

SPARE THE ROD, THE TIME-OUT, AND EVERY OTHER KIND OF CHILDHOOD  
PUNISHMENT TOO: WHY PARENTS OUGHT NOT TO PUNISH THEIR CHILDREN

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## ABSTRACT

Zena Ryder: Spare the Rod, the Time-Out, and Every Other Kind of Childhood Punishment Too: Why Parents Ought Not to Punish Their Children  
(Under the direction of Geoffrey Sayre-McCord)

It is a default rule of behaviour to avoid intentionally causing distress to others, which is why parental punishment of children requires justification. I consider how various theories that have been offered as justification for state criminal punishment might apply in the case of parental punishment of children. I argue that none of those theories is successful, usually largely on empirical grounds. While retributivism is unsuccessful in justifying parental punishment of children, it nevertheless gets some significant things right: the importance of censure, and the appropriateness of wrongdoers feeling bad. However, the correct kind of "feeling bad" is *guilt* for one's wrongdoing and *sympathy* for one's victim (if there is one), not the self-oriented distress that is induced by a punishment.

As a matter of empirical fact, feelings of guilt and sympathy tend to motivate human beings to make amends, which is why it's appropriate for parents to encourage their children to have those feelings (or at least not interfere with them). I argue that punishing children is not an effective way to induce feelings of guilt and sympathy (indeed, punishment tends to interfere with them). Parents should use non-punitive discipline that encourages children to recognize their own wrongdoing as such, to feel sympathy for anyone they may have harmed, and they should help children to make amends. Parents ought not to punish their children.

To my children, Ben and Julia.

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## INTRODUCTION

I take it as uncontroversial that a default rule of human behaviour is: avoid intentionally causing other people distress, where distress can be anything from extreme emotional or physical suffering to mild unhappiness or physical discomfort. As I will use the term "distress", it refers to different types of emotion such as fear, frustration, sorrow, irritation, embarrassment, disgust, loneliness, unhappiness, etc. as well as including physical pain — anything from excruciating to minor. Of course, we do *sometimes* think it's justified to intentionally cause others even extreme distress (or pain), such as when the only way to protect oneself from an attacker involves intentionally hurting them. The higher the level of distress, or the longer its duration, the "stronger" the justification for imposing it needs to be. Intentionally causing a very low level of distress would require much "weaker" justification. Making my husband jump (i.e. intentionally causing him minor momentary fright) can be justified because it would make us both laugh afterwards. That's sufficient justification. But if I knew that he *hated* being made to jump and only I found it funny, it wouldn't be justified to do it — even though his distress is still relatively minor. The crucial thing is that intentionally causing distress does require justification of some kind; the greater the distress, the stronger the justification required. Without such justification, intentionally causing distress is morally unacceptable — with greater levels or duration of distress being morally worse than lower levels or shorter duration of distress. But even a small departure from the default rule "do not intentionally cause other people distress" does require justification. If you are in doubt about the need for justification for intentionally inflicting small amounts of distress,



I could perhaps massage your intuitions by coming to your house and smushing all the flowers in your garden, or purposefully stepping on your toe.

As well as being commonsensical, something along the same lines as this default rule of behaviour is acceptable to different kinds of ethical theory. (As we should expect. Any moral theory that rejected such a fundamental tenet of ordinary moral behaviour would have a tough row to hoe in showing why their theory should be preferred over this rule of thumb.) A deontological theory will have rules about how to treat other people, and they will undoubtedly include something along these lines, or else their rules will imply it. The same goes for a rule consequentialist. Depending on the exact theory of value, they might have a more general rule that replaces "distress" with something slightly different, such as "harm". In which case, "Avoid intentionally causing other people distress" is just a more specific instance of that more general rule (given that distress is a kind of harm).

The act consequentialist of course doesn't accept any "official" general rules of behaviour (only practical guides, perhaps). For the act consequentialist, each act is supposed to be evaluated individually — they ask: what positive and negative consequences will *this* act have? However, the act consequentialist accepts that agents ought to act such that they maximize positive consequences and minimize negative consequences. Consequentialists' exact theories of value will vary, of course, but "distress" (or something similar, such as "negative emotion" or "unhappiness") will be *one* of the negative values that a consequentialist believes should be avoided, in favour of positive values.<sup>1</sup> They will accept that sometimes it's right to cause distress — when it

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<sup>1</sup>Consequentialists might think that along with "Avoid causing other people distress" there's an equally weighty default rule to "Cause other people happiness" (or something like that). More than one rule can be default, and departing from any of them would require justification (and for the consequentialist, that justification will always be in terms of consequences, of course). Personally, I don't believe that "Cause other people happiness" is a default rule of human

is a consequence of the best available option, i.e. all the alternatives have worse overall consequences. But they do think it's right to avoid causing distress — unless there's justification for doing so, and for them, that justification will be in terms of the positive benefits achieved by taking the route that causes distress. (A classical consequentialist will think that an action is right — i.e. has the best outcome of all the options — regardless of the agent's intentions. However, if they accept something like "Avoid causing distress", they will also accept "Avoid intentionally causing distress" since intentionally causing distress is a subset of causing distress.)

