

Punishment, Contempt, and the Prospect of Moral Reform

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ABSTRACT

This paper objects to certain forms of punishments, such as supermax confinement, on grounds that they are inappropriately contemptuous. Building on discussions in Kant and elsewhere, I flesh out what I take to be salient features of contempt, features that make contempt especially troubling as a form of moral regard and treatment. As problematic as contempt may be in the interpersonal context, I contend that it is especially troubling when a person is treated contemptuously by her political community's institutions—such as by certain forms of punishment. Punishment is contemptuous if it fails to respect offenders as moral persons, who as such are always capable of moral reform. Respect for offenders therefore requires, at least, that punishment not tend to undermine the prospect of offenders' reform. I flesh out this constraint by considering various ways in which punishments may tend to undermine offenders' reform. In particular, I discuss ways in which supermax confinement tends to violate the reform-based constraint. Finally, I address several potential objections to my account.

Keywords: Punishment, contempt, moral reform

It's pretty much like not living. You're locked in a cell twenty-three hours a day ... That's it. Sit in the house, watch TV, listen to the radio if you have those ... It's boredom, a real intense boredom. No outside air ... you can't see out the windows. They don't treat you bad, but it's just that everything is so impersonal. It's like dealing with automatons.

— Anonymous supermax inmate, Washington State¹

I.

Supermaximum-security units, or supermaxes, are prison facilities designed to house inmates considered especially dangerous apart from the general prison population. Prisoners in supermaxes typically spend all but one or two hours each day alone in their cells, many of which have frosted windows, or no windows at all, to prevent prisoners from seeing out. Fluorescent lights that never turn off are common features. Meals are delivered to prisoners through small slots in cell doors. Prisoners' contact with guards and communication with other prisoners is intentionally minimized, thus producing conditions of extreme isolation. As many as 80,000 people are held in such conditions in U.S. prisons.²

Critics of supermax confinement have argued that the practice inflicts physical and, especially, psychological suffering on prisoners, and thus that it constitutes cruel, inhumane punishment.³ Nevertheless, courts have been reluctant to condemn supermax confinement in general, although some have ruled particular conditions or practices at particular institutions to

be unconstitutional.⁴ Although I am sympathetic to the notion that supermax confinement is excessively harsh, it is perhaps not surprising that courts have not prohibited this mode of punishment outright. On most accounts, after all, punishment by its nature involves the imposition of suffering (pain, hard treatment, burdens, etc.) on those punished. Thus critiques of supermax confinement on grounds of suffering would need to show not only that such treatment imposes significant physical or psychological burdens on offenders, but that these burdens are excessive, or disproportionate, and thus that they run afoul of the standardly cited retributivist prohibition on punishments that are more severe than is morally deserved. The degree of suffering an offender deserves is a notoriously thorny matter,⁵ and given the mandate of supermaxes to house the most dangerous offenders, ostensibly the “worst of the worst,” proponents of supermax confinement may contend that such conditions, while harsh, are not excessively so.

In this paper, I develop an objection to punishments such as supermax confinement on somewhat different grounds. Consider again the quotation with which we began, from the prisoner in confinement in a Washington state facility: “They don’t treat you bad, but it’s just that everything is so impersonal. It’s like dealing with automatons.” The central complaint reflected in this comment, I suggest, is not that the institutional treatment is too harsh or cruel, but rather that it is impersonal, that it demonstrates a lack of real concern for the prisoner. Put simply, such treatment is contemptuous.

Contempt has received fairly little attention among moral philosophers, and what has been written has tended to focus on contempt as a form of interpersonal regard or treatment. It may seem strange, then, to write of an institution as being contemptuous. But this is precisely my

claim, namely, that the institution of punishment often, and impermissibly, treats offenders contemptuously.

In section II, I build on discussions in Kant and elsewhere to highlight what I take to be salient features of contempt, both as regard and as treatment. Kant took contempt to be the converse of respect, and thus he held that contemptuous treatment is always morally impermissible.⁶ Although I am sympathetic to Kant's view that it is never permissible for one person to treat another contemptuously, I contend in section III that we should be especially troubled when a person is treated contemptuously by her political community's institutions, such as the institution of punishment. In my view, punishment is contemptuous if it fails to respect offenders as moral persons, who as such are always capable of moral reform. Respect for offenders therefore requires, at least, that punishment not get in the way of reform. Thus I endorse as a constraint on punishment that it should not tend to undermine the prospect of offenders' reform. I flesh out this constraint by considering various ways in which punishments may tend to undermine offenders' reform. In section IV, I focus in particular on supermax confinement, and I consider various ways in which it typically violates the reform-based constraint. In section V, I address some potential objections to my view.

II.

My central claim is that contemptuous punishment is morally wrong. As a starting point, it is useful to flesh out the conception of contempt I have in mind and to highlight certain features of contempt that make it morally troubling. In this section, I draw on discussions of contempt by various moral philosophers and psychologists to articulate its relevant features. My aim is not to provide a precise definition of contempt, some necessary and sufficient conditions

for use of the concept. But I hope that the features I discuss will be recognizable as components of a familiar conception of contempt.

