticism in general. Thus, if free will skepticism holds, once an appropriate justification of quarantining is found, it can be used to justify the analogous practice of preventative detainment.

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Chapter I: Introduction

The idea that immoral, unacceptable, or illegal actions warrant some form of punishment is widely accepted. Punishment is a concept that is introduced to us as children and looms over us throughout our lives. Whether it is a time-out in response to a tantrum or a life sentence in response to a violent crime, we accept that deplorable actions will be reprimanded. However, arguments denying free will have raised questions about the acceptability of the familiar practice of punishment. I will argue here that free will skepticism provides good reasons for thinking that retributivist punishment is unjust. If free will skepticism is correct and retributivist punishment is unjust, then an alternative response to unacceptable behaviour is needed. Derk Pereboom provides one possible alternative approach to punishment with his theory of crime prevention.

Pereboom's theory of crime prevention replaces punishment with preventative detainment. Instead of distributing suffering in an attempt to seek retribution, Pereboom is proposing that society remove potential criminals from the general public to prevent future harmful actions. To defend this approach, Pereboom must justify this use of preventative detainment. He attempts to do so by arguing that preventative detainment is analogous to quarantining and, therefore, similarly justified.

Quarantining refers the separation or isolation of individuals who are confirmed to be or suspected to be carrying a contagious illness or virus. The aim of quarantining is to prevent the spread of infection from the quarantined individual to other members of society. This separation can be voluntary, but it can also be required by the state and has been applied forcefully to people who do not wish to be quarantined. Since quarantine is

imposed without a person's consent, it is even more important that the practice be sufficiently justified.

The purpose of this paper is to evaluate Pereboom's attempt to justify his theory of crime prevention using this analogy. Specifically, I will examine the quality of the analogy drawn between quarantining and preventative detainment and its ability to provide acceptable practical conclusions on the nature of preventative detainment. First, I will argue that the analogy is promising because the two practices share appropriate and relevant similarities. And since the analogy is shown to be promising, I agree with Pereboom that the justification of quarantining can be transferred to preventative detainment. In the second chapter, I will discuss feasible approaches to justifying quarantining. After examining two plausible and contemporary ways of determining when quarantining is just, I will dedicate the third chapter of this paper to applying these justifications to preventative detainment and assess the acceptability of these applications. In doing so, I will discuss the problems that arise when contemporary quarantine justifications are applied to preventative detainment. However, I will argue that these problems are not the result of some flaw in the analogy, but rather stem from a reluctance to accept free will skepticism in general.

Before evaluating the quality of the quarantine analogy, it is helpful to discuss the reasons for Pereboom's rejection of punishment. Because punishment is widely practiced in North America, its justifications are more familiar than those given for preventative detainment. In North American societies, the threat of punishment motivates citizens to act in accordance with the law and reprimands them when they fail to do so. Although there are some cases where prohibited actions can be excused (for example, in cases of

self-defence), most illegal actions are met with negative consequences. Some common responses to unacceptable acts include “reprimands”, required “apology or restitution”, the infliction of suffering, or isolation (Pereboom, 50). However, a problem arises when the nature of these consequences is considered more carefully.

In many cases, outside of the context of punishment, the treatment an offender receives as punishment would itself be classified as immoral or illegal. For example, holding a person against their will is unlawful. However, it is also a fairly accurate description of imprisonment (a popular form of punishment in North America). Since punishment resembles illegal or immoral practices, it must be sufficiently justified before it can be permitted. One familiar method used to justify punishment is the retributivist approach.

1.1 Retributivism

Although retributivist justifications of punishment play a role in contemporary punitive systems, Pereboom’s theory provides an alternative to this approach and offers a foundation for a legal system which is not dependent on retributivism. For the retributivist, punishment is justified because “wrongdoers deserve to suffer on account of their blameworthy wrongdoing” (Berman, 269). Therefore, retributivist theories justify punishment by arguing that the suffering inflicted on an offender through punishment is justified because the offender *deserves* this suffering.

According to the retributivist, there are certain characteristics of an act that must be present in order for the actor to deserve to be punished. First, the act must qualify as a “wrongdoing”. This means that the act must be a prohibited, illegal, or immoral act.

However, not all actions classified as wrongdoings justify punishment of the actor. The act must also be a *blameworthy* wrongdoing in order for punishment to be deserved.

However, the criterion that makes an action blameworthy is not easily defined. To discover which actions are blameworthy ones, let us consider those wrongdoings that the retributivist does not consider blameworthy.

The retributivist acknowledges that there are some scenarios where the agent is not entirely blameworthy for his or her wrongdoings. These scenarios include “compulsion by another [party],... insanity,... or the existence of circumstances in which the making of any other choice would be morally inadmissible or would be too much to expect of any man” (Strawson, 375). Each of these exceptions describes a situation where an agent’s choice to act has been limited or eliminated. In the case of compulsion, the agent has not chosen to act wrongly. In fact, the agent, since someone else is controlling him or her, is completely incapable of choosing his or her action. For those who suffer from certain mental illnesses, their ability to make well-reasoned choices or to evaluate these choices can be severely limited. Further, the retributivist does not find actions to be blameworthy if every alternative action is also a wrongdoing or demands more from the actor than can be reasonably expected. For example, if a person were put in a position where the only actions available to him or her are limited to becoming an accessory to a crime or refusing to do so at the expense of human life, it would be “too much to expect” that a person would refuse to become an accessory. In cases where there is no permissible or moral action available, the actor who chooses a lesser wrongdoing, to avoid a greater wrongdoing, does not deserve to be punished.

These instances of wrongdoing that avoid blameworthy status are all cases of limited choice. The retributivist holds that the actor's choice to commit the wrongdoing is necessary for the actor to be fully blameworthy. Further, the choice to act must be made freely. If the actor is significantly limited by compulsion, mental illness, or a lack of reasonable alternatives, then the actor cannot be blamed for his or her action. Thus, to consider persons blameworthy for their wrongdoing, they must have freely chosen to act as they did. The retributivist holds that if an actor acts wrongly as a result of his or her restricted freedom, "moral condemnation or punishment [of the agent is] inappropriate" (Strawson, 375). Thus, the retributivist theory of punishment holds that some amount of free choice, and the free will that allows for free choice in general, is necessary for the just use of punishment.

Since the retributivist holds that it is unjust to punish individuals for actions they did not freely choose, when determining if a person can be justly punished, one must determine whether or not the illegal or immoral act was freely chosen. This determination may seem unproblematic to those who consider most offenders to be freely choosing their actions; however the retributivist's general reliance on the existence of free choice and free will leaves almost every blameworthy act vulnerable to arguments from the free will skeptic. Pereboom's theory considers the possibility that the free will skeptic is correct and, in response, attempts to justify his preventative detainment without appealing to free will.¹

¹ An alternative justification for punishment is based in deterrence. Deterrence theory holds that punishment's aim is to prevent or minimize future offenses. This means justification may still be inconsistent with free will skepticism if the punishment applied is still justified, even only in part, by the free choice of the actor. However, it may also be consistent with free will skepticism if the justification of punishment is based purely on the prevention of future offenses. For the purposes of this paper, I will focus on Retributivism because it contrasts Pereboom's position

1.2 Freewill Skepticism

The free will skeptic holds that free will is, at best, an illusion and that all actions are caused by factors outside of an agent's control. If the free will skeptic is correct, no action is the result of a free choice². Therefore, an agent's actions are never blameworthy in the retributivist sense and, as a result, retributivist punishment would never be just. A simple way to avoid concluding that all punishment is unjust is merely to reject free will skepticism. However, there are persuasive reasons for believing that people do not possess free will.

Recent advancements in neuroscience have generated further support for free will skepticism. Growing evidence of the close relationship of the physical/chemical mechanisms of the brain and mental activity (experience, qualia, reasoning, and so on) makes it more plausible to explain mental processes in terms of their physical causes. If our mental activity (such as reasoning and decision-making) is purely the result of chemical changes and neuron activity, then our actions or behaviors are also a result of these physical occurrences.

It is generally held that physical objects adhere to the laws of physics and are part of closed causal chains. For example, if a rock is dropped down the side of a mountain, it will take a particular path downward. The nature of the rock's descent is wholly

nicely. But, if Pereboom's approach is to be pursued, an in-depth examination of the role of deterrence must also be preformed.

² It is not my intention, nor the goal of this paper, to demonstrate that free will skepticism is undeniably correct. However, I do wish to show that the free will skeptic's position is persuasive enough to validate pursuing Pereboom's complementary theory of crime prevention.

³ There are cases where individuals do purposely infect others, cases of HIV infection are a notable example of this; however, these people would be considered to be both carriers and criminals.

⁴ This dependence on public health is not limited to our avoidance of contracting illnesses from

determined by the physical variables that affect it. These variables may include, but are not limited to, the initial trajectory, the terrain encountered, and the physical characteristics of the rock. If one were able to account for each of these variables (which would entail engaging in many types of mathematical considerations), one could calculate and predict the descent of the rock. This is because the rock's path down the hill is determined. If the rock hits the ground at a particular angle, then it can do nothing but move in a particular direction at a particular speed. If that direction causes the rock to land in a pool of mud, it can do nothing but slow, or perhaps even stop, in accordance with the thickness of the mud, its original speed, and the displacement of energy. These features of the rock's descent are not controlled by the rock. The rock, as a wholly physical object, can do nothing but adhere to the laws of physics and will fall in exact accordance with these laws. (Sternburg, 10-37)

If mental occurrences are reducible to or completely caused by the brain, then our choices and reasoning are as determined as the fall of the rock. Since the brain is a physical object, physical laws govern brain activity. Thus, certain environmental inputs and genetic dispositions will result in particular outputs. For example, let us assume that a raised level of dopamine (a physical reaction) results in the experience of happiness (a mental occurrence) and causes a person to draw positive conclusions. Let us also say that positive conclusions and experiencing happiness causes a person to behave in a particular way. If someone has a genetic disposition to create a large amount of dopamine when exposed to sunlight and the person has the input of being exposed to sunlight, then that person will experience happiness, draw positive conclusions, and, thus, behave in a particular way. Therefore, the sunlight causes the spike in dopamine, the dopamine

causes the particular mental activity, and the particular mental activity leads to certain behavioural outputs. This causal chain does not involve any sort of choice or interjection of free will to bring about a particular behaviour. Instead, it is determined by inputs, dispositions, and causal interactions that are not controlled by the actor.

One could argue that this example is overly simplified and has not considered many other possible and significant variables. This is true; there would be numerous inputs, dispositions, and other physical elements that would influence every action an agent performs. However, the free will skeptic holds that all actions are the result of causal chains that have the same nature as the simplified example above. Although neuroscience has not yet advanced to the point of describing every aspect of these complex causal chains, some free will skeptics hold that these advancements will be possible in the future. Further, these advancements will reveal that actions can be traced back to the environmental inputs and genetic dispositions that cause them and these outside factors cannot be within the control of our free volition. These causal chains necessarily obey physical laws that wholly determine our actions, just as in the examples above.

Thus, for the free will skeptic, actions are the result of causal chains that are determined by physical laws and factors that the actor has no control over. Therefore, no actor's actions are freely chosen. If this is true, the blameworthiness that is needed to justify retributivist punishment cannot be achieved, as was discussed in the section on retributivism. Therefore, if free will skepticism is correct, and there are good reasons for thinking it may be, it becomes extremely difficult to justify retributivist aspects of our current punitive system.

Since North American societies currently use punishment to respond to and regulate criminal activity, the rejection of punishment, and the social systems that utilize punishment, seems to risk some kind of anarchy. Without a viable alternative, we are then left with the troubling outcome of a society of people acting immorally or illegally without the option of justly punishing them. This is not an appealing conclusion, nor a very acceptable one. For this reason, many object to free will skepticism on the grounds that “the responses to criminal behaviour [this position] would permit as justified are insufficient for acceptable social policy” (Pereboom, 49). Thus, the free will skeptic needs a social policy that responds to criminal activity in a justified, non-punitive manner.