There is a difference, for our purposes, between intentionally causing distress and intentionally causing something distressing. When I spank a child, or wash their mouth out with soap, I intend to cause them distress (physical or emotional or both). Their distress is not a mere byproduct or side effect of what I do; it forms (at least part of) my reason for doing it. On the other hand, when I take them to the dentist, even though I know they don't like it, their distress *is* a mere byproduct or side effect of what I do; it does not form (even part of) my reason for doing it. Taking them to the dentist is intentionally causing something distressing to happen to them, but it is not intentionally causing distress. (I'm not supposing that this distinction is always made in everyday language, at least not strictly. But it is a distinction that is important for present purposes.)

I don't mean to imply that causing distress can be morally wrong *only* if it's caused intentionally — rather than accidentally, or incidentally. It can be wrong to cause distress accidentally (say, if someone was culpably negligent and an accident happened) and it can be wrong to cause distress incidentally (say, if the unintended side effects of something were known to be much greater than the expected benefits). It's just that this particular default rule of behaviour — don't

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behaviour; but it's something that the consequentialist might argue should become one.

intentionally cause other people distress — is what is relevant in the case of punishing children. Other actions that parents perform may cause their children distress incidentally (such as taking them to the dentist, or having them tag along to a loud concert) or accidentally (such as doing up their zipper and accidentally nipping their skin, or by letting them travel in a car without a seat-belt on). And such actions may be morally justified or not, but the reasons they are justified or not has nothing to do with the distress being intended (because it wasn't).

One might think that instead of "Avoid intentionally causing other people distress", the following is the correct default rule of behaviour: "Avoid causing other people distress" (i.e. without the *intentional* part). My view is that these are variations on a theme, and *both* are rules, not competing principles only one of which is correct. This is similar to the following two rules of thumb: "Avoid killing people" and "Avoid intentionally killing people". These are variations on the same theme, not competing principles. We should, generally speaking, avoid killing people — whether intentionally, incidentally, or accidentally. A more specific instance of that rule is "Avoid intentionally killing people". Any time these rules are transgressed, it requires justification. Depending on the version that is transgressed, a different kind of justification is required. If some people are *accidentally* killed, the justification for the action that resulted in people being killed would have to focus on the degree of care taken and whether it amounted to culpable neglect or not. If people are *intentionally* killed, a different kind of justification would be required — one that focused on the *reasons* for the killings, including the evidence for the likely effects of the killings, and whether those reasons and evidence are good enough to justify the killing.

So, while it's true that we ought to avoid causing distress (generally), it's also true that we ought to avoid intentionally causing distress. And it's the latter, more specific, rule that is more

relevant in the case of punishment. Punishment is not *only* an instance of causing distress. In addition to that, it's also an instance of *intentionally* causing distress and, as we shall explore in some detail, that requires additional justification (for everyone except the classical consequentialist who doesn't care what intentions an agent has).

Punishment of children is the intentional infliction of some kind of distress in response to a disapproved of behaviour, with a goal such as "teaching a lesson", fairness, instilling responsibility and so on.<sup>2</sup> I have chosen a weak formulation of punishment, in terms of "distress", rather than suffering, pain, or harm,<sup>3</sup> any of which might be objected to on the grounds that they sound stronger than the proponent of punishment might be willing to accept. Because "pain" or "harm" or "suffering" sound more extreme than "distress", I will use the latter. I don't want to give the impression of stacking the deck against proponents of punishment.<sup>4</sup> Because punishing children involves intentionally causing them distress, physically or emotionally or both, e.g. by spanking them, restricting their freedom in a time-out, removing their property, etc — it requires justification. Punishment is not merely intentionally causing something distressing to happen; it is intentionally causing distress. That is, a child's distress (physical pain, emotional upset, suffering etc)

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<sup>2</sup>A fraternity ceremony that inflicts pain after an initiate has committed some agreed upon action — such as shoplifting or breaking a window — is not punishment, even though it is the intentional infliction of distress in response to a certain bad behaviour. It is not a punishment because the fraternity members are not inflicting pain because they *disapprove* of the bad behaviour. See Boonin (2008), p. 23.