To regard someone with contempt, according to Kant's view, is to judge her to be morally worthless.⁷ This characterization may strike some as too strong. Michelle Mason, for, describes contempt somewhat more modestly, "as presenting its object as low in the sense of ranking low in worth as a person in virtue of falling short of some legitimate interpersonal ideal of the person."⁸ Thus for Mason, contempt takes its object to be fundamentally deficient, or comparatively low in worth, along some dimension(s) of personhood, but perhaps not altogether worthless. Whether contempt picks out what is regarded as a complete lack of worth in someone, however, or just a fundamental deficiency, we can say that a person regards the object of her contempt as inferior as a person.

This claim, that contempt regards its object as inferior as a person, underscores another relevant feature: contempt is person-focused rather than act-focused. Mason distinguishes contempt from resentment in that, whereas resentment is typically focused on what someone has done ("I resent that she unfairly embarrassed me in front of our colleagues"), contempt focuses on the person—not for what she has done, but for who she is.⁹ Mason writes:

Contempt, to adopt a phrase of Augustine's, thus will have none of "Despise the sin but not the sinner." The "sin" in such a case is simply an outer manifestation of something taken to go to the core of the "sinner," something taken to be contemptible.¹⁰

In his study of punitive emotions, Benoît Dubreuil makes essentially the same point by contrasting contempt not with resentment but rather with indignation.¹¹

Because contempt's object is the person herself, and because this assessment is no longer moored, as resentment is, to her various particular acts, contempt also tends to permeate all of our interactions with those we regard contemptuously. That is, when we come to regard someone as deficient as a moral person, this assessment will tend to be pervasive. As Mason puts it, my contempt for another becomes that person's "most salient description for purposes of my ... assessment of her."¹² So whereas my resentment for something a person has done may not necessarily color my entire evaluation of (and all my interactions with) the person, contempt tends to present a person as morally inferior generally—or at least in her most fundamental aspects (viz., in the ways we take to matter most).

Just as contempt is usefully distinguished from resentment, it is also usefully contrasted with anger. Whereas an attitude of anger is heated and engaged, a contemptuous attitude is cool and dismissive.¹³ Contempt, after all, regards its object as not worth the trouble. As Kant writes:

[W]e cannot be angry and at the same time hold the other in contempt; for just as anger involves an emotion that presupposes a great exertion of effort to resist the impression of a felt offence, so contempt incorporates a conviction of the object's unworthiness for employment of such a resistance on its behalf, and is therefore coupled with calmness.¹⁴

Contempt is distinctive, then, in that whereas other negative responses to someone—such as anger—regard their object, at least implicitly, as worthy of concern and engagement as a moral person, contempt does not. Of course, one might still regard the object of her contempt as warranting *some* interest or concern. She might regard him with merely prudential concern, as a threat. Or she might take an interest in him as a subject of mockery or derision.¹⁵ But assessing

someone as worthy of prudential concern or of mockery is consistent with maintaining a moral attitude of contempt toward her, i.e., with regarding her as beneath our concern as a moral person.

Contempt, then, presents a person as fundamentally deficient (if not altogether worthless), focuses on the person rather than what she has done or brought about, pervades our entire assessment of her, and is cool and dismissive in virtue of not regarding her as worthy of our concern.¹⁶ Given these characteristics, it follows that contempt tends to be especially uncondusive to the prospects of moral reform, forgiveness, and reconciliation. In fact, it is arguably less compatible with these ideals than are hotter, more engaged emotions such as anger.

Thomas Hill writes:

[C]ontempt is a deep dismissal, a denial of the prospect of reconciliation, a signal that conversation is over. Furious argument and accusation, and even sharp-tongued deflation of hypocrisy and self-deception, leave some space to resume communication; but cold, silent contempt does not. The one demands to be heard, while the other walks away in disgust.¹⁷

Thus we can see reflected in contempt a sort of disengagement, a giving up on a person.¹⁸ Or similarly, contempt may reflect one's never having regarded the person as worthy of genuine engagement in the first place.

Because contempt essentially reflects a giving up on its object, it typically will be unresponsive to evidence of moral reform. This is because the relative calmness characteristic of contempt reflects not only a belief that the person is not worth our engagement, but also a sort of confidence that the person's status as fundamentally subpar is settled, and not liable to change.¹⁹ This characteristic unresponsiveness to moral reform can also be uncondusive to prospects for

forgiveness. This is because an important condition (albeit perhaps not a sufficient one) for meriting forgiveness is sincere repentance of one's wrongdoing, which entails a commitment to self-reform.²⁰ Thus insofar as contempt is unresponsive to evidence of reform, it will thereby be unresponsive to evidence that may count in favor of forgiveness. (Contempt could also undermine forgiveness, it is worth noting, by tending to blind us not only to evidence of reform, but to evidence that our initial assessment of the person's character was itself flawed.) By the same token, contempt will typically be uncondusive to the prospect of reconciliation.²¹

Psychologists Agneta Fischer and Ira Roseman describe "the prototypical pattern of contempt" as "short-term derogation, long-term social exclusion, a lack of reconciliation, and the absence of relational improvement."²²

Mason, who defends the place of contempt as a morally justified attitude, claims that it is both empirically and conceptually plausible that contempt can remain responsive to evidence that would count in favor of forgiveness.²³ She writes:

In response to the empirical claim, I have only my own experience as counterexample and ask others to consult experiences of their own. As for the conceptual claim, I do not see the basis for it; common usage, for example, does not suggest that it is part of the very meaning of contempt that once one is a contemner, one is forever a contemner.²⁴