1.3 Pereboom’s Analogy

Pereboom recognizes the social policy objection to free will skepticism and acknowledges that the position is partially dependent on providing acceptable regulatory systems that do not utilize punishment or depend on free will. It is this “acceptable regulatory system” (Pereboom, 49) which Pereboom seeks in his essay “Free Will Skepticism and Criminal Punishment.” Pereboom’s theory of crime prevention is meant to outline a social system that could minimize criminal activity without punishment. Instead of basing his theory on a need for retributive justice, the motivation for Pereboom’s proposed responses to criminal activity is the prevention of further crime.

To defend his theory of crime prevention, Pereboom must determine which responses to criminal activity are both necessary to prevent future offences and can be justly imposed on non-free agents. Pereboom examines appeals to arguments concerning

self-defence as a plausible means to this sort of justification. However, arguments founded on self-defence risk appealing to justifications that are not compatible with free will skepticism. Therefore, Pereboom asserts that the use of the quarantine analogy is a superior means of justification. This is because the analogy avoids possible free will dependent arguments often used to justify self-defence. However, self-defence arguments are still valuable because they move the discussion of fair treatment from inflicting just suffering on offenders to protecting potential victims.

Pereboom allows that “a right to self-defense and [to] defend others” (68) can be used to justify certain forceful actions against possible offenders. Acts of self-defence are supported by the motivation to prevent injury that cannot be avoided without this force. That said, Pereboom concludes that when self-defence is used to justify responses to criminal activity on a larger scale, “nothing more severe would be required [to protect others] than isolating [offenders] from those [to whom they] pose a threat” (Pereboom, 72). This isolation prevents threatened actions and, therefore, protects society from injury. Any further force or suffering inflicted on the potential criminal could not be classified as self-defence because it may be sufficient but would not be necessary for the protection of others. This is because dividing violent criminals from any potential victims ensures that these victims are not harmed. Thus, since self-defence is based only on the protection against threatened or potential harm and only to the extent needed to prevent this harm, it can justify nothing more severe, although the loss of liberty is quite a loss, than distancing, isolation, or preventative detainment.

Although a right to self-defence could justify his preventative detainment, Pereboom “does not think that the skeptic should aim to justify punishment by appealing

to this [concept], but rather, for the most dangerous criminals, should aim for a policy of detention modeled on quarantine” (69). Pereboom justifies detaining individuals before they commit an offense by appealing to quarantine as opposed to self-defence in part because quarantining does not depend upon blameworthiness or free choice in general. Although self-defence can be consistent with free will skepticism, it is not uncommon to also find retributivist-based arguments to justify inflicting harm in self-defense.

While arguing for punishment as a deterrent, Erin Kelly defends the right to self-defence by appealing to the choice involved. The victim must choose between “two ways of distributing certain harms: she can refrain from resisting the aggressor thereby sparing the aggressor harm while suffering harm herself, or she can resist, thereby saving herself from harm (at least if her resistance is successful) by subjecting the aggressor to harm” (Kelly, 448). Kelly then concludes that the victim is justified in harming the aggressor because the “aggressor has made it the case that [the] victim must make [the previously mentioned] choice [because]... one or the other of them must suffer” (448). Kelly concludes that the aggressor can justly suffer because he or she “has made it the case” (448) that one of two parties must suffer. The offender’s role in creating avoidable suffering determines that it is the offender that ought to bear that suffering.

Although this line of reasoning is interesting, it is not ideal for Pereboom. The argument is dependent on the fact that it is the offender who has “made it the case” that someone must suffer. Kelly’s argument is most compelling if the aggressor has chosen to bring about suffering and the victim’s choice is severely limited by the offender’s threat of harm. However, if the free will skeptic is correct, the aggressor has “made it the case” in a very insignificant way. He has simply been a central part of the causal chain that

leads to the situation. Kelly's argument can be interpreted as suggesting that the offender is to *blame* for the inevitability of someone suffering, as opposed to the victim who is blameless. It is this blameworthiness that could justify the offender's suffering. As has been previously discussed, blameworthiness is dependent on the possession of free will. Without reference to free will, the aggressor's position is as relatively blameless as the potential victim's. For these reasons, Pereboom correctly pursues the quarantine analogy approach to justifying preventative detainment. Pereboom holds that the quarantine analogy captures the right to protect oneself and others by focusing on "the protection of society" (Pereboom, 72) as a whole.

1.4 The Foundation of Pereboom's Quarantine Analogy

Although Pereboom holds that the quarantine analogy is the ideal way to justify and limit the use of preventative detainment, his discussion of the relevant similarities between quarantine and preventative detainment, on which this analogy is founded, is limited. There are three significant relevant similarities between individuals who are justly quarantined and those who would be preventatively detained. The presence of these similarities allows for a strong analogy to be made between the two practices. The first similarity is that both parties pose a threat to those around them and society in general. Second, in each case the potentially detained individual cannot avoid harming others without the interference of some restrictive measure. Lastly, and closely related to the previous point, neither detainee can be held "responsible in a basic desert sense" (Pereboom, 72) for the harm he or she may cause to others.

Both the carriers of disease and potential criminals pose a threat to those around them. Without quarantining, those individuals infected with a harmful and highly contagious disease may infect many other people around them. In some cases, the harms caused by these infections could be severe (for example, causing excessive pain, long-term suffering, and even death). In the case of airborne illnesses, where close quarters can be sufficient for infection, a great number of people could be potentially infected if the carrier is not somehow contained. Therefore, certain carriers pose a significant threat to those who are vulnerable to infection.

Pereboom's preventative detainment is primarily meant for criminal offenders who will commit violent crimes. Although individuals who violate traffic regulations or copyright policies are negatively impacting others, these sorts of wrongdoings do not cause the same sorts of intolerable harms as violent crimes. Like carriers of infection, future violent offenders risk causing severe injury and, in some cases, death to those around them. Thus, both violent criminals and disease carriers threaten the public safety and health.

The second similarity on which the analogy is based is that the damage caused by carriers and criminals is unavoidable without the use of separation or isolation. Although it may be easy to see how carriers cannot help infecting others, it is more difficult to argue that criminals cannot avoid harming others without the use of preventative detainment. Before Pereboom's essay, Michael Corrado discussed the central problem with assuming that these two practices are similar in this way.

In his essay "Punishment, Quarantining, and Preventative Detainment", Corrado discusses the control that the carrier and the criminal have over the harm they cause. In

the case of the carrier, Corrado concedes that detainment is appropriate “[t]o the extent to which it is not within the power of the diseased person to avoid harming others if [he or] she remains free” (10). Thus, quarantining those with airborne viruses seems to be appropriately just. This is because it is almost impossible for a person to avoid infecting others when the sharing of air is sufficient for spreading the infection. A plausible way of controlling the use and distribution of air would be by containing the carrier through quarantining. Thus, Corrado acknowledges that quarantining is sometimes appropriate and essential to avoiding the infection of others. However, he is not so easily convinced that the same can be said of preventative detainment.

A central objection to the analogy between detainment preventing the spread of disease and detainment preventing violent crimes is that only carriers lack the intention and choice to harm others. The argument is that, in contrast to carriers, criminals have acted to harm those around them even though they could have done otherwise. Corrado adopts the view that criminals, unlike carriers, are always able to avoid harming people by making a choice to act differently. He expresses the argument that, unlike preventative criminal detainment, “the communication of the disease that quarantine aims at preventing will not be due to any culpable act of the diseased person” (Corrado, 4). In contrast, he asserts that the rational criminal is responsible for his actions. This is because he holds that the criminal always could have chosen to act otherwise. By suggesting this fundamental difference between carriers and criminals, Corrado is expressing a common objection to Pereboom’s crime prevention theory. However, it is an objection that Pereboom is both aware of and actively avoids.

Since Pereboom is functioning under the premise that agents do not possess free will, the harm caused by criminal activity is the result of inevitable causal chains in which the offender is simply a reactive object. Thus, for Pereboom, the criminal cannot avoid acting as he does, without some kind of interference just as carriers cannot avoid infecting others with an illness. Individuals do not choose to become contagious carriers. Nor do most carriers actively choose to infect those around them³. Similarly, the free will skeptic holds that persons are driven to criminal behaviours due to genetic disposition, environment, and other similar factors all of which are outside of their control. Thus, those individuals who have a sufficient combination disposition and situation will be caused to commit some crime or harm to others. For Pereboom, interfering with the causal chain, in the form of preventative detainment, is one of the only ways to avoid these criminal or immoral actions. Preventative detainment is essential for preventing harms because it eliminates the environment needed to commit the crime that the offender is disposed to commit. Thus, both the carrier and the criminal cannot simply choose to avoid harming others. For Pereboom, interference in the causal chain, most likely in the form of preventative detainment, is the only way to avoid these criminal or immoral acts.

Without carriers or criminals freely choosing to act and infect, Pereboom does not find these agents to be “responsible in the sense of desert” (73) or responsibility based on blameworthiness. Corrado, in order to categorize their actions as “culpable”, attributes the responsibility necessary for just desert to criminal individuals. Corrado does not find carriers of infection to be blameworthy in the same sense. Yet, he does find infected

³ There are cases where individuals do purposely infect others, cases of HIV infection are a notable example of this; however, these people would be considered to be both carriers and criminals.

individuals who do not fulfill their obligation to avoid harming others to be guilty of “reckless endangerment”. However, Corrado asserts that carriers “who do not presently intend to harm... even if they are certain to harm in the future, are not presently blameworthy in a way that would support punishment” (10). For Pereboom, difference in intention does not make carriers distinct from potential criminals in terms of blameworthiness. Instead, intention would serve only as an indication of the amount of rehabilitation or change in environmental input that is needed to change the individual’s behaviours. Pereboom does not find the difference in intention to merit a significant difference in treatment for the carrier and the criminal because the free will skeptic does not recognize intentions, or the actions that follow them, as being freely formed or willed. Since both the carrier and the criminal are equally determined under Pereboom’s view, they both equally lack proper responsibility. Thus, they should receive similarly motivated and justified responses.

In Michael Davis’ response to Corrado’s essay, he agrees with Pereboom and concludes, “quarantine [only importantly] differs from preventive detention in what it is supposed to protect others from” (14). Both forms of separation protect society from harm; preventative detention protects society from harm caused by violence and other such criminal offenses, while quarantine protects against the harm of infection. I agree with Pereboom, and Davis, that this difference in the kind of harm is not a relevant difference to be used in the evaluation of the analogy (Davis, 14). This is because both severe illness and violence can cause similar negative effects on a person (physical pain, permanent bodily damage, decreased quality of life, death, etcetera) and, because of this, are roughly parallel in their need to be avoided. The three previously mentioned

similarities are relevant and give convincing reasons for accepting that quarantine and preventative detainment are analogous in the this context.

Since there are persuasive reasons for believing that quarantine and preventative detainment are relevantly similar and therefore analogous, Pereboom's conclusion that the justification for quarantine can also justify preventative detainment is fair. Since quarantining is tolerable in our current society, and believed to be just in some cases, Pereboom wishes to transfer this justification to the preventative detainment of potential criminals. However, the theory's dependence on the quarantine analogy merely shifts the need to justify Pereboom's preventative detainment to the need to justify quarantine. Pereboom asserts that quarantines are justified by "the protection of society" (73), and, thus, so are the detainments of actual and potential criminal offenders that prevent future crimes. This may be partially true; however, recent discussion in biomedical ethics concerning the moral status of quarantining suggests that this mode of justification may be problematic. In the next Chapter, I will discuss two potential approaches to justifying quarantine and then will apply these justifications to Pereboom's theory of crime prevention.

Chapter II: The Justification of Quarantine

2.1 Introduction

In the previous chapter, the analogy between preventative detainment and quarantine was shown to be a promising analogy due to the practices' similar relation to free will and, therefore, punishment. Pereboom argues that the strength of this analogy gives good reasons for concluding that the justification of quarantine can be used to justify detainment. However, Pereboom does not sufficiently discuss or apply the justification of quarantine in order to defend preventative detainment. Thus, his theory is dependent on some means of justification that he does not discuss in depth. Pereboom has only adequately concluded that the justification of quarantine, whatever it may be, can also be used to justify preventative detainment.