<sup>3</sup>I think it's more standard to speak in terms of pain, harm, or suffering as in Sayre-McCord (2001), p. 504: "Punishment has at its core the intentional infliction of pain or harm." But I'm using the weakest formulation I can think of.

<sup>4</sup>Thanks to Geoff Sayre-McCord for raising this potential problem with using words like "suffering" to describe punishment.

is not a mere byproduct or side effect of a punishment, it forms at least part of a parent's reason for punishing.

It might be thought that what really makes an action a punishment is not intentional infliction of distress (or harm, pain, suffering, etc), but rather intentional interference with bodily integrity or autonomy. While such interference is indeed a significant source of distress and many punishments make use of it, there are punishments that cause distress that do not interfere with bodily integrity or autonomy (unless "autonomy" is understood so broadly as to mean "something someone doesn't want or like", which doesn't seem correct). For example, a shaming punishment in which someone's identity is concealed (so they don't face any consequences due to diminished reputation) can cause distress even though it doesn't interfere with autonomy (other than to be something the offender doesn't want to do). Suppose an offender's sentence is to walk up and down a busy sidewalk wearing an identity-concealing mask and a large sign around their neck that says, "I am a thief". Such a punishment would cause distress to the offender, but it does not interfere with autonomy or bodily integrity. It's the intentional infliction of distress that makes it a punishment.

On the other hand, someone who cannot experience any distress cannot be punished, even if their bodily integrity is interfered with. Suppose an offender was in a car accident immediately after their crime and fell into a permanent coma. It would not be possible to punish them because they would not be aware of anything that happens to them. Even if their bodily integrity is violated during unconsciousness, they have not been punished, because the action can cause them no distress. They will never even know that it happened and cannot "learn their lesson" or anything like that. (Of course, that doesn't preclude its being morally wrong to do.)

When a child is punished by not being allowed to have dessert, that doesn't do anything so significant as interfere with the child's bodily integrity or autonomy (again, unless "autonomy" is understood so broadly as to mean "something someone doesn't want or like"). But it does cause them distress — i.e. it upsets them — which is exactly what the parent intended it to do.

There's one more feature of punishment that is worth drawing attention to. The distress that the recipient experiences is typically<sup>5</sup> (but not necessarily) *self-oriented* — children are made to feel physical pain, or emotional upset at being isolated by themselves in a room, or intense disappointment at not being able to watch their favourite TV show, and so on. When adult offenders are punished in different parts of the world, they are made to feel physical pain, or the emotional pain of loneliness due to separation from family and friends while imprisoned, or frustration at having their freedom curtailed, or hardship at having to pay a fine, and so on. Self-oriented distress contrasts with other-oriented distress, for example: the discomfort of empathic concern; the pain of witnessing a loved one suffer; intense feelings of guilt and responsibility for having harmed someone else; and so on.<sup>6</sup>

By inflicting some kind of distress or suffering on a child or an offender, it is hoped that punishment, will help them "see the error of their ways". Distress, pain, or suffering is supposed to be a *means to the end* of getting a child or an offender to appreciate what they did wrong, to

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<sup>5</sup>It is possible to punish someone by intentionally causing them to feel other-oriented distress. An offender could be punished by forcing them to watch their own child being made to suffer. The offender's distress is other-oriented (sympathy for their child), but it is a punishment (i.e. intentionally inflicted distress, which aims at goals such as retribution, justice, recognition of wrongdoing, feelings of guilt, etc.). Note, however, that such other-oriented distress is not focused on the offender's *victim*. Which is where we might think that it would be right for an offender's distress to be focused. We will return to this issue.

<sup>6</sup>For more on the distinction between other-oriented empathic concern and self-oriented personal distress in response to another's distress, see Lamm et al (2007), Cheetham et al (2009), Decety & Lamm (2015). We will come back to this in more detail in Chapter 8.

sympathize with any victims of the wrongdoing, and so on. (For the retributivist, the goal might be something more abstract, such as justice or fairness. But, still, the point is to intentionally inflict distress on the wrongdoer in order to achieve something else: justice, censure, repentance, and so on.) Of course, appreciating the wrongness of one's action, feeling guilty, sympathizing with a victim and regretting the harm one caused them can all be distressing experiences. But they themselves are not punishments — they are examples of the *goal* of punishment. So if a parent or a representative of the justice system acts with the intention to cause a child or an offender the distress inherent in appreciating the wrongness of one's action (guilt) or the distress of realizing someone else's suffering (sympathy), that action is *not* necessarily a punishment.