In my view, Mason's reply is unpersuasive. Undoubtedly, many of us can recall instances of having held someone in contempt only to have that assessment change when evidence favoring forgiveness emerged. But presumably there also are likely to have been many counterexamples, in which our contempt rendered us slow to recognize mitigating evidence, or even prevented our

recognizing it altogether.²⁵ Thus even if we can recall cases in which contempt did not so color our view of a person as to leave us unable to recognize evidence of repentance or reform, this does not dispel the empirical worry that contempt *tends* to have this practical effect.²⁶

Furthermore, the claim that contempt renders us less sensitive to evidence favoring forgiveness is supported by certain other features of contempt discussed above. I have agreed with Mason and others in describing contempt as person-focused and pervasive. That is, the object of my contempt is the person herself, rather than her particular wrongful actions.²⁷ Also, my contempt colors my entire assessment of and interaction with this person.²⁸ Given this conception, what sort of changes might I regard as evidence in favor of forgiveness? Presumably the most viable recourse for the person held in contempt, if she is genuinely repentant and desires forgiveness, is to apologize and change her behavior. But given that my contempt transcends any particular transgressions toward me, why expect that particular acts of kindness or contrition would elicit the withdrawal of that contempt? Since my contempt permeates my assessment of the person, I would more likely view any sincere acts of contrition as disingenuous, or perhaps as somehow manipulative. Again, this is not to say that contempt *always* prevents us from recognizing evidence of reform or that the concept of contempt itself rules out this possibility. But certain central features of contempt make it unlikely that contempt will typically leave us capable of recognizing evidence in favor of forgiveness. Contempt, after all, does not look for signs of repentance; contempt gives up the search.

Kant viewed contemptuous regard as, at least to a degree, outside our control. He writes, “At times one cannot, it is true, help inwardly looking down on some in comparison with others; but the outward manifestation of this is, nevertheless, an offense.”²⁹ Here Kant indicates that contemptuous regard is, or significantly involves, an evaluative component that cannot be

rationally controlled at the time at which it emerges. But contemptuous *treatment*, according to his view, is a denial of a person's dignity, a denial of the absolute inner worth that all rational beings possess.³⁰ He believes that we should therefore treat others with respect even if we regard them with contempt. Of course, it may be psychologically difficult to harbor contemptuous regard for another without this regard manifesting itself in contemptuous treatment. Thus if contemptuous treatment is morally impermissible, then as a practical matter, meeting this moral proscription may give each of us good reason to cultivate, or at least attempt to cultivate, a disposition not to regard others contemptuously.

When contemptuous regard *does* manifest in contemptuous treatment, such treatment will have the same troubling implications we saw with contemptuous regard. To treat someone as though she is fundamentally subpar, and thus not worth our concern, is to fail to treat her as a genuine moral agent, who, as such, always has the capacity for repentance and reform.³¹ What's more, because contemptuous regard will typically be unresponsive to evidence of repentance and reform, treatment that reflects this attitude will be similarly unresponsive. As such, contemptuous treatment will tend to be un conducive to the prospect of reconciliation.

Not only is contempt unresponsive to evidence of reform, it also may tend to undermine the prospect of reform. This may occur in at least two related ways: First, a consequence of our regarding a person as fundamentally inferior, of dismissing her as not worth our continued engagement, is that we will not be motivated to provide her with the resources and opportunities that might facilitate her reform. I say more about this below, in the context of whether penal institutions make available sufficient opportunities for offenders, should they so choose, to help themselves. Second, when we treat a person as though she is fundamentally inferior, when our treatment of her communicates that we have given up on her, that she is not worth our continued

engagement and effort, she may in time come to agree with this assessment and, as a consequence, give up on herself. Thus again, our contempt may not only blind us to evidence of reform, but it may also actually undermine the prospect of reform.

Given these features and implications of contempt, we can perhaps see why Kant regarded it as “in every case contrary to duty.”³² In particular, Kant was concerned about the tension between contempt and reform. He writes,

[the] censure of vice ... must never break out into complete contempt and denial of any moral worth to a vicious human being; for on this supposition he could never be improved, and this [is] not consistent with the idea of a *human being*, who as such (as a moral being) can never lose entirely his predisposition to the good.³³

As this passage indicates, Kant saw contempt as inconsistent with the recognition of humanity’s predisposition to morality, and thus with a recognition of the prospect of redemption.

This, then, is the conception of contempt I have in mind. Contempt regards and treats its objects coolly and dismissively in virtue of judging them to be fundamentally deficient as persons and thus not worth our concern. Although I believe the conception sketched in this section is intuitively plausible, I do not deny that other conceptions are available. Some may speak of contemptuous regard in a more heated, visceral sense, as something closer to hatred or disgust.³⁴ Alternatively, William Ian Miller suggests a more inclusive conception of contempt, according to which we may regard our children, pets, or even partners with contempt insofar as we judge them to be endearingly subordinate and unthreatening.³⁵ In this paper, I leave aside questions about contempt’s appropriateness for non- (or not-fully-developed) moral agents, such

as children or pets. And although I am skeptical about stretching the conception of contempt so far as to include my fond regard for a napping spouse, I am not interested in settling such conceptual disputes here. For my purposes, it is enough that there is a form of regard and treatment that exhibits the features I have discussed in this section. I claim that this is most naturally described as contempt—and I argue below that our existing penal practices often manifest this attitude in their treatment of offenders.

III.