A possible explanation for Pereboom not including a in-depth justification of quarantine in his previously mentioned essay, aside from the fact that he must limit his paper in some way, is that the analogy with quarantine, whether the practice is just or not, immediately accomplishes two things for Pereboom. Unlike preventative detainment, quarantine is a form of seclusion that is currently used in many societies, most relevantly in North America. The analogy associates the unfamiliar practice of non-punitive criminal detainment with the fairly well known practice of quarantining. Pereboom's crime prevention model is extremely different from contemporary North American legal systems and, as result, is hard to accept on those grounds alone. In contrast, quarantining is a restrictive measure that is used somewhat regularly in Canada and the United States. By showing the two practices to be relevantly similar, Pereboom is able to express to his readers that preventative detainment is not as outrageous and foreign a concept as it may

at first appear. Although the transference of familiarity puts preventative detainment into the realm of acceptability, it does not show that preventative detainment is truly justified.

The second thing directly accomplished by showing that preventative detainment is analogous to quarantining, regardless of its justification, is the transference of the socially acceptable status of some forms of quarantining. Although Pereboom does not provide a direct justification for quarantining which can be used to justify preventative detainment, the reader is assumed to be aware that quarantining is permitted in many cases in North America. Since quarantining and preventative detainment are analogous, preventative detainment should share this status. Thus, without providing actual justifications, Pereboom has already given good reason for thinking that preventative detainment, like quarantine, is not a completely foreign idea or *prima facie* unacceptable. Rather, it is something that is relevantly similar to practices already considered, at the very least, tolerable in North America.

Although the analogy helps Pereboom's readers to entertain the idea of preventative detainment without showing the practice to be just, a sufficient justification of quarantining is needed to show that these practices are not only perhaps acceptable, but are justified. While there are many cases where quarantining has been and is being used globally, the morality and legality of these cases are constantly debated. Neither the familiarity nor the common usage of quarantine establishes it as a just practice. Thus, the transference of these features via the analogy does not show preventative detainment to be just. For Pereboom to truly justify preventative detainment through his analogy, a sufficient justification of quarantine is needed. It is this justification that I will seek in the following chapter. I will examine two approaches to justifying quarantining that I

find to be the most plausible means of determining when quarantining is justified. If either of these approaches is successful in defending quarantine, then they ought to justify the analogous practice of preventative detainment.

Central to the problem of justifying quarantining is balancing the maximization of those things that we value, or that benefit us, and the minimization of those things that affect our lives negatively, or burden us. In the case of quarantining, the benefit of possessing individual rights and liberties conflicts with minimizing the burden brought on by the spread of disease. Individuals tend to value both the protection of public health, which is the result of limiting the burden of disease, and the preservation of their rights and liberties. Good public health is valuable for many reasons: it helps to ensure each person's own good health, lessens the general threat of infection, and allows us to maintain our usual quality of life. This is because the health and quality of life of each individual is, at least in part, dependent on public health in general⁴.

Similarly, rights and liberties are valuable because they provide the ability to shape one's life free of unnecessary or unreasonable external constraints. There is value in at least feeling as though we determine our own movements and actions. Because each of these interests has value, there must be good reasons for sacrificing one in order to preserve the other.

Quarantining is controversial because it limits the liberties of an individual in order to protect the public and reduce the spread of disease. When a person is quarantined, his or her movements, choices, and actions are significantly restricted.

⁴ This dependence on public health is not limited to our avoidance of contracting illnesses from others. It is also our dependence on the ability of other members of our society to fulfill their roles. We each depend on those who work to provide us with food, electricity, fuel, medical attention, protection, and so on. In order for us to maintain the quality of our lives, we need these people to be healthy enough to continue providing these services.

Thus, he or she is not able to control the shape his or her own life to the same extent as those persons that are not quarantined. However, if infected people are allowed to travel freely, they could affect a large number of people negatively. Therefore, the justification of quarantine must provide a way to determine when and to what extent it is just to reduce a person's liberties in order to minimize a certain amount of "disease burden" (Selgelid, 16) felt by the public.

A common approach to balancing the sacrifices of the individual and the threat to the public would be a consequentialist approach. This would involve evaluating the consequences of an infected person's free movements and comparing them to the consequences of that person's detainment. Under this approach, whatever extent of individual freedom or captivity brings about the best consequences is the moral action. However, I will not be considering single-variable consequentialism approaches because they involve reducing variables (such as the possession of liberty or the burden of disease) to some common comparable measurement (such as happiness, harm, and so on). I hold that there are things, such as autonomy, human life, and human rights, which are not reducible and carry a unique status. Nevertheless, arguing for this point is beyond the scope of this paper. Instead, I will be offering what I have found to be the two most promising justifications of quarantining that align with this conclusion.

2.2 Burden-Benefit Balancing Approach

In his essay "Ethics, Tuberculosis and Globalization", Michael J. Selgelid proposes that individual instances of "coercive social distancing" (15) are justified by balancing "the promotion of public health and the protection of individual liberties" (15).

For Selgelid, the benefit of promoting of public health is achieved by reducing the burden caused by the spread of disease. Thus, I will refer to Selgelid's approach as the "burden-benefit balancing approach". This approach determines if quarantining can be justly used in a particular instance by determining if the burden of disease and affect on the benefit of public health outweighs the benefit of individual liberties and relative human rights.

Although Selgelid does consider the consequences of quarantining to determine the amount of burden caused by the spread of disease, he does not merely consider consequences or depend on reducing liberty to something else in order to determine the benefit of individual liberties. Instead, he holds that the burden and the benefit can be compared without reduction. Therefore, the burden-benefit balancing approach at very least attempts to avoid the problem with single-variable consequentialism.

Although this approach is viable, there is much work to be done before it can be used to determine when and to what extent quarantining is justified. First, neither liberty nor disease burden obviously outweighs the other. Second, a way of determining the precise amount of disease burden caused by an infected person's free movements is not currently available. And lastly, the amount of disease burden that outweighs individual liberty is not yet determined, nor is a means to calculate it. While these problems must be solved before a complete justification of quarantine can be given, this approach has the potential to eventually provide this justification.

If it were always true that any degree of liberty or any amount of disease burden always outweighed any amount of the other, the justification of quarantining would be simple. If liberty and the promotion of public health were so disproportionate in their value or importance, then quarantining would be just, according to the burden-benefit

balancing approach, as long as it maximized the more essential of the two. For example, if avoiding any negative affect on public health were always considered more important than a person's liberty, then quarantining would almost always be permissible. However, neither liberty nor public health seems to obviously outweigh the other in every case.

Selgelid agrees, "neither [public health nor individual liberties] should be given absolute priority over the other" (15). Examining past and current social responses to different types of possible outbreaks shows that North American governments have also come to this conclusion. While I do not wish to assert that North American policies necessarily reflect justified or moral conclusions, I do think they are a good representation of public intuitions on a subject. The fact that North American societies do not consistently value decreasing disease burdens over maximizing individual benefits, or *vice versa*, gives, at very least, a reason to seek out further evidence of when to value one over the other.

There are circumstances where we prioritize public health over the rights and liberties of the individual. For example, in 2003, quarantining took place in Toronto, Canada in order to contain an outbreak of severe acute respiratory syndrome (SARS) ("Frequently Asked Questions", Center for Disease Control). The rights and liberties of individuals were suspended or limited to prevent the virus from spreading to other members of the general public. Thus, there are some cases where North American society prioritizes public health over individual liberties. In contrast, mass quarantining is not currently used to protect against the spread of the common cold virus. There are also cases where a threat to public health does not outweigh personal liberty and result in quarantining. Therefore, current practices reflect the belief that neither the protection of

public health nor the preservation of individual liberties consistently outweighs the other. Since there are cases where North American societies act as if public health is more important than individual liberties and others where they do not, there ought to be good reasons for treating each different cases differently. Since these good reasons determine when it is just to use quarantining and when it is not, these reasons must be related to justifying quarantine in general. The burden-benefit balancing approach concludes that if the benefit of quarantining properly outweighs the burden it causes, then that balance of benefit and burden gives sufficient reason for its use.

Selgelid concludes that the “key philosophical question” (16) needing to be answered when determining the just use of quarantine is, “what amount of disease burden is sufficient to outweigh individual liberties and rights”. He communicates this point as follows:

Imagine that the free movement of a patient in a particular condition would on average lead to disease burden X in the context under consideration. How great would X need to be for detention of an individual for a given period of time to be justified? (Selgelid, 16)

Selgelid is asserting that some amount “X” of disease burden brought about by the free movements of a carrier with a particular disease is sufficient to outweigh personal freedom. This burden would take into consideration the suffering of those who are infected, the damage to society as a whole because of the decrease in general health, and other similar concerns. In order for the individual to be justly quarantined, that X amount of burden must be sufficient to outweigh the individual’s loss of liberty. In order to justify quarantining in this way, the amount X, the amount of public burden that outweighs the limitation to liberty, must be determined. Thus, for Selgelid, the problem

of justifying quarantining is reduced to that of determining what amount of disease burden outweighs the liberty of those quarantined.

Selgelid's benefit-burden-balancing proposal can be used to justify our current usage of quarantining. As has been mentioned previously, quarantining has been used to contain potential SARS carriers; however, it is not widely used to contain common cold carriers. Thus, if this different treatment is just and the benefit-burden balancing approach viable, then the disease burden in these two cases must vary significantly. The truth of this conclusion can be shown when we consider the different features of the two illnesses.

One feature of SARS, that accounts in part for the use of quarantining, is the highly contagious nature of the virus. SARS is transmitted through "close person-to-person contact" and it is suspected that some strains "may be transmitted more broadly through the air" ("Frequently Asked Questions", Center for Disease Control). This highly contagious nature would indicate that the disease burden brought about by the virus would be fairly large if the carriers were not contained because many people would be infected. Quarantining attempts to stop the spread of infection by restricting the carriers' exposure to those around them. If this exposure did not result in the spread of infection, then there would be little motivation to separate the individual because doing so would not decrease the burden. Thus, the contagious nature of the SARS virus is related to our current use of quarantine. Further, this relation could be justified by the fact that contagiousness increases the total disease burden.

However, although the highly contagious nature of SARS played a large role in the decision to use quarantining and increases the total disease burden of the virus, the

contagiousness of a virus does not and ought not to always determine the use of quarantining as a response. First, some highly contagious infections can be almost completely contained by the carrier without the use of quarantining. For example, carriers of the Human Immunodeficiency Virus (HIV) are not typically quarantined. Although this virus is both very contagious and potentially lethal if contracted, HIV can be almost completely contained through behaviour modification. This is because the virus is only transmitted through the exchange of certain bodily fluids. HIV is most commonly contracted through sexual intercourse or the sharing of medical instruments. Since the spread of infection is primarily limited to certain behaviours, a person could significantly reduce the spread of infection by avoiding or regulating those behaviours. Thus, that a virus is highly contagious is not a sufficient reason for quarantining in our current practices. This can also be justified by the burden-benefit balancing approach because the ability to lessen the spread of infection through behaviour modification lessens the disease burden brought about by a person's free movement.

Thus, the mode of transmission of a virus or disease would also be a variable considered when calculating the total disease burden. SARS required quarantining because the spread of infection from a carrier to other individuals was not easily limited. This is because the virus is transmitted through close contact and, possibly, through the air. Limiting one's close contact with others and exchanges of air is nearly impossible without the use of quarantine or separation. Thus, our current practices suggest that if the carrier does not need to be quarantined to avoid infecting others, then quarantining need not be implemented. This conclusion is consistent with the burden-benefit approach.

Thus, although both SARS and HIV are highly contagious, they do not both occasions the use of quarantining.

Under our current practices, although the motivation to limit the spread infection seems to be a necessary criterion for quarantining to be used in our current practices and under the burden-benefit approach, it is not sufficient for its use. In both the case of SARS and that of the common cold virus, there is a very high chance of the infection spreading from one person to another. Similar to SARS, the common cold is spread to “others through the air and close personal contact” (“Common Cold”, Center for Disease Control). The cold virus is so often caught that it is estimated that the average adult will contract it 2-3 times per year (“Common Cold”, Center for Disease Control). Although the cold virus is contagious to at least the same extent and transmitted similarly to the SARS virus, carriers of the cold virus are rarely quarantined. Thus, there must be some other feature of the SARS virus that brings about the use of quarantining.