Goals of *both* punitive and non-punitive discipline are things like recognition of wrongdoing, moral education, taking responsibility, the experience of guilt, sympathy for victims, improved future behaviour, justice, fairness, and so on. How such goals are approached can be punitive or non-punitive. If they are approached via some *other* (typically self-oriented) distress that is intentionally inflicted, the method is punitive. If they are *not* approached via some other distress that is intentionally inflicted, the method is not punitive.

This is important. Non-punitive responses to crime and non-punitive discipline of children are *not* just punishment by another name, even if they cause distress, even if they intentionally cause distress. This is because non-punitive responses, while they share some goals with punitive responses and those goals involve some distress (recognizing your own wrongdoing can be intensely distressing!), the *methods* of reaching those goals are necessarily different. A punitive method intentionally inflicts distress (typically self-oriented), but a non-punitive method does *not* intentionally inflict distress. And the question I am considering in this dissertation is whether it's morally acceptable for parents to choose a punitive method of disciplining their children.

Whilst there is a vast philosophical literature on the controversial issue of criminal punishment by the state, there is relatively little on the punishment of children by their parents. It does not seem to be an area of much philosophical controversy. Indeed, parental punishment of children (PPC) is sometimes considered a paradigm case of permissible punishment:

Parents are natural educators morally charged with the task of turning their young dependents into civilized adults, and they need, common sense insists, the possibility of punishing to succeed.<sup>7</sup>

We mustn't let the common sense nature of PPC obscure what actually happens when a parent punishes their child. Even though they have (we can assume) their child's interests at heart, when a parent punishes their child, on that occasion, they intend to cause the child distress — such as physical pain or emotional upset — to some degree or other.

In a typical discipline scenario, a child exhibits bad table manners, is too noisy, too messy, ignores a parental instruction, hits a sibling, speaks unkindly or rudely, doesn't eat their vegetables, or doesn't do their homework (perhaps repeatedly). A typical punishment might be a spanking, a time-out, extra chores, or a removal of privileges. On such occasions, is punishment justified? If justification is lacking, parents ought not to punish their children; they ought to refrain from intentionally causing distress.

In this dissertation, I will argue that no justification of parental punishment of children is forthcoming. This means that parents should maintain the default position — and refrain from intentionally causing their misbehaving children distress. Parents ought not to punish their children.

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<sup>7</sup>Quinn (1985)



Does this mean that it is *never* justified to punish a child?<sup>8</sup> Well, we can always cook up a scenario in which the only choices are punishing a child and something morally worse — letting evil aliens blow up the planet springs to mind — and in such a scenario, it would be morally permissible (indeed no doubt it would be required) to punish a child. If evil aliens threaten to blow up the planet unless I punish my child, then it's presumably morally permissible for me to give my a child a time-out or a spanking. (We will return to our evil aliens later.)

But what about more realistic scenarios? In realistic scenarios, is it *never* justified to punish a child? To answer this question, I think it's necessary to clarify how empirical evidence bears on everyday life. Suppose, as I think is actually true, that there is overwhelming evidence in favour of childhood vaccinations — the initial pain is minimal, the risks are low, the costs are low, the benefits are high (both to the vaccinated child, and to those around them). So *unless there is good reason to think my child is an exception* in a relevant respect, then I ought to get my child vaccinated. If my child is deathly allergic to one of the ingredients in the vaccine, or if their immune system is so weak that they could not safely handle being vaccinated, then I have *countervailing evidence* against the general claim that one ought to get one's child vaccinated. In the absence of such countervailing evidence, I ought to get my child vaccinated. (Unrealistic scenar-

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<sup>8</sup>I happen to believe that no typical general moral claim about the permissibility or impermissibility of a type of action is guaranteed to be literally exceptionless, although it's not necessary for the reader to agree with this claim in order to accept my argument against punishment. (By a *typical* general moral claim, I mean familiar statements like "It's morally wrong to break a promise" or "Torture is morally wrong".) We are creative creatures and we can always imagine a scenario in which an agent has excellent reason to believe that something morally much worse would happen if they don't perform a particular type of action, however awful that type of action is. For any genuine type of action, no matter how awful — murder, rape, torture, etc — we can (if we force ourselves) imagine scenarios in which performing one of those actions is permissible (or at least not impermissible), because the only alternatives are morally even worse. (Different theorists will of course give different reasons for why one action is morally worse than another eg, it has worse consequences, or it breaks a more serious rule, it transgresses a more fundamental right etc.)

ios, such as aliens threatening to blow up the planet, are imaginative ways to provide clear countervailing evidence against a general claim. The point of such cases is to make it clear that the evidence that would be relevant, or even decisive, in any ordinary situation is superseded in the specific case.)