Philosophical (and psychological) discussions of contempt tend to focus on the interpersonal context: a person, or some number of persons, regard and treat some other person(s) with contempt. As we have seen, such contempt is troubling for a number of reasons. Contemptuous treatment may come not only from individuals, however, but also from institutions, and in particular the institution of punishment. Such institutional contempt is especially troubling. In a liberal polity, the institutions of criminal justice act on behalf of the entire community. Punishment, in particular, has been said to convey to offenders the entire community's censure, or blame.³⁶ If the message communicated by punishment shifts from censure of the offender *for what she has done* to contempt for the offender *for who she is*, then this contemptuous message will be especially powerful because it represents the condemnation not merely of some individual(s) but of the political community as a whole. If my family members, for instance, treat me contemptuously, the effect on me might be mitigated to some extent by other noncontemptuous relationships, perhaps with friends or co-workers. But the contempt of the entire community may be a particularly heavy burden.

What would it be for a community, through its penal institutions, to treat offenders with contempt? As the previous discussion indicates, punishment is contemptuous when it treats offenders as fundamentally subpar, when it fails to take seriously the prospect of their redemption. Such punishment fails to treat offenders with respect as moral persons, who, in Kant's terms, can never entirely lose their "predisposition to the good." On some accounts, respect for offenders as moral persons implies that at least part of punishment's function is to communicate a message urging the offender to reflect on her wrongdoing and commit to self-reform.³⁷ Such accounts are controversial, though, as some have objected that it is not the proper business of the state, at least not in a liberal democratic polity, to seek to induce repentance in offenders.³⁸ Such a conception of the state may seem too intrusive.

Whether or not respect for offenders as moral persons requires that the state make their repentance and reform an aim, I contend that respect requires at least that the state not get in the way. Punishment fails to take seriously offenders' potential for redemption, and thus fails to respect them as moral agents, when it tends to create obstacles to their redemption. Thus, in addition to the traditional retributive proportionality constraint on punishment—namely, that the severity of punishment should be proportionate to the seriousness of the crime—I propose that we should adopt the following reform-based constraint: Punishments should not, in their mode or degree, tend to undermine the prospect of offenders' reform.

Punishments may undermine the prospect of offenders' reform in various ways. First, they may be so severe that they inhibit criminals' capacities to engage in the moral reflection necessary to come to see their criminal behavior as wrong.³⁹ Capital punishment is an obvious example of such a sentence, in that execution clearly inhibits (in fact, extinguishes) the individual's capacity for moral reflection.⁴⁰ In doing so, it fails to afford the offender the respect

appropriate to her as a person. Similarly, punishments imposing extreme physical suffering would be prohibited insofar as the severe pain associated with such treatment would significantly inhibit the individual's capacity for moral reflection.

Punishment may inhibit the capacity for moral reflection not only because of the severity of the sentence itself, but also because of the conditions that prevail in carrying it out. Two offenders receiving prison sentences of identical length may nevertheless be said to receive different punishment if one is subject to significantly harsher conditions during his incarceration than the other. Much of the philosophical literature on punishment, to the extent that it addresses the question of how (as opposed to why) we may punish offenders, centers on morally justifiable sentencing practices. Focusing only on imposing justified sentences, however, without also considering the conditions in which the sentences are administered, overlooks how much of the work of determining the overall character of a particular instance of punishment is done after the sentence is handed down.⁴¹ Respect for offenders must therefore be expressed not only in the formal sentences themselves, but also in the manner in which these sentences are carried out.⁴² Thus, the constraint I endorse here prohibits not only sentences that tend to undermine the prospect of offenders' reform, but also the toleration, in the imposition of sentences, of conditions that tend to undermine the prospect of reform.

Another way in which punishments may undermine the prospect of reform is by weakening offenders' motivation, rather than their capacity, to undertake a process of moral reflection and reform. Punishments may weaken an offender's motivation in at least two ways: First, when a sentence expresses to an offender that society has given up on him, that it regards him as irredeemable, he may come to accept society's judgment about him, to see himself the same way. Thus his motivation to engage in the process of moral reflection and reform may be

weakened. Second, if the punishment is so harsh, demeaning, etc., as to foster hatred (or perhaps contempt⁴³) in the offender for the penal institution and the community on whose behalf it punishes, then punishment may in this way weaken an offender's motivation to contemplate whether his criminal actions were, in fact, wrong. The laws of a political community, after all, can be seen as reflecting and expressing that community's values.⁴⁴ Thus if an offender, because of the harsh or humiliating treatment he receives from the community's penal institutions, comes to regard the community itself with hatred or contempt, then he may likewise be less motivated genuinely to reflect on which of the community's values were expressed in the laws he violated, and whether these values might in fact have merit. These two respects in which punishments may undermine an offender's motivation to reform are both succinctly, and bluntly, expressed by an inmate in Leavenworth Prison: "In society's eyes you're a worthless piece of shit. Now, you can buy into what society says and decide you really are a piece of shit or you can say, 'Fuck society, I'll live by my own rules.'"⁴⁵

In addition, when a punishment does not at least make available the opportunities by which an offender may improve his situation, both during his punishment and afterward, this may weaken his motivation to engage in a process of reflection that may lead to repentance and reform. Following R. A. Duff, we can distinguish "reform" from "rehabilitation," where "reform" refers to a change in individuals' motives and dispositions and "rehabilitation" refers to the improvement of their skills, capacities, and opportunities.⁴⁶ According to this construal, providing an offender with the education, training, or information he needs to improve his chances of (re)integrating himself as a productive member of society would constitute an example of rehabilitation. Reform, however, would require something different, namely, that the

offender come to appreciate that what he did was wrong and make a commitment to change his behavior accordingly.