The central difference between the cold and the SARS virus is the severity of their effects on their carriers. Although it is true that the average adult catches the cold virus a few times per year, a very small percentage of the many infected suffer permanent damage as a result, or even require formal medical attention at all. The symptoms of a cold, such as “sore throat, runny nose, coughing, sneezing” (“Common Cold”, Center for Disease Control) and so on, are rarely life-threatening and can be described as inconvenient and uncomfortable as opposed to crippling and insufferable. The cold virus is usually overcome in about seven to ten days and leaves little permanent damage. In contrast, during the worldwide SARS outbreak, thousands of people required medical attention and hundreds of people died (“Frequently Asked Questions”, Center for Disease

Control). It is the amount of damage that the virus causes that dictates the extent of quarantining in North America. Thus, because contracting SARS can have severe effects, societies have responded with quarantining. In contrast, those with the common cold virus are not quarantined because the effects are usually much less severe.

These different reactions to the common cold and the SARS virus can also be justified by the burden-benefit balancing approach. This is because severity of the effects caused by the disease would be another variable that must be considered when calculating that disease's total burden. Because the effects of the common cold are less severe, the amount X of disease burden that it brings about would also be less.

By examining the common practices of North American societies concerning quarantining, some features of a virus that may account in part for the current use of quarantining have been shown. It has also been shown that the burden-benefit balancing approach may come to similar conclusions on the use of quarantining. Although current uses of quarantining do not necessarily need to parallel the just use of quarantining, this alignment shows that the approach is capable of drawing conclusions which our society already deems acceptable. This does not prove that this approach is ideal; however, its alignment with our past conclusions on quarantining is less problematic than if it contrasted with them.

Also, this discussion of past usages of quarantining has also exposed features of a virus or disease that would be taken into account when determining the burden brought about by a particular disease. However, these previously discussed cases of quarantining did not involve specifying the precise amount of disease burden X . The severe cases of lethal and airborne infection *seemed* to demand quarantining because our current society

holds that the freedom benefit of the individual, whatever exact weight that benefit holds, is less than the burden of mass suffering and loss of life. However, our current practices that raise the most public opposition (such as the quarantining of potential carriers as opposed to confirmed carriers and carriers who fail to completely modify their behaviour when modification is necessary) are also scenarios that pose the biggest problems for Selgelid's approach. These are the cases where the amount of disease burden is not so easily estimated to be extensive and cases where the burden is especially difficult to measure. These cases require a more precise value of X because the amount of disease burden placed on the public may not outweigh the liberty of individuals.

In order to determine the precise amount of sufficient burden, Selgelid concludes that further "epidemiological research" (16) must be done. I agree that further research on the disease burden that the free movements of a particular carrier causes could help give a more specific idea of amount X. However, it is doubtful that a sufficient amount of research could be done in the near future. There are many complex variables involved in calculating X that vary with each particular case. In the case of the HIV carrier, in order to determine X, one would have to consider the amount of accidental risk, the ability of the person to modify his or her behaviours, the extent of damage caused by the potential infection, the person's likelihood of consistently modifying behaviour, and many other similar factors. These considerations would be difficult to account for completely, but could possibly be calculated if our current research increased and advanced to the necessary extent.

Although it is possible that these factors may determine the extent of burden placed upon the public, they cannot determine the amount of burden that is sufficient to

outweigh the loss of liberty. In order to do that, the amount of benefit provided by the possession of individual liberty as well as the extent of that benefit would have to be calculated. Thus, it is essential to Selgelid's argument that a person's rights and liberties are comparable to the burdens inflicted on the public by infection. Losing the ability to shape one's life free of extensive external constraints is a very different sort of loss than enduring physical discomfort, pain, or even losing one's life. But, these are the sorts of things that must be compared in order to draw a conclusion using Selgelid's approach. It will be necessary to compare results such as a thousand people having a nonfatal cough for a few days and several people losing a substantial amount of their freedom for a few days. To compare these sorts of public burdens and the individual's loss of liberty, there may need to be some kind of common measurement. By classifying these unique concepts into burdens and benefits, Selgelid does not avoid this need. This still requires determining the amount of burden or benefit attached to each concept. Also, benefit and burden must be judged to be equal or comparable values in some way.

Selgelid's theory, although problematic, accounts fairly well for extreme cases. The severe case of lethal and airborne infection is more easily compared to losing one's freedom because a loss of life in a way is a loss of freedom (in the sense that a loss of life is the loss of one's liberty to shape that life). If the freedom of one person is equal to the freedom of another, then the inevitable death, and resulting loss of freedom, of many outweighs the freedom of one. It is more difficult to use the theory when the burden is not as absolute. In the case of the HIV carrier, we must conclude whether the smaller risk of accidental infection⁵ is a greater burden than the loss of one's freedom. If, as in

⁵ Accidental infections would be those that involve the unintentional exchange of bodily fluids. Some commonly mentioned cases of accidental infection include instances where a medical profession is

the case of the fatal airborne infection, it were inevitable that, even with behavioural modification, one person would contract HIV through accidental contact with any HIV carrier that remains “free moving” (Selgelid, 16), then it may outweigh that carrier’s restricted freedom. However, there is no way of currently determining whether more than one person will be accidentally infected or if no person will be infected at all. Accidental infections of the sort previously mentioned are relatively rare, but they do occur. In these cases, not only is a specific value of personal freedom needed, but there is also a need account for the probability of infection and the total risk involved.

Therefore, Selgelid provides a plausible means for justifying the use of quarantine that conveniently aligns with some current usages. He also correctly identifies the need to discover the amount of public burden that outweighs limiting a person’s freedom and infringing upon that person’s rights. If quarantining creates benefits that outweigh the resulting burdens, then quarantining is just. This approach avoids the problem of necessarily requiring all considerations to be reduced to a single measurable and ultimately valuable element. Instead, Selgelid holds that individual liberty can simply be deemed a benefit; it does not need to be reduced to the amount of happiness or harm it provides. Similarly, the loss of liberty is a burden and does not need to be outweighed by the measurement of happiness or harm brought about by an increase in public health. However, discovering the amount of burden proves to be extremely difficult because without reducing it to a common measurement requires comparing two things that are problematically unique. This is not to say that this approach will not every be able to

pricked by a syringe that was used on a HIV positive patient or when an HIV carrier is injured in a close proximity to other injured persons and blood is inadvertently exchanged.

yield a plausible amount X of disease burden. I merely wish to express the problems that must be overcome in order for this approach to be practically useful.

2.3 The Reciprocity Approach

A potentially fruitful alternative to the burden-benefit balancing approach is the reciprocity approach. In the essay “Your Liberty or Your Life: Reciprocity in the Use of Restrictive Measures in the Context of Contagion”, A. M. Viens *et al* present reciprocity as a basis for determining when it is just to use quarantine. The principle of reciprocity “requires that one return the good one has received, or [that one] respond to harms preformed, in a fitting manner” (Viens, 10). This means that if an individual, or group, has received some good, then they are obligated to return that good in a sufficient way. Unlike the burden-benefit balancing approach, this approach does not require large-scale accurate predictions about the future effects of a person’s free movements. Neither does it rely on reducing complex variables to a unit of measurement in order to make accurate comparisons. However, this approach is not without its own set of problems and, although it provides a compelling alternative to the burden- benefit balancing approach, is not obviously superior.

Viens holds that if the act of quarantining is consistent with the principle of reciprocity, then the act of quarantining is justified. The principle of reciprocity requires that each person “return the good [they have] received” (Viens *et al.*, 10). In the case of quarantining, one significant good that citizens receive is increased protection against contracting dangerous and contagious illnesses. This protection is given, in part, by reducing the spread of these illnesses by having individuals quarantine themselves when

they become carriers of diseases of this type. Because the spread of infection has been lessened by past uses of quarantining, reciprocity demands that those who have received the good of increased protection against these illnesses return this good. The two central ways of returning this good sufficiently are by compensating those people who have been quarantined directly and by returning the general protection through lowering the risk of infection for those around them.

Those individuals who are quarantined ought to be compensated in order to return the good of protection and increased health which they have contributed. Reciprocity dictates not only that those infected individuals “should not be overly burdened by measures to protect public health, but also that individuals are supported in a way that allows them to fulfill their obligations.” (Viens *et al*, 212). By compensating individuals for the time spent in quarantine, individuals are able to fulfill their obligation to be quarantined while maintaining a basic quality of life. Thus, they are encouraged to seek out quarantine when needed and supported as they meet their obligation.

Further, protection against severe infection allows the general public to experience a greater, or simply maintain their current, quality of life. Contracting severe illnesses causes a person to experience unpleasant, painful, or perhaps even lethal effects. Also, an increased threat causes a constant fear of contracting an illness with these effects. Both the direct negative effects of being ill and this constant fear of contracting illness lower a person’s quality of life. These effects lower their quality of life. Thus, a certain quality of life is achieved as a result of others being quarantined and this good must be returned through increasing the quality of life experienced by the infected person while being quarantined (and perhaps even after quarantine). Some suggested ways to

return the good contributed by the quarantined person presented by Veins and his co-authors include “compensation for missed work”, “access to food and other necessities”, and access to information such as “the expected duration of restriction” (212). By providing these compensations, the protected members of society are returning the good provided a certain quality of life.

Since each person has been given the good of protection against infectious diseases, each person must return this good by being quarantined when failing to quarantine themselves risks failing to return the good. Thus, when people become infected with a severe contagious illness, they have an obligation to quarantine themselves. However, a problem arises when determining whether the good of protection has been sufficiently received, and therefore must be returned.

If a person has contracted a contagious illness from someone else, who perhaps ought to have quarantined themselves but failed to do so, it would seem that the newly infected person has not received the good of protection against severe infections. If this is true, then the newly infected person has not received the good of protection and, therefore, does not have an obligation to return this good by being quarantined. Even more troubling, if the state is justified in imposing quarantine only when a person has failed to meet his or her obligation (which will be discussed later on in this section), the state cannot justly impose quarantine on the newly infected person. Thus, the infected person can remain free, despite the damage which his or her freedom would cause.

Although troubling, the problem of the newly infected person does not make the reciprocity approach ineffective. The newly infected person may not have received direct protection against contracting severe illnesses, however, this person has received other

forms of good brought about by the continual quarantining of the sick. Before becoming severely ill, this person may have lived for many years without infection as a result of past quarantining. Also, his or her loved ones may have not been infected because of the good that quarantining of others has provided. And on a larger scale, the infected person has received the good of a society which is not plagued by ramped contagious illnesses. A functioning society depends on a certain level of public health that cannot be achieved when severe contagious infections spread freely. Unrestricted crippling disease would affect critical services, such as medical attention, food provision, and security, which are dependent on an able work force. Thus, the person who has become infected may not have received the good of protection from infection; however, her or she has received many other goods as a result of the limiting the spread of infection through the use of quarantining. Thus, the infected person still has a good which he or she must return by quarantining themselves, or allowing themselves to be quarantined, once infected.

This idea of returning distinct goods draws attention to a central problem with the principle of reciprocity. The idea of “the good” is ambiguous. Although this ambiguity is necessary for the principle to be applied to a wide range of circumstances, the vagueness of the term becomes problematic when deciding what must be returned when the good is given. I have discussed justifying aspects of quarantining by returning the same good that has been received. Compensation is justified by returning the good of a basic quality of life and quarantining the infected by returning the good of protection of loved ones as well as past protection. However, it must be determined whether the good returned must be the same good which was given or whether some good of equal value is acceptable. In the following section, I will discuss both possibilities and their relation to

possible moral foundations for the principle. However, I will also discuss the problem that arises for the reciprocity approach when distinct goods of equal value are used in place of identical good.

That being said, people must provide others with some good related to the protection from severe infection, which they have received, by quarantining themselves when failing to do so would risk infecting others or failing to return any received good. This means that when people become infected with a virus or disease of a certain severity, they have an obligation, derived from the reciprocity principle, to be quarantined. However, the reciprocity principle must also be applied to the actions of the state in order to determine when quarantining can be justly, and perhaps forcefully, imposed by the state.