In the case of punishment, if there is countervailing evidence that a particular child is an exception in a relevant respect — for example, the child has been diagnosed with oppositional defiance disorder and there is good evidence that children with ODD respond well to punishment and not to non-punitive discipline — then there might be sufficient reason to think that the general evidence is superseded in that particular case. For the purposes of this dissertation, I will be considering the ethics of punishing *typical* children, not those diagnosed with any behavioural disorders.<sup>9</sup> In the absence of countervailing evidence that one's child is an exception in a relevant respect, then one ought to refrain from punishing one's child. And, no, I don't think there are any exceptions to that general claim, just as I don't think that there are any exceptions to the analogous claim about vaccines:

In the absence of countervailing evidence that a particular child is relevantly atypical (or that a particular situation is relevantly atypical), such that the general evidence does not apply to them (or it), or the general evidence is superseded, it's true that a parent ought to vaccinate their child.

In the absence of countervailing evidence that a particular child is relevantly atypical (or that a particular situation is relevantly atypical), such that the general evidence does not apply to them (or it), or the general evidence is superseded, it's true that a parent ought not to punish their child.

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<sup>9</sup>I have not looked in any detail at the evidence regarding punishment in these populations and so, officially, I withhold judgement about the ethics of punishment in such cases.

In the vaccination case, intuitions might vary on whether or not we judge the 'ought' to be moral or pragmatic (or both) — since it involves refraining from doing something beneficial (rather than doing something harmful). In the punishment case, however, since punishment involves intentionally inflicting distress on another person, we tend to see the 'ought' as being moral (instead of, or in addition to, being pragmatic). Personally, I don't think there's a hard and fast fact of the matter when an 'ought' is moral and when it's pragmatic, but it would take me too far afield to discuss that here. Suffice it to say that, judging by the venerable history of the topic of punishment in moral philosophy, I take myself to be making a moral claim, not a merely pragmatic one. Simplifying somewhat by removing the caveat about countervailing evidence regarding atypicality, the moral claim I am defending in this dissertation is:

Parents ought not to punish their children.

In order to argue for the conclusion that PPC is not justified and that parents ought not to punish their kids, I should need only to show that there is not sufficient reason to depart from the default position of refraining from intentionally causing other people distress.

If position A is the default position, and position B is the alternative, we need reasons to think that B is preferable in order to depart from A. In the absence of such reasons, we stick with A (that's what it means to be the default position). In order to have reasons to think that B is preferable to A, we might compare A and B, but inconclusive reasons should lead us to stick with A. It's not the case that we start off neutral between A and B, and so need reasons that favour A if we are to go with A; we stick with A *unless* we find reasons to think that B is preferable. In the present case, this means that in order to argue that parents ought not to punish their children, I should *not* need to show that there is an alternative, such as a particular type of non-punitive dis-

discipline, that is preferable — I just need to show that there's no good reason to depart from the default (do not intentionally cause distress).

It might be argued that a good reason to depart from the default is that there is no alternative way to reach the goals parents need to reach (e.g. there is no non-punitive discipline method that has been shown to be effective at, say, getting children to eat their vegetables). This *would* be a good reason to depart from the default *if* punishment was effective at reaching its goals. But if it's not effective, then the lack of a well-supported alternative is not a reason to depart from the default. It could be the case that "nothing works", in which case we should stick with the default. Or it could be that there's not (yet) evidence for what non-punitive discipline methods work, in which case we should still stick with the default.

However, I realize that most readers will require more than seeing that there is not sufficient reason to depart from the default position in order to be persuaded of the conclusion that parents ought not to punish their children. Given the depth to which PPC is culturally embedded, many people will share the feeling that Bill Lycan expressed to me: that the conclusion that parents ought not to punish their children is, in his words, "mind blowing". And so I will also talk about the empirical evidence regarding the risk of long term harms due to punishing children, which provides additional reasons not to punish them.

Of course, for the consequentialist, the long term risks and harms are not *additional* reasons to reject PPC