Although the two concepts are distinct, they are nevertheless related. When penal institutions fail to make available to offenders the resources that could facilitate their reintegration into society, they send a message that society sees these offenders either as incapable of improvement or as not worth the trouble. Also, apart from this communicative function (that is, even if the offender does not recognize the contemptuous message being implicitly expressed), failures to make such resources available may still facilitate self-contempt in offenders. Offenders with few or no job skills, little or no education, and, importantly, no real tools with which they stand a serious chance of addressing these deficiencies and improving their lives may come to regard themselves as hopelessly incapable of improving their situations. That is, they may be more likely to regard themselves with contempt. Thus an offender's motivation to reform may be weakened by the message sent by a punishment's failure to make available sufficient opportunities for improvement, or by the lack of opportunities itself, or both. In any case, the result will be effectively to undermine the prospect of reform, and thus to fail to respect the offender as a person.

IV.

As an example of a form of punishment that exhibits a number of the features discussed here, consider maximum security, or supermax, units. These are facilities in which prisoners typically spend 22-23 hours each day in isolation in their cells, exiting only to shower or for solitary exercise in a small yard. In one sense, such units might seem especially conducive to the sort of moral reflection that might lead to reform. The extreme isolation of such units, after all,

offers prisoners plenty of time (in fact, little else) during which they may choose to contemplate the wrongness of their acts. In practice, however, evidence indicates that prolonged terms of isolation may undermine both the capacity and motivation for moral reflection, and may instead push many prisoners toward paranoia, hopelessness, or desperation. Lorna Rhodes, an anthropologist who visited and studied control units in the state of Washington, writes that in “isolation or semi-isolation, there is nothing to nudge the mind outside of its self-preoccupation and discomfort.”⁴⁷ Among the numerous prisoners she quotes, one says:

There is no hope for my future, no matter how hard I try to just be patient, be humble ... There is nobody to talk to ... and vent my frustration and as a result, sometimes I am violent. Pound on the walls. Yell and scream.⁴⁸

In addition, Rhodes describes how prison officials are trained to regard prisoners skeptically, to view positive responses by prisoners not as good behavior but as waiting and manipulation. As one administrator puts it:

The inmates know the game. They know what to say ... you have to be really guarded on that. You’d like to think that they’re not animals, that these are human beings: ‘Oh, my gosh, [he] won’t do that. And he even promised me.’ But that is not the reality ... there’s always the risk that the person is just playing the game.⁴⁹

Undoubtedly, many of the individuals detained in maximum security units are adept at “playing the game.” But notice how the administrator’s description reflects the feature of contempt that I discussed earlier, namely, its tendency to be unresponsive to evidence of moral reform. Officers

in the control units are trained to regard prisoners as incapable of changing and to discount apparent evidence of change as in fact evidence only of manipulation. As an officer told Rhodes: “A person is not a liar because he lies, but he lies because he’s a liar. ... We can postpone lying ... but that does not change the individual.”⁵⁰ Certainly, many prisoners can be dangerous and manipulative, and the officers who deal with them on a regular basis should be wary. But to presume that each prisoner’s moral character is settled, and that any apparent signs of improvement must instead be evidence of manipulation, is essentially to give up on these prisoners. In my view, this essentially amounts to a form of institutional contempt.

Ultimately, Rhodes is pessimistic about the effects of prolonged isolation on prisoners’ moral (and mental) well-being. This is not to deny that in some cases isolation might facilitate moral reflection and reform. But the effects of prolonged isolation merit further study. If empirical evidence indicated that such punishments, on balance, do tend to hamper offenders’ ability to engage in moral reflection, and thus tend to undermine the prospect of their moral reform, then these punishments would be prohibited according to the constraint I have proposed.

V.

In this final section, I address some potential objections to the reform-based constraint on punishment. First, one could argue that any punishment might undermine the prospect of reform. That is, perhaps any punishment might at least to some degree increase an offender’s negative regard for the society on whose behalf she is punished, and thus weaken her motivation to reflect on, and care about, how her criminal actions violated certain of the society’s values. If this is the case, then one might think that all punishments, insofar as there exists the possibility that they might undermine reform, would be impermissible. Notice, however, that I have consistently

phrased the constraint as a prohibition on punishments that *tend* to undermine the prospect of reform. So for my account to imply a prohibition on all punishments as the objection challenges, it would have to be the case that all modes and degrees of punishment tend to undermine the prospect of reform. This seems unlikely, unless one believes that impunity always tends to be more conducive to moral reflection and reform than any punishment at all.

This leads to a related point: Undermining the prospect of reform, as I conceive it, is to be distinguished from undermining the mere possibility of reform. The latter formulation could permit a great deal more in terms of punishment, insofar as reform may remain at least a bare *possibility* even for offenders subject to exceedingly harsh or demeaning treatment. Such treatment would undermine the prospect of reform, however, in terms of tending to make the requisite moral reflection less likely than it would have been had punishment not been administered. Thus it would be prohibited on my account.