Viens holds that the state has a “fundamental obligation” (208) to “protect[] the public from communicable diseases” (208). This obligation is important because it justifies the state’s responses to individuals who fail to meet their obligations to be quarantined. When infectious carriers fail to quarantine themselves and, in doing so, fail to return the good, it is necessary that the state be able to justly impose quarantine in order to ensure that those others who have given the good, receive it. This fundamental obligation can be drawn from the reciprocity principle in two ways, by applying to the reciprocity principle directly to the state or by arguing that the state is justified as an external enforcer of the principle.

The reciprocity principle can be directly applied to the state if the state is considered a kind of entity. If the state is the sort of thing that can receive good, then the principle dictates that it has an obligation to return that good. However, applying the

principle to an entity like the state is difficult because it requires that the way in which the state can be considered an entity must first be defined. It must be specified whether the state is a whole significantly different from the sum of each citizen and whether this “whole” receives some good which is distinct from the sum of the good received by each individual citizen. Further, if the state is the sort of thing that can participate in the reciprocal exchange, then the good that it receives must be determined before it can be sufficiently returned.

A possible good received by the state could be a level of public health. This public health allows for a level of social productivity. This good of public health has been achieved, in part, by limiting the spread of severe illnesses through quarantining infectious people since productivity depends on an able work force. If the reciprocity principle is applied to the state, then the state has an obligation to return this good. First, this can be done by compensating quarantined individuals for the good they have given. Corrado argues for this point in saying, “[w]e are asking members of the community to sacrifice things they are entitled to, and to do it for the common good... If the security obtained by taking away Jones’ freedom is worth it to the community, the community should be prepared to pay” (11). Thus, the state ought to allocate a certain amount of resources toward returning the good through compensation.

However, this compensation is justified by a return of things valued equally to the good of public health, not the return of that particular good. Since the state is returning the good of public health by giving the quarantined individuals certain comforts and these comforts call for a certain amount of taxation. This problem of exchanging distinct goods can be avoided by identifying the state as a sum of its members. The taxation can

be justified on an individual level since each individual is returning the good of remaining uninfected and, in turn, maintaining a certain quality of life by contributing to the compensation through taxation. Thus, this taxation is a means to return the good of a certain quality of life.

Second, the state returns the good by making sure that carriers of infectious viruses are quarantined. In return for the good of public health, the state provides the good of a society with a particular level of public health by quarantining those people who fail to seek out quarantining and meet their obligations on their own. However, if considering the state an entity of this kind is problematic, the reciprocity principle could not be used directly to justify the state's actions in this way.

If the state is not the sort of thing that can participate in the reciprocal exchange directly, imposed or forced quarantining can be justified by appealing to a contractual basis for the reciprocity principle. Citizens have entered into a number of implicit and explicit contracts with other members of their society. Citizens agree to refrain from performing certain actions, such as those actions that the particular society deems illegal or inappropriate. The state enforces these contracts and is responsible for protecting each member of the society from those citizens who fail to fulfill their contractual obligations. The reciprocity principle could be interpreted as included in, or following from, the terms of this contract between citizens and, therefore, justly enforced by the state. Also, agreeing to the terms of this contract is necessary for becoming or remaining a member of a given society. If the reciprocity principle is included in this contract in some way, the infected person has agreed to, by accepting citizenship, return the good others have given. This means that since many others have avoided infecting an individual by being

quarantined, the infected individual has an obligation to do the same by also being quarantined. If the person fails to fulfill this obligation on his or her own, the state has a duty to make sure that person respects the contract and, as a result, forces quarantine upon the individual. Since the state has a duty to prevent people from neglecting their obligation to return the good, forcefully quarantining is justified when the quarantined individual has or would have failed to meet their obligation to do so without the use of force. However, the state's enforcement of the relevant contracts must be justified and the contents of the contract, as well as the inclusion of the reciprocity principle, would also need to be justified.

The need to justify this possible contractual basis for the reciprocity principle draws attention to the general need for justifications of the principle. Although, the obligations derived from the reciprocity principle can be used to determine the action that ought to be, and can justly be, performed when considering quarantining, for those actions to be morally justified the principle must fit into a larger moral framework. Arguing for a specific framework which supports the reciprocity principle is beyond the scope of this paper. However, since there are a few potential ways of justifying the principle, it is worth considering as a possible justification for quarantine.

Veins and his coauthors relate the reciprocity principle to the benefit-burden balancing basis for moral action which Selgelid's uses. Veins is arguing that the principle, when met, should bring about "an appropriate balancing of benefits and burdens of the social cooperation [that is] necessary to obtain the good of public health" (Veins *et al*, 211). Thus, he concludes that when the principle is followed correctly, the benefits of quarantining will sufficiently outweigh the burdens. This may also mean that

a good given can be justly returned in the form of a different, but comparable, good. Thus, compensation would not necessarily be an exchange of quality of a life. It could simply be an exchange of protection for comforts. If this is true, both the justifications for quarantine presented in the essay may be different approaches to the question of quarantine which rely on the same basis for morality. However, Viens does not provide sufficient support for the claim that the principle would produce acceptable balances if used. It is also possible that an exact exchange of a particular good for that same good (eg. protection for protection) is a viable alternative or that the reciprocity principle is a type of moral law or duty which does not depend on burden-benefit balances.

Viens may be correct that adhering to the principle will bring about a balance between burdens and benefits. However, further evaluations of sufficient balances of burdens and benefits brought about by quarantining is needed to support this claim. Thus, defending the principle by appealing to burden-benefit balancing meets many of the same problems as Selgelid's approach. If it turns out that the two are related, the work done in the previous section on the burden-balancing approach can be altered to incorporate this point.

If the principle of reciprocity does fit into a plausible moral framework, then this principle provides a plausible means of justifying quarantining. Therefore, if Pereboom's analogy holds, this principle should also provide an equally coherent way of justifying preventative detainment.

Chapter III: The Justification of Preventative Detainment

In the following chapter, the justifications previously discussed, the burden-benefit balancing and the reciprocity approach, will be applied to Pereboom's detainment. To assess the strength of Pereboom's quarantine analogy further, and the legitimacy of the conclusions on preventative detainment which follow from it, I will examine the type of criminal detainment which the analogy, if sound, justifies. If the analogy holds, the transference of prospective justifications for quarantining ought to support an equally acceptable form of just preventative detainment. Although the analogous application of the two approaches to quarantining discussed in Chapter II produce some seemingly absurd or unacceptable conclusions on the nature of just preventative detainment, I will argue that these results do not reflect poorly on the strength of Pereboom's analogy. Instead, I will maintain that these conclusions can be best explained by a commitment to premises denied by the analogy. Thus, these results do not weaken the assertion that Pereboom's quarantine analogy is a promising way of justifying his theory of crime prevention.

3.1 The Burden-Benefit Balancing Approach

Under the burden-benefit balancing approach, quarantine is justified when the burden of disease brought about by the disease carrier's free movement outweighs the benefits of that carrier remaining relatively unrestricted in his or her movements. If the balancing of burdens and benefits succeeds in justifying quarantine and Pereboom's analogy holds, then this approach ought also to be capable of justifying preventative detainment. In

order to test the analogy through the application of this approach, we must first identify the analogous properties involved in the different practices.

The benefits being considered in the case of quarantining and the case of preventative detainment are at least similar and at most capable of being reduced to the same basic benefit. Both quarantine and Pereboom's criminal detainment are forms of confinement. As a result, they both involve restricting the movements of individuals to eliminate the respective risk these individuals pose to society and prevent the probable results of their future actions. Thus, the central benefit being considered is the ability or right to move unrestricted, whatever value that may have.

A superficial difference between these practices is the type of action that motivates the respective usages of forceful isolation. In the case of quarantining, the individual is confined in order to stop the spread of an infection or disease and the negative effects that this spread of disease would potentially cause. In contrast, Pereboom's proposed preventative detainment of criminals would be used to avoid the predictable criminal activity that the contained individual would engage in if left free, and the effect of this criminal activity.

Although the difference between infection and criminal activity should be noted, it is not significant enough to offset the relative similarities between the two practices. As was mentioned in Chapter I, Pereboom's analogy is based on the idea within free will skepticism that criminals are as capable of refraining from a particular criminal act in a specific and relevant environment as carriers of disease are capable of stopping the spread of their infection when in the ideal environment to infect others. Because of this similarity, both the carrier and the future offender must be contained in order to avoid

infection and offenses, respectively. Thus, limiting the movements of individuals is necessary in both cases in order to avoid the negative outcomes, although the nature of these outcomes are distinct, brought about by these individuals remaining free.

Therefore, the fundamental benefit, in both cases, that must be outweighed by the burden of crime or disease is the benefit of living one's life relatively freely and possessing an amount of unrestricted movement that is equal to other members of society. Under the burden-benefit approach, when a person is justly quarantined the burden outweighs that person's right to relatively unlimited movement. In the case of preventative detainment, it is also this unrestricted movement that must be outweighed by the burden being considered. Thus, a central benefit in both cases is the potential detainees' personal freedom.

When the idea of personal freedom is applied to Pereboom's preventative detainment, it becomes more complicated. The term "free", and the idea of losing one's freedom, must be explained in the context of accepting free will skepticism. If, as the free will skeptic holds, no person can make a meaningfully free choice, then what value does the retention of personal freedom, defined as the ability to move through the world without extensive limitations, hold?

First, the restriction on the person's movements when they are being detained is an external and imposed restriction. The state actively contains the carrier or offender in order to limit his or her actions. The freedom being denied by the free will skeptic has to do with internal factors. For the free will skeptic, there is nothing outside of physical causal chains that can account for significant free choices. If we consider a purely physical robot, the robot can be unfree in two ways. He can be actively limited by

placing an obstacle in his way and he can be generally limited by his programming, which determines how he will act when confronted with his environment in general. The freedom referred to here when considering benefits is the former type.

Secondly, although even without the use of detainment, in the context of free will skepticism, the event path of a person's life is determined and his or her actions limited to this determination. However, we must still consider that person's quality of life. Even without free choice, some life events are valued more highly than others. One reason for this could be that these events bring about a certain level of happiness, result in a lower level of stress, or cause other desirable internal states. Since these internal states are valued, the events that cause them are valuable as well. Conversely, some life events have less value because they bring about undesirable internal states. If a period of time in detainment causes more undesirable internal states than a life without this external restriction, then the detainee has lost something valuable as a result of his or her detainment.

Therefore, when considering if the loss of free movement in a world without free will, one must take into account the undesirable internal states caused by a person's knowledge that his or her movements are being forcefully restricted. Although the detainee is not freer or less free when being detained, in the sense of his or her ability to make free choices and shape his or her life through these free choices, the detainee's free movement is still something valuable which ought not to be taken from him or her without justification. By using preventive detainment, not only could a person be robbed of valuable life events that would come about as a result of the causal chains which would ensue if he or she remain free, but also the knowledge that he or she is being

restricted could cause negative internal states. Thus, it is at least in part the value of desirable internal states that may be brought about by a person remaining free which must be weighed against his or her detainment.

As for the burden which must outweigh personal freedom in order to justify quarantining and preventative detainment, it varies slightly when considering the latter as opposed to the former. Clearly, the burden brought about by a future criminal's free movements is not the burden of disease. Instead, the burden would be that of the criminal activity caused by the unrestricted movements and actions of potential offenders and re-offenders. Again, this difference is superficial when considering the analogy. This is because given free will skepticism the potential criminal's activity, and thus the burden, cannot simply be avoided by, for example, the potential criminal simply choosing to act otherwise. If the carrier is left in an environment which is ideal for infecting others, the carrier can do nothing but spread the infection. According to Pereboom, if a future offender with the right sorts of dispositions is left in an environment which is ideal for committing a relevant crime, the future offender can similarly do nothing but commit this relevant crime. Thus, the two forms of burden are still relevantly similar in that the limitation of free movement is needed in order to prevent the burden.

So when applying the burden-balancing approach to the preventive detainment of criminals, the amount of burden created by an unrestricted potential offender must outweigh the benefit of that person retaining his or her personal liberty in order to justify his or her detainment. To put this idea in Selgelid's terms, if "the free movement" of a criminal in a "particular condition" leads to on average the burden of criminal activity X "in the context under consideration" (Selgelid, 16), then X would have to be sufficient to

“justify detention of an individual for a given period of time”. (Selgelid, 16) Therefore, if a particular potential criminal were predicted to commit some amount ‘x’ of criminal activity when his or her movements are not restricted and the burden of that amount ‘x’ exceeds the benefit of the potential criminal’s free movements, then it would be just to preventatively detain that offender.

At first glance, the burden-benefit balancing approach has the potential to be as effective a way for justifying preventative detainment as it is for justifying quarantining. That is to say, if the balancing of burden and benefit captures the correct foundation to moral action, then the balancing of the properties involved in discovering when quarantining is moral can also be used to determine when preventative detainment is justified. Not only does this approach have the potential of clearly justifying preventative detainment, it also aligns with Pereboom’s considerations involving the justification of his preventative detainment which would follow from his analogy.

The use of the burden-benefit balancing approach connects the justification of preventive detainment to the “protection of society” (Pereboom, 72). Pereboom mentions this protection as playing a role in the defense of this form of confinement. Both the burden of disease and the burden brought about by free moving criminal activity captures the negative effects felt by other citizens and society as a whole.⁶ Each X amount of burden takes into account the harm citizens will experience, some as a result of the spread of disease and others as a result of being the victims of crime. Further, society as a whole is threatened since these two forms of burden negatively affect public health and public safety or security in general. This general decline in health and safety must be taken into

⁶ I will not determine whether the burden to society as a whole is simply the sum of the burdens felt by each citizen or something more than this. However, this would have to be specified to calculate the total burden correctly.

account either generally or by discovering its effect on each individual member of that society.

Although the conclusion drawn from the burden-benefit balancing approach seems equally sound when applied to criminal detainment as when applied to quarantining, the practical problems faced when justifying quarantine in this way, although slightly altered by the context, also arise when the approach is applied to preventative detainment.

First, the amount of burden brought about by criminal activity that outweighs a single individual's or group of individuals' liberty must be calculable. This sufficient amount of burden is as difficult to determine in the case of preventative detainment as it would be for quarantining. When considering the need to accurately calculate the burden of disease brought about by a disease or virus carrier's free movements, Selgelid acknowledged that more "epidemiological research" (16) is needed. This means that our understanding of the patterns, causes, effects, and conditions of a particular disease must be advanced through further research. Further research is also needed to determine the burden brought about by potential criminal's free movements. Although some of the needed forms of research align when calculating disease burden and when calculating criminal burden, some forms differ.

Although extreme imbalances between burden and benefits are perceived to draw obvious conclusions, more complex or subtle comparisons reveal that a more precise specification of the amount of burden that outweighs liberty is needed. When considering the spread of disease, one must discover the carrier's likelihood to frequent the types of environments needed to bring about transmission and the carrier's probability

of successfully infecting others in this environment. Both of these factors must also be calculated in order to determine the amount of criminal burden brought about by an unconfirmed potential offender. The offender's probability of entering the correct sort of environment to commit the predicted criminal act and his or her likelihood of successfully carrying out the act must be gauged.

Predicting the environment, and the probability of a potential offender entering a certain environment, is central to calculating the likelihood of a person offending in general because an offender's entering into a particular environment is sufficient for causing that person to offend. It follows from free will skepticism that if a person has the correct disposition to offend when in a certain environment, then that person will offend when faced with that environment. This is because people do not choose to act as they do, they are caused to act as they do. Thus, two things must be determined in order to correctly predict people's actions: their dispositions to act and their probable actions in particular environments.

To calculate the burden of a free moving potential criminal, the likelihood of encountering sufficient environments must be predicted. For example, a kleptomaniac must be exposed to opportunities where he or she can commit the act of theft in order to commit this criminal act. If the kleptomaniac, although he or she has the disposition to steal if able, has no possibility to take something while moving freely through the world (although this is very unlikely), then the correct amount of criminal burden brought about by the kleptomaniac's free movements would be zero. Therefore, in this case, if a person's movements being relatively unrestricted are worth anything, then the kleptomaniac's free movements do not produce an amount of burden that outweighs the

considered benefit. Thus, he or she cannot justly be preventatively detained under the burden-benefit balancing approach.

Additionally, the probability of the potential offender's succeeding in criminal acts when the environment provides the right sort of opportunity must be calculated. In the case of quarantining, the success of infection would be dependent on the carrier's actually carrying the virus or disease and the extent to which the illness is contagious. In the case of criminal activity, the contagious nature would be analogous to the potential offender's ability to successfully commit a crime. Thus, a person with the disposition to rob a bank, but without the ability to rob a bank would bring about very little relevant criminal burden if allowed to remain free.

Further, our intuition is that the criminal burden caused by a person who is predicted to, if allowed to remain free, download one song illegally every seven years does not offset the benefits of that person's remaining free of detention. But, when the burden and benefit are more closely matched, perhaps in the case of a reckless driving, the determination is difficult. It is apparent, in these circumstances, that the decision to detain requires a precise amount of the total burden that outweighs the respective benefit. But, these amounts are not easily compared, nor is the moment of equilibrium simply calculated.

These troublesome practical calculations, although they must be taken into account, are not at the forefront of Pereboom's consideration. To avoid these concerns, Pereboom is beginning the defense of his preventative approach by considering extreme cases of future offenders. For example, let's consider the extreme case of a person

commonly referred to as a sociopath⁷ or, more historically, a psychopath. A psychopath is unable to moderate his or her criminal urges and this is usually caused by a lack of empathy which follows from a combination of genetic makeup and environmental factors. In the case of psychopathy, the individual is thought to commit criminal acts in so many possible environments that the likelihood of his or her coincidentally avoiding them is extremely low. Further, since the person has a desire to commit criminal acts, he or she is likely to seek out these environments. Also, the criminal activities which he or she is disposed to participate in are considered to be some of the most unacceptable, including acts of violence such as murder.

It is for these sorts of offender's that Pereboom primarily suggests preventative detainment is needed. This is strategic because current views of sociopaths, although still largely accepting of the existence of free will, recognize an inability for the sociopath to resist criminal activity and even a foundational disposition which is correlated with these acts. Less severe criminal activity may require less severe forms of limiting, as opposed to detainment. An example of less severe sorts of limitations would be the removal of privileges, such as the possession of a driver's license, or extensive monitoring.

⁷ Sociopaths are commonly defined as people who have an antisocial personality disorder. Antisocial personality disorders are

“characterized by repetitive behavioral patterns that are contrary to usual moral and ethical standards and cause a person to experience continuous conflict with society. Symptoms include aggressiveness, callousness, impulsiveness, irresponsibility, hostility, a low frustration level, a marked emotional maturity, and poor judgment. A person who has this disorder overlooks the rights of others, is incapable of loyalty to others or to social values, is unable to experience guilt or to learn from past behaviors, is imperious to punishment, and tends to rationalize his or her behavior or to blame it on others.” (p. 115)

However, even balancing the benefit and burden in the extreme case of the sociopath may be impossible if the benefit and burden caused by a person's free movement are things that simply cannot be calculated. Although it is difficult to determine the disease burden of a particular scenario, it is even more difficult to accurately predict the amount of criminal burden brought about by a future offender remaining free. Determining the amount of criminal burden brought about by a free moving potential offender involves accurately identifying people with a disposition to offend and to what extent. This parallels determining if a person is infected with a particular virus or infection, and whether that infection is significantly harmful and contagious.

Currently, there are some infections that can be detected fairly accurately. Medicine has already advanced to the point where it is possible to test for infections, such as HIV, with a certain amount of correctness. However, testing for a person's criminal disposition is not currently understood to the same extent as the process of finding a now recognized virus. Pereboom specifies that the testing which would need to be conducted to accurately identify future offenders is dependent on a considerable amount of advancement in the several fields, primarily that of neuroscience.

The confirmation of a disease carrier's infection, through accurate testing, would translate to, when considering the future offender, an accurate determination of the person's potential to commit the crime in question. Pereboom's assertion that advancements in neuroscience are needed is founded on the free will skeptic's or the determinists' position. If all things, including mental content and behaviours, are fully caused and wholly physical, then, as a result, they are potentially predictable. If this is

true, then our ability to predict behaviour, as Pereboom holds, is dependent on our advancements in neuroscience. As is the case with the falling rock example given in Chapter I, if we understood all things involved in cause and effect relationships as well as the physical inner workings of the brain and our actions were the direct result of these physical inner workings, then we would be able to determine a person's future actions.

Pereboom holds that exploration of the brain will reveal the causal chains and dispositions that lead to criminal activity. Thus, certain forms of brain scanning or testing have the potential to determine which people are future offenders and in what environments they would commit these potential crimes. That being said, these advancements have yet to be made and, therefore, these predictions cannot yet be made.

Even if it is true that each action is part of a closed causal chain, this does not guarantee that someday in the future we will be able to understand these causal chains to the extent of flawlessly predicting them. And even if neurological screening could show that an particular individual could act in no other way than to respond to every instance of a certain interaction, such as a moment where someone enrages this person, with a prohibited act, one would still have to predict the many features of his or her potential environments. That is to say, even if it could be determined that a person when angry would always assault another person, there would be more specific aspects which would also need to be predicted. For example, these aspects could include how often this person would interact with potential victims and the severity of each interaction. Thus, the problem of calculating the total burden that will be caused by a person's free movements is one that is shared by both preventative criminal detainment and quarantine.

Although the burden-benefit approach is dependent on several advancements in neuroscience, mathematics, and our ability to make accurate predictions in general, this does not mean this approach is not a viable and a possibly accurate way of justifying quarantine and detainment. More importantly for the purposes of this paper, the fact that similar problems exist for both quarantining and preventative detainment when the balancing approach is applied is not problematic. The presence of possible solutions for the problems faced when using the burden-benefit balancing approach, such as advancements in the relevant scientific and mathematic fields, shows that the analogy does not necessarily produce completely absurd, contradictory, or unacceptable results. This means that the analogy can still be seen as a promising one. This is because, if the burden-benefit balancing approach is used to justify the analogous practice of quarantining, it is reasonable to think that it should justify preventative detainment to the same extent. However, there is one way in which the two practices may be judged to draw opposing conclusions when each is justified by this approach.

In current practice, people who merely have a high probability of having been infected can be quarantined. With infectious disease, we can predict the level of damage within a population with a high probability and, thus, feel justified in quarantining those people. Further, since the understanding of certain viruses is fairly advanced, it is possible to predict infection by recognizing the presence of certain symptoms, modes of transmission, and known levels of contagiousness. Thus, if the suspected carrier has come in close contact with individuals who are then confirmed through testing to be infected or if the infection in question is both lethal and highly contagious, then the person may be quarantined and this quarantining may be deemed justified. In these

cases, the person has been quarantined based on a certain probability of having contracted an infection. This probability is lower than the probability of a person having been infected once a positive test has been conducted.

This use of lower probabilities is problematic because it runs the risk of limiting or suspending the liberty of people who have not been infected and, therefore, do not pose a threat of infection to those around them. Thus, the actual burden of disease does not outweigh the benefits. This does not necessarily mean the quarantining is unjust. It must be determined whether the benefit burden-balancing approach balances actual future events or the probability of future events. Viens admits that there are times when quarantining “imposes autonomy-limiting measures to healthy persons who may or may not pose a danger to others” (Viens *et al.*, 208). However, this seems to simply be excused as the results of a fallible practical system. That being said, this result is difficult to accept because it means that the burden-benefit approach does not necessarily dictate that healthy individuals cannot be justly quarantined.

Thus, the burden-benefit balancing approach is dependent on the amount of disease burden that the individual being considered would create if left free. However, the calculation of this amount of disease burden is difficult to discover. Depending on how this value is calculated, this approach could be used to justify quarantining people who simply have a significant probability of being a carrier and, as a result, of infecting others. This is because the calculation of the disease burden may merely involve discovering the probability of the potential carrier bearing a particular disease. This is because a certain probability of infection, combined with the severity of the effects of that person remaining at liberty if they are indeed infected, could be judged to outweigh

the loss of that person's liberty. Thus, the potentially infected person could be quarantined without something as relatively certain as a positive test result or any confirmation that he or she is infected.