One might object that because of psychological differences between offenders, which punishments will tend to undermine the prospect of reform may differ significantly from one offender to the next. Thus this constraint may set the ceiling for permissible punishment at different levels for different offenders guilty of the same type of offense, which appears unfair. A similar objection has been raised against the retributive proportionality constraint: Because offenders will differ in their subjective experiences of particular sentences, matching punitive burden to the seriousness of the crime would appear to require meting out the more severe sentence to the less sensitive offender and the less severe sentence to the more sensitive offender, even if they are guilty of the same type of crime.⁵¹ Andrew von Hirsch responds to this critique of proportionality by arguing that the criminal law is generally concerned with standard cases, and that “[n]otwithstanding the fact that individuals experience penalties differently, it still is

possible to gauge and compare the characteristic onerousness of various sanctions.”⁵² I am inclined to adopt the same response to the current objection: Although offenders may differ with respect to what will undermine their reform, it should nevertheless be plausible to make general assessments about which punishments *tend* to have this effect.

As the previous points indicate, which punishments would actually be ruled out by my account will depend significantly on empirical evidence about what tends to undermine the prospect of reform. I do not attempt here to address these empirical questions. Rather, my aim has been to flesh out and argue for the constraining principle itself. But the question of how the principle would constrain in practice—that is, the question of what sorts of punishments actually tend to undermine the prospect of offender reform—is one that I suggest bears further scrutiny. If research found, for instance, that certain forms of punishment significantly correlated with higher frequencies of reoffending (or with offenders’ graduating up to more serious crimes) upon release, this would provide at least some tentative evidence that such punishments were undermining offenders’ moral reform.⁵³ Again, however, my point in this paper is not to settle the empirical issue, but rather to defend the principle underlying it.

As another potential objection, one might contend that some offenders are simply irredeemable, and if so, we need not concern ourselves with whether punishments might undermine their redemption.⁵⁴ If some criminals are essentially moral monsters, with no potential for reform, then seemingly no punishments would be ruled out by the considerations of reform that I have proposed here. There is no punishment, after all, that will undermine the reform of one who cannot be reformed anyway.

We should be careful, however, about ascribing to individuals, even apparently vicious individuals, the labels “moral monster” or “irredeemable.” It is not clear what would count as

adequate evidence that one is truly irredeemable, rather than merely (so far) unredeemed or unrepentant. Even consistently evil behavior is only evidence, in Kantian terms, that one does not currently exhibit a good will, not that one has no capacity to develop a good will. Kant, in fact, believed that everyone possessed a predisposition to act from respect for the moral law.⁵⁵ This feature of humanity, as Thomas Hill puts it, “implies that anyone who has humanity has a capacity and disposition to follow such principles; but since his rationality may be imperfect or counteracted by other features, he may not always follow these principles.”⁵⁶ Thus Kant believed everyone had the capacity for repentance and reform, that a human being “can never lose entirely his predisposition to the good.”⁵⁷

Similarly, Jean Hampton urges us always to take seriously the offender’s potential for redemption. She writes, “the state’s assumption that the people it is entitled to punish are free means it must never regard any one it punishes as hopeless, insofar as it is assuming that each of these persons still has the ability to choose to be moral.”⁵⁸ The requirement to take seriously offenders’ potential for redemption asks a lot of the political community. It obliges us to acknowledge that even offenders whom we would be most tempted to label incorrigible—even those who freely embrace, and even explicitly express their commitment to, beliefs or attitudes we take to be repugnant—are nevertheless, insofar as they are free moral agents, capable of repentance and reform. To deny an offender’s potential for redemption would be, essentially, to deny her moral agency; but to deny her moral agency would be to deny her eligibility to be held accountable through criminal punishment.⁵⁹

Finally, one might worry that the reform-based constraint I have proposed here sets an untenably low ceiling on what sorts of punishment are permissible. I have contended that punishments should not tend to undermine the prospect of offenders’ reform. I also endorse,

though I do not defend it here, the commonly cited retributivist principle that punishments should be no more severe than their crimes morally deserve. Both of these constraints set upper limits on how severely we may punish.⁶⁰ A worry arises, however, with respect to how these constraints fit with what I, like many others, take to be a central aim of punishment, the reduction of crime.⁶¹ The worry, raised most notably by Alan Goldman, is that for punishments to achieve the goal of deterring potential offenders, these punishments would need to exceed what is allowed by the retributivist and reform-based constraints.⁶²

I offer two responses. First, if it did prove to be the case that the floor set by the goal of crime reduction were higher than the ceilings set by the retributivist and reform-based constraints, the constraints would take precedence. In other words, the social benefits of punishment are insufficient to justify the institution if its practices fail to respect those punished as moral persons. Second, however, I doubt that the aim of crime reduction really does require sentences more severe than the retributivist and reform-based constraints allow. Research into punishment's deterrent effects tends to support the notion that *certainty* of punishment plays a much larger role than *severity* of punishment. This conclusion undermines the idea that sentences must be especially severe for the institution of punishment to have a significant deterrent impact; effective enforcement appears more salient to this impact. Thus the institution of punishment might provide significant crime reduction benefits even if constrained not only by considerations of retribution, but also by the reform-based constraint that I have endorsed here.

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NOTES

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1. Quoted in Rhodes, *Total Confinement*, 29.