In order to determine whether a healthy person can be detained, we must specify whether a concrete amount of disease burden must be calculated or whether a certain probability of disease burden can be used to outweigh even a non-carrier's personal liberty. The central difference between these two types of disease burden is that, if a concrete value is needed to outweigh liberty, then any time a non-carrier is quarantined it is unjustified. However, if merely a high probability of infection and a high probability of spreading infection can be used to outweigh a person's freedom, then quarantining a person who has a high probability of being a carrier, but in fact is not, would be a just use of quarantining.

Determining whether it is just to use mere probabilities in the balancing of benefits and burdens is two-fold. First, the ability to use probabilities has practical advantages. Although it may be possible to make perfect predictions in a determinist world, these predictions would be difficult and are currently beyond our ability. Thus, if these prediction are necessary to the use of the burden-benefit balancing approach to draw just conclusions, then we are not currently able to justify our use of quarantine. Secondly, the use of probabilities below a sufficient level contradicts Pereboom's conclusions on just preventative detainment.

Pereboom specifies that for preventative detention to be just, it must be "virtually certain" (74) that the detainee is going to, at some future time, commit a crime of a certain severity (primarily violent crimes). Thus, in order for the burden-benefit

balancing approach to align with Pereboom's criterion, there must be a extremely high probability, if not absolute certainty, that the criminal burden accumulated during the future free movements of the individual in question will outweigh the benefit of that personal freedom.

In order to achieve this virtual certainty, Pereboom is proposing future technical advances in "neural screening" (Pereboom, 74) and advances in our understanding of neuroscience. He holds that these advancements could accurately identify future offenders in the same way that laboratory evidence can be used to determine a person's infectiousness. This is consistent with the idea that behaviours can be explained in terms of physical causes and physical causes can be identified. Thus, behaviour can be predicted by identifying the causal elements in the brain that trigger these behaviours when the correct environmental input is present. For example, it may be the case that people who our society refers to as sociopaths have particular genetic traits and physical attributes that cause their violent behaviours, whether these traits are present at birth or brought about through environment. These traits could include features such as particular chemical balances, neuron pathways, and brain mechanisms. If neural screening advances to the point where these physical causes can be discovered and detected, then we could conclude with "virtual certainty" that a person will commit a particular criminal act in the future.

The inclusion of the "virtual certainty" criterion is meant to minimize the understandable worry that people who have not and would not have actually committed a crime if they retained their liberty, could be justly detained. Pereboom may be seen as deviating from the conclusions drawn from his analogy, or that the analogy does not hold,

by concluding that stronger evidence is needed for the detainment of potential criminals than seems to be necessary for the potentially infected. But, the apparent difference between detaining healthy individuals and detaining innocent individuals is the result of assuming that a potential carrier is significantly different from a potential criminal.

There are a few notable differences between an unconfirmed carrier and an unconfirmed criminal. However, these differences are either superficial, easily accounted for, or based on premises which are irrelevant in the context of accepting free will skepticism. The last of these is most significant. The idea that there is something fundamentally problematic with detaining an innocent person but not with quarantining a potential carrier may be based on an implicit rejection of free will skepticism.

The idea that an innocent person ought never to be detained could be based on the idea that they have done nothing to deserve that detainment. However, the idea of deserving detainment is based in a commitment to the existence of free will and that people deserve to be punished for their blameworthy wrongdoings. The reverse of this is that people who have not performed a blameworthy wrongdoing do not deserve to be punished. As was discussed in Chapter I, blameworthiness is dependent on the idea of free choice. Thus, without free will people cannot be blamed in the same sense and, subsequently, do not deserve punishment. Therefore, neither non-offenders nor offenders deserve punishment.

Offenders and non-offenders are equal in their inability to be justly punished, just as carriers and non-carriers are equal in their inability to be justly quarantined. Putting the idea of punishment aside, as Pereboom has, the decision of non-punitive detainment is based on prevention. If a non-carrier can be detained in order to prevent some

probability of burden, then a non-offender ought also to be justly detained to prevent a comparable probability of sufficient burden. Thus, our feeling or intuition about innocence is likely based on a belief in free will and the difference this belief attributes to carriers and offenders.

Another reason why it may be just to quarantine uninfected people, who merely have a substantial probability of being infected, while requiring virtual certainty in order to justify the detainment of any probable offenders is that the burden avoided by quarantine is always much larger than the burden avoided by preventative detainment. Although a criminal may harm many people, contagiousness and lethal diseases risks harming many. A criminal disposed to commit murder may end the life of a person every time he or she has the opportunity. Similarly, an infected person may infect someone every time he or she has the opportunity. However, even if the infection is lethal, those newly infected people may go on to infect others before passing away. So, the negative effects of the infection could spread at an exponential rate. Therefore, the probable burden being considered in cases of certain diseases can be quite a bit more than criminal burdens. Since, the future offender's probability of affecting far fewer people is less, the urgency of his detainment may also be less. This difference does not cause a problem for the analogy. It is simply a difference in amounts of burden being considered, not fundamental concepts.

The nature of just detainment that Pereboom describes could be in opposition to our common practices of quarantining because one of the two is flawed. It could be the case that virtual certainty ought not to be necessary. It could also be the case that, if a criminal is merely suspected to be disposed to commit a large number of severe crimes,

then the potential burden does outweigh personal liberty. If this were the case, then Pereboom's virtual certainty criterion is too strong. However, if it is less than certain that the burden will be outweighed, then our current uses of quarantining may be unjust.

3.2 The Reciprocity Approach

Since the reciprocity principle provides another promising approach to justifying quarantine, it ought to be equally able to justify preventative detainment, if Pereboom's analogy holds. I will argue that this approach does offer a coherent way to justify preventative detainment and, therefore, supports Pereboom's analogy. The problems that arose when using the reciprocity approach to justify quarantine appear similarly when the approach is applied to preventative detainment. This is consistent with the two practices being analogous. Although some aspects of these problems seem unique to preventative detainment, I will argue that these issues are not the result of a weakness in the analogy. Instead, they are caused by of the consideration of features which are irrelevant to the analogy or are due to a misinterpretation of free will skepticism.

As discussed in Chapter II, the reciprocity approach dictates that quarantining is just when it is the result of individuals or groups adhering to the principle of reciprocity and the obligations which follow from this principle. These obligations involve returning the good one has received. When considering quarantining, the good that each individual receives is protection against highly contagious infections of a certain severity. In part, quarantining those who were infected provides this protection. Uninfected individuals maintain their "uninfected" status because they are rarely exposed to infectious carriers. This lack of exposure is achieved by removing those who were infected from the general

public. Thus, the reciprocity principle requires that individuals return the protection they have received by quarantining themselves when failing to do so would risk the spread of infection.

When the principle of reciprocity is applied to the practice of preventative detainment, the good that each individual receives, and must therefore return, is also a type of protection. Instead of having been protected against harmful illnesses, individuals have been protected against the negative effects of criminal activity. When defending preventative detainment, Pereboom is primarily considering protection against violent crimes. As was mentioned in the previous section, this focus on violent crimes is strategic because of current perspectives on a physical basis of sociopathic behaviour and because of the severity of violent crimes. However, it is also practical to focus on violent offenders because the prevention of violent crimes calls for detainment in a way that non-violent crimes may not. Non-violent crimes may require less severe preventative measures such as behaviour modification or monitoring.

Primarily, people are able to avoid being the victims of violent crimes because people who do not act violently toward them surround them. Uninfected people parallel non-violent people in the sense that a person is able to do something mundane, like shop at a grocery store, without becoming infected with a contagious disease because those people around him or her are not carrying these diseases. Similarly, a person can buy groceries without sustaining injuries due to violence because the other shoppers or employees act non-violently in environments such as the grocery store. In remaining unharmed, the grocery store shopper has received a good. This good is a certain amount of safety or an ability to travel the world without becoming the victim of a violent crime.

By acting non-violently, this good is given to the shopper by the people around him or her. Under the reciprocity principle, the shopper has an obligation to act similarly and allow others to remain uninjured as they travel by acting non-violently toward those around him or her. In doing so, the shopper is returning the good that he or she has received.

The non-violent person and the uninfected person may seem significantly distinct. This distinctness comes from the belief that the non-violent actor chooses to act non-violently as opposed to the uninfected person who simply is not carrying the virus needed to infect others. However, in keeping with freewill skepticism, the person who is disposed to or sufficiently caused to act non-violently is as capable of acting violently as the uninfected person is capable of infecting others. Both types of individuals lack an imperative link in the causal chain needed to bring about infection or violence, respectively. The non-violent person lacks the sufficient combination of internal and external factors needed to act violently just as the uninfected person lacks the virus needed to spread infection.

The non-violent actor's environmental inputs, genetic makeup, and causally formed beliefs and desires will bring about non-violent behavioural outputs, and only non-violent outputs, in the relevant environment. Similarly, the person who possesses variables of this type which lead to violent acts in a particular environment will be caused to act violently in that environment. The combination of environmental inputs and genetic disposition is analogous to the combination of carrying a contagious disease and being exposed to the correct sort of environment to succeed in infecting others. That is to say, a carrier of a contagious virus will always spread that virus to others when in an ideal

environment and casual chain for the virus to be transmitted. Similarly, a person with a sufficient combination of genetic makeup and internal content to act violently when presented with a certain external input will act violently when presented with that input. It is these individuals, both the carriers of illness and the people sufficiently disposed to violence, which require quarantining or detainment to avoid the spread of infection and violence, respectively. When using the reciprocity approach, detainment is justified because both the disease carrier and the person causally determined to be violent have an obligation to separate themselves from the general public. This obligation comes from the good of protection against infection or violence which these individual's have received from others in the past, as well as more general goods which is the result of a base level of protection, brought about by the removal of other potentially harmful people.

If there are people who are disposed to act violently in such a large range of different environments that these environments cannot be avoided, these people cannot help but fail to return the good that they have received. This is likely the case for those people who meet the standard conception of psychopaths or sociopaths. The sociopath still has an obligation to act non-violently towards others just as others have acted non-violently towards him or her. If the only way for sociopathic individuals to avoid violent behaviour, meet his or her obligations, and return the good they have received is for the sociopath to be preventatively detained (since the range of environmental triggers is so vast that they are unavoidable without containment), then he or she has an obligation to seek out detainment.

The idea that violent offenders have the obligation to detain themselves may seem stranger than the infected individuals having an obligation to quarantine themselves. One explanation of this strangeness is that Pereboom's quarantine analogy is flawed and, because of this, the reciprocity principle does not apply as neatly to preventative detainment as it does to quarantine. However, this distinct concern is not due to a weakness in Pereboom's analogy, rather it follows from a misinterpretation of the obligations which follow from the reciprocity principle or an implicit rejection of the free will skeptic's position.

The idea that individuals have an obligation to seek out preventative detainment when failing to do so will result in violent behaviours is strange because it seems unlikely that a person who would commit a violent crime would volunteer to be detained, or even allow themselves to be detained, to protect his or her future victims. If the offender was motivated to detain themselves, they would likely also be motivated to act non-violently in the first place. However, the fact that these offenders will consistently fail to meet their obligation does not mean they do not have this obligation.

In the case of quarantining, the obligation to quarantine one's self when infected is not as difficult to accept as the obligation to preventatively detain one's self. As discussed in Chapter II, some carriers may resist quarantining themselves because they wish to retain the benefits of living unrestricted (such as a better quality of life, ability to work, and ability to interact with others). However, although it is likely that some carriers will resist, it seems even more likely that violent criminals will fail to seek out detainment. This is because these two cases involve different relations between the

causal source of the threat to the general public and the desires and intentions of the actor.

Desires are a complex sort of mental content and can present in many different ways. They can be classified as conscious, sub-conscious, first order, second order, instinctual, short lived, long lasting, direct, or indirect. Regardless of the type of desire, if free will skepticism is correct, these desires are caused and could also play a role in causing actions, including criminal action. Further, if mental content is reduced to or sufficiently connected to physical occurrences, then these desires either align with or are physical events. These physical events participate, either as a causal force or an effect, in the causal chain that brings about action.