2. New York City Bar Association, *Supermax Confinement*, 1. The 80,000 figure includes those housed in prisons designed as supermax facilities as well as in traditional prisons that incorporate control units (also called security housing units or isolation units) that serve the same functions.

3. Such accounts are too numerous to cite fully, but see, e.g., Haney and Lynch, "Regulating Prisons"; Grassian, "Psychological effects"; Grassian and Kupers, *The Colorado Study*; King, "The Effects of Supermax," esp. 124-7; Moskos, *In Defense of Flogging*, 45-8; and Yost, *Solitary Confinement*.

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4. See, e.g., *Hutto v. Finney*, 687: solitary confinement “is not necessarily unconstitutional, but it may be depending on the duration of the confinement and conditions thereof.”
 5. See Shafer-Landau, “Retributivism and Desert.” The difficulty of determining desert can sometimes lead, in practice, to absurd consequences, as is vividly illustrated by Moskos, *In Defense of Flogging*, 95. He cites the case of Darron Anderson, who received a 2,200-year prison sentence for rape, kidnapping, and robbery. On appeal, a judge added 9,000 years to the sentence, although a second appeal reduced this new total by 500 years. Anderson is now set for release in 12744.
 6. See, e.g., Kant, *Metaphysics of Morals*, 579: “To be contemptuous of others (*contemnere*), that is, to deny them the respect owed to human beings in general, is in every case contrary to duty; for they are human beings.” Similarly, see Kant, *Lectures on Ethics*, 173, where Kant explicitly describes contempt as the opposite of respect.
 7. Kant, *Metaphysics of Morals*, 579.
 8. Mason, “Contempt,” 240-1. See also Bell, “A Woman’s Scorn,” 83; and Haidt, “The Moral Emotions,” 858.
 9. See Hutcherson and Gross, “The Moral Emotions,” 721.
 10. Mason, “Contempt,” 247.
 11. Dubreuil, “Punitive Emotions,” 46.
 12. Mason, “Contempt,” 249.
 13. See Dubreuil, “Punitive emotions,” 45-6; and Haidt, “The Moral Emotions,” 858. But see Bell, “A Woman’s Scorn,” 84.
 14. Kant, *Lectures on Ethics*, 417 (see also 173 and 434).

15. See Gottman, *Why Marriages Succeed*, 81. Mockery, what Gottman calls “the art of the subtle put-down,” is a common manifestation of contempt. See also Bell, “A Woman’s Scorn,” 87.

16. Although in this paper I focus on contempt as directed at others, the points I mention here also apply to self-contempt.

17. Hill, *Respect, Pluralism, and Justice*, 60.

18. A number of psychologists have discussed contempt’s association with withdrawal from—rather than confrontation of—the object of contempt. See Fischer and Roseman, “Beat Them,” 112; Hutcherson and Gross, “The Moral Emotions,” 723; and Mackie et al., “Intergroup Emotions,” esp. 610-13. See also Dubreuil, “Punitive emotions,” 45; and Bell, “A Woman’s Scorn,” 84.

19. One might think that insofar as contempt is cool and calm relative to anger, hatred, etc., it would thus be more conducive to our recognizing evidence of reform. But as I indicate above, the calmness characteristic of contempt is a product of our being settled in our assessment of the other person’s moral character. Thus although contempt is calm, it is not necessarily conducive to the sort of calm, cool deliberation that (for instance) Hume endorsed, because the calmness of contempt comes essentially from one’s having finished deliberating, from having written the other person off, so to speak.

20. See Kolnai, “Forgiveness”; Gamlund, “The Duty to Forgive”; and Murphy, “Forgiveness and Resentment.”

21. Because to reconcile is essentially to restore or repair damaged relationships, what reconciliation implies will vary depending on the nature of the relationship before it was damaged. Reconciliation in the interpersonal context (e.g., the reconciliation of spouses, or of

parent with estranged child) may involve a restoration of trust and an ability to resume the close personal relationship that was damaged. In the context of offenders and the polity that holds them to account, reconciliation might instead involve the recognition by the polity of offenders as having regained full standing as citizens, and a successful reintegration by offenders into the community. See Duff, *Punishment, Communication, and Community*, 92-6. Like Duff, I think that reconciliation in whatever context will typically involve repentance and reform by the wrongdoer. Thus insofar as it tends to be unresponsive to evidence of moral reform, contempt will be uncondusive to reconciliation.

22. Fischer and Roseman, "Beat Them," 108. See also Gottman et al., *The Dynamics of Marriage*. Perhaps not surprisingly, Gottman and his colleagues have found that contempt between spouses is the most significant predictor of divorce. For a discussion of Gottman et al.'s findings, see Gladwell, *Blink*, 18-33.

23. Mason, "Contempt," 256.

24. *Ibid.*

25. Although in cases of the latter type, in which our contempt prevented recognition altogether, it follows that we will not now be able to recall them as counterexamples.

26. It does not help to stipulate that contempt is morally justified only in the cases in which it does not leave one unable to recognize mitigating evidence. For contempt is contempt in either case; insofar as it *tends* to render people unable to see mitigating evidence, it is implausible to condemn contempt only in those cases in which this ever-present tendency happens to be realized.

27. The claim that contempt is person-focused in this way is consistent with the notion that my wrongful actions may play a prominent causal role in the development of your contempt for me.

But your contempt, as person-focused and pervasive, will tend to disconnect from any particular acts by which I may have wronged you. In contrast with your resentment for what I have done, your contempt will tend to attach to me, as an assessment of my moral worth, and will thus become more about who I am than about particular offenses I have committed.