A carrier of an infection could negatively affect those around them by remaining free without any intention or desire to cause these negative effects. This is possible because the spread of infection is not directly caused by, or causally related to, a desire to spread infection. Instead, it is the result of a sufficient exchange of virus or bacteria. It is only when the carrier becomes aware of his or her infection, and the risk involved, that desires and intentions come into play. It is quite possible that once the carrier recognizes that he or she is carrying a dangerous and contagious infection that he or she will volunteer to meet his or her obligation to be quarantined. This is because the carrier may desire to avoid harming others and this desire aligns with quarantine.

In contrast, it is unlikely that violent offenders would volunteer to be detained in order to avoid negatively affecting others through their violent actions. This is because a violent offender's desires align, in some way, with their violent acts. These desires play a

causal role in bringing about the violent act. Also, a desire to harm others conflicts with a desire to protect others through preventative detainment.

Thus, if these desires play a causal role, the violent offender's desire to do harm cause his or her violent action and also cause a resistance to detainment. Although carriers may resist being detained because they wish to retain other positive features of remaining free or because they have miscalculated the risk they pose, carriers do not necessarily wish to remain free because they desire to infect or harm those around them. In contrast, those who are sufficiently disposed to commit a criminal act, specifically a violent criminal act, may have some kind of desire to commit this crime and bring about harm.

The different relations between the harmful action being considered (infecting others or acting violently towards others) and the internal states of the actor (such as desires, intentions, and beliefs) seems to merit different considerations if these relationship are understood as being importantly different. However, for the free will skeptic, they are not importantly different. The difference in relation between internal states and actions in these two cases is irrelevant. This is because internal states are limited, in some way, by physical laws in the same way as infections are externally contracted and controlled by closed causal chains.

For example, the kleptomaniac experiences a desire, intention, or urge to steal when the opportunity presents its self. Without free will, these desires can be traced back to causal sources which are outside the kleptomaniacs control, such as genetics, past experiences, and current environments. Because of this lack of control, the kleptomaniac cannot help but desire to steal and cannot help but act on these desires if he or she is

correctly disposed or caused to act on them. Thus, the kleptomaniac seems unlikely to volunteer to be detained in order to prevent him or herself from stealing because he or she desires to steal. Similarly, violent offenders whose desires align with harming those around them are unlikely to volunteer to detain themselves in order to prevent this harm.⁸

However, there are some scenarios where a criminal may meet their obligation to detain themselves. If the desire to preform a criminal act is caused in a large part by the presences of an environmental input, or action trigger, then when that input is not present the future offender may desire to remain separated from such environments to avoid the action it causes. This is similar to a recovering addict desiring to avoid opportunities to use the drug to which they are addicted. The addicts wish to avoid the environmental input that would cause a desire to use this drug. But, if the desire to commit a criminal act exists even when there is no opportunity to act in this way or the environmental causes are too common be avoided, then the future offender is likely to resist separation because they desire to be in these environments and commit these crimes.

The low probability of future offenders voluntarily detaining themselves does not reflect a problem with Pereboom's analogy between the two forms of detainment. Although carriers are more likely to allow themselves to be quarantined, this is only because the action of infecting others is not caused by a desire to infect others. Thus, carriers could be caused to voluntarily detain themselves as a result of a desire not to harm others. Violent offenders may harm others as a result of some desire to do so and this desire may also prevent them from seeking out detainment. Therefore, it is likely the

⁸ Like the sociopath, the kleptomaniac has a psychiatric disorder. Thus, it may appear that it is only those people with notable disorders that ought to be preventatively detained. However, I use these examples because the status of these disorders helps to communicate the actor's inability to control his or her own actions. To the free will skeptic, all offenders have an equal ability to freely control their choices, regardless of the categorization of their mental health.

case that many violent offenders would fail to meet their obligation and, in response, the state would have to intervene. This does not, however, mean that future offenders do not have this obligation to detain themselves.

If individuals will fail to meet their obligation to return the good of protection by acting non-violently, it is the duty of the state to ensure that these people return the good to those who have given it by imposing preventative detainment. As was discussed in Chapter II, the state's interjection can be supported by the reciprocity principle in two ways. First, if the state is considered an entity that receives goods such as a level of public safety, then it must return the good given by protecting citizens which have contributed this good from those who will fail to do so. Second, the state's forceful detainment can be justified if the principle of reciprocity is part of or follows from a contractual agreement between citizens. The state would then be obligated to enforce the terms of this contractual agreement. This means that when a person does not seek out detainment when the reciprocity principle dictates that he or she ought to, the state is justified in forcefully removing this person from the general public.

Just as those who are quarantined ought to be compensated for the good they have given to the general public, those who are preventatively detained should be compensated for what they have lost to provide a good to others. When criminals are preventatively detained, citizens experience an increase in quality of life. By preventively detaining future offenders, each person's probability of becoming the victim of violence is lessened. This allows for an increase in the general level and feeling of public safety while decreasing the stress or fear of being victimized. Thus, the increase in quality of life which the detainment brings about is a good and the detainee that good ought to be

returned to the detainee. Therefore, the detained future offender should be provided with compensation similar to that given to quarantined individual. The detainee should be given a certain quality of life and a level of comfort that includes features such as meaningful activity and any possible rehabilitation.⁹

The issue of sufficient compensation draws attention to the problems caused by the vagueness of the good which the reciprocity approach dictates ought to be returned. As mentioned in Chapter II, the correct use of the reciprocity approach is dependent on defining the nature of the good. In the case of compensating criminals, if the good which ought to be returned must be identical to that given, then detainees ought to be provided with a certain quality of life determined by the quality of life their detainment has allowed others to experience. Alternatively, if the good need only be equivalent, then the compensation provided could be in any form which is sufficiently similar in value to the protection and life quality provided. This sufficiently similarity may be determined by balancing burdens and benefits and, if so, is related to the previously mentioned approach. Thus, in order for the reciprocity approach to be correctly applied to the problem of preventative detainment and quarantine, the nature of the good must be defined.

Regardless of the nature of the good, a considerable level of compensation for detainees brings about practical complications. Compensation can be costly and, if a high level of compensation is just, then it may require things like higher taxation.

⁹ It could be argued that this level of compensation makes detainment too comfortable and, thus, will not deter people from future criminal activity. The role of deterrence in a non-free universe needs to be explored further, but is outside the scope of this paper. Also, this concern would be relevant to the burden-benefit balancing approach. If it is the case that the provided deterrence brings about the most benefit and the least burden, then lessening the amount or nature of compensation could be justified.

Although this increase may be justified, it could be impractical or impossible to implement. The reciprocity approach dictates that both quarantined and detained individuals receive quite a bit of compensation, whether it is an equal quality of life or comparable goods. However, this may not be financially possible. Since money is finite, there comes a point where its use must be prioritized. Although reciprocity dictates that restricted individuals receive a certain level of care, this care could overshadow more pressing needs. This is not a problem for the burden-benefit balancing approach, since the level of benefit achieved and burden brought about by the allocation of a certain amount of resources can be used to calculate, and moderate, the amount of compensation given. However, the reciprocity approach demands a certain level of compensation despite practical limitations.

Although there may be problems with the practical application, the reciprocity approach provides a more practical way to determine when it is just to quarantine and preventatively detain than the burden-benefit balancing approach. This is because it determines when detainment is justified by evaluating what good a person has received and, therefore, must return as opposed to making complex calculations about the future benefit and burden of detainment. Quarantine has been used to contain the spread of highly contagious infection and without this use of quarantine these infections, due to their contagious nature, would have spread. Since highly contagious diseases spread at an exponential rate when carriers continue to move freely, these past uses of quarantined have provided a good to citizens who have remained uninfected. Similarly, those individuals who have not become victims of violent crimes have received a good. Those who have refrained from acting violently towards them have given this good. Thus, these

individuals have an obligation to return that good. Thus, the reciprocity approach dictates which actions is justified by appealing to the good people have received and the past events which have allowed for this good as opposed to making complex accurate future predictions.

Although complex future predictions about benefits and burdens are not as necessary for the reciprocity approach, some accurate future prediction is still needed. Mainly, preventative detainment is still dependent on accurately distinguishing which individual's will commit criminal acts, and in doing so fail to meet their obligations, if they are not detained. Thus, like the burden-benefit balancing approach, the problem of Pereboom's "virtual certainty" criterion remains. If the state's role is to force those who fail to, or will fail to, meet their obligation to return the good they have received through detainment, it must do this with some level of accuracy. The state cannot justify, by use of the reciprocity approach, detaining individuals who, in reality, would have respected their obligations towards others and, in doing so, return the good. Thus, the reciprocity approach also depends on the advancements in neuroscience which Pereboom believes will provide us with the virtual certainty that an individual will offend in the future without detainment.

As was discussed in Chapter II, the reciprocity approach becomes problematic when a person fails to return the good he or she has received. As a result, another person does not receive the good and therefore does not have the obligation to return that good. In the case of quarantining, a person who becomes infected due to someone else failing to meet his or her obligation to quarantine themselves has not received the good of

protection from severe illnesses. However, this person has received other goods which he or she would fail to return if he or she did not quarantine themselves.

This problem does not apply flawlessly to future criminal's detainment, since becoming a violent offender does not necessarily depend on being the victim of violence. However, those who are victims of violence still have an obligation to be non-violent for the same reasons that carriers have an obligation to avoid infecting others. The victim of violence has received the good of non-violent action in a more general way.

In order to make compelling arguments for the victim of violence having an obligation to return the good of non-violent interactions, the nature of the good must be defined. If each good must be returned similarly, the victim must act non-violently because he or she has received a good which can only be returned if her or she acts non-violently to return. For example, although the victim of violence has not received the good of protection against violence, he or she may have received the good of having one's loved ones protected against violence. If so, then he or she must return this good by acting non-violently towards others' loved ones. Thus, the victim ought still to act non-violently towards others.

In this section, the reciprocity principle has been used to justify the use of preventive detainment. Although problems arise when using this approach, these issues parallel those which appear when using reciprocity to justify quarantine. Thus, the reciprocity approach as fruitful a way to justify quarantine as it is a way to justify preventative detainment and this supports Pereboom's analogy.

3.3 Conclusion

Pereboom's use of the analogy between quarantine and preventative detainment is a promising means of justifying preventative detainment for the free will skeptic. The analogy is founded on the significant similarities between contagious carriers and future offenders who do not possess free will. Thus, if the analogy holds, the means of justifying quarantine should also be able to be used to justify the use of preventative detainment.

However, Pereboom's vague references to the proper means of justifying quarantine is not sufficient to justify the nature of preventative detainment that he presents. Even so, this does not mean that Pereboom's quarantine analogy is flawed or its use is unproductive. Once justifications for quarantine are concluded upon, there is good reason for thinking that these justifications will apply coherently to preventative detainment as well.

To further evaluate the strength of Pereboom's analogy, I have examined two contemporary, and potentially fruitful, approaches to the justification of quarantining. The burden-benefit balancing method and the reciprocity approach have both been shown to be reasonable attempts at justifying uses of quarantining. However, both of these approaches have problematic aspects which must still be resolving prior to their being used to correctly justify either quarantine or preventative detainment. The burden-benefit balancing approach depends on evaluation of ethical foundations and advancements in epistemic research and neuroscience. While the reciprocity approach has practical concerns, needs a stronger definition of the good, and depends on defending a moral basis for the principle. That being said, resolving these issues is not necessarily impossible.

In the final chapter, these attempts to justify quarantine were applied to Pereboom's preventative detainment in order to evaluate the conclusions drawn from the quarantine analogy. When applied to the problem of preventative detainment, these justificatory approaches apply to preventative detainment with equal effectiveness. Although problems arose during these applications, I have argued that these problems are not the result of a flaw in the analogy. Instead, these problems are the result of a rejection of the free will skeptic's position in general. Therefore, it is possible to apply potential quarantine justifications to preventative detainment without producing absurd, unacceptable, or distinct conclusions which would draw attention to some flaw in Pereboom's analogy. Thus, Pereboom's analogy is a promising one and, thus, the justification for quarantining, once determined, could also be used to justify preventive detainment.

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