28. Perhaps a useful, albeit imperfect, analogy could be drawn here between contempt and love. Love, we often say, can tend to blind us to (or at least leave us less sensitive to) the flaws in those whom we love. My argument is that contempt tends to have a similar effect, although in the opposite direction: contempt tends to blind us to (or at least leave us less sensitive to) the redeeming qualities in those whom we regard with contempt.

29. Kant, *Metaphysics of Morals*, 579-80.

30. See, e.g., Kant, *Metaphysics of Morals*, 557 and 579.

31. See Kalderon, *Moral Fictionalism*, 176: “Even if someone were lacking [in the relevant respect], to treat him as an end is to treat him as capable, at least in principle, of acquiring the requisite sensitivity and perception. ... The difficulty of course is that contemptuousness is inconsistent [with such treatment].”

32. Kant, *Metaphysics of Morals*, 579.

33. *Ibid.*, 580.

34. See, e.g., Bell, “A Woman’s Scorn,” 84: “Contempt may be experienced as a highly visceral emotion similar to disgust, or as cool disregard.”

35. Miller, *The Anatomy of Disgust*, 32.

36. See, e.g., Feinberg, “The Expressive Function”; Hampton, “The Moral Education Theory”; Duff, *Punishment, Communication, and Community*; and Christopher Bennett, *The Apology Ritual*.

37. Perhaps most notably, see Duff, *Punishment, Communication, and Community*, esp. 80-1; see also Hampton, “The Moral Education Theory.” Unlike Duff, Hampton characterizes the message conveyed by punishment as essentially an educative one.

38. See Matravers, *Justice and Punishment*, 92; and von Hirsch, “Punishment, Penance,” 69-82.

39. See Falls, “Retribution, Reciprocity, and Respect,” esp. 46-8.

40. One might object here that a criminal sentenced to death may have substantial time to engage in moral reflection, should she so choose, while she awaits her execution, perhaps during her appeals process. Facing death might even foster introspection and moral evaluation. I offer two responses. First, the appeals process should not be conflated with the sentence; the death penalty itself, when carried out, undeniably extinguishes a person’s capacity for moral reflection. Second, a community that imposes the death penalty communicates to the offender either that it does not take seriously her potential for reform or else that it takes it seriously only for a limited time. Thus the polity essentially imposes an expiration date on her capacity for reflection and reform. This is true unless, of course, one believes in an afterlife in which moral reflection is still possible. If so, one will presumably deny that execution extinguishes this capacity. For a number of reasons, however, religious claims of this sort are not promising bases for the establishment of penal practices in a liberal polity.

41. For two notable exceptions, see Holtman, “A Kantian Approach,” and Hill, “Treating Criminals as Ends.”

42. See Kant, *Metaphysics of Morals*, 474, where, after endorsing capital punishment as the required sentence for murder, he nevertheless insists that the execution “must still be freed from any mistreatment that could make the humanity in the person suffering it into something

abominable.” Unlike Kant’s explicit claim in this passage, of course, my account entails that capital punishment is not morally permissible.

43. The notion of contempt directed upwardly—that is, from those out of power toward those in power—is discussed at length by Miller, *The Anatomy of Disgust*, 206-34.

44. See Duff, *Punishment, Communication, and Community*, 35-73. See also Primoratz, “Punishment as Language,” esp. 196-8.

45. Quoted in Earley, *The Hot House*, 89.

46. Duff, *Punishment, Communication, and Community*, 5.

47. Rhodes, *Total Confinement*, 111.

48. *Ibid.*, 112.

49. *Ibid.*, 167.

50. *Ibid.*, 171.

51. Kolber, “The Subjective Experience.”

52. Von Hirsch, “Proportionality,” 79-80.

53. See Chen and Shapiro, “Harsher Prison Conditions.” This 2007 study found some evidence that harsher prison conditions led to higher rates of offending after release. The study was limited, however, by a small sample size. See also Villa, “Adult Prisons Harden Teens,” about a 2004 study by the *Arizona Republic* that found that the state’s tougher punishment policies for teenage offenders were contributing to nonviolent juvenile offenders’ more frequent commission of violent crimes upon release.

54. See Rhodes, *Total Confinement*, esp. 182-90, where she discusses the tendency among officials in maximum-security prisons to view prisoners essentially as moral monsters.

55. See, e.g., Kant, *Religion*, 52, and Kant, *Groundwork*, 44.

56. Hill, *Dignity and Practical Reason*, 41.

57. Kant, *Metaphysics of Morals*, 580.

58. Hampton, “The Moral Education Theory,” 231. See also Duff, *Trials and Punishments*, 266: “we can never have *morally* adequate grounds—nothing could count as morally adequate grounds—for treating a person as being beyond redemption.”

59. Cf. Duff, *Answering for Crime*, 38-43.

60. Often the ceiling set by the reform-based constraint will be lower than that set by the retributivist constraint; thus what might be permitted on purely retributivist grounds will often be ruled out insofar as it tends to undermine the prospect of an offenders’ reform. In principle, there might also be cases in which the retributivist principle would set the ceiling on punishment lower than the reform-based principle, although such cases seem less likely in practice.

61. See Hoskins, “Deterrent Punishment.”

62. Goldman, “The Paradox of Punishment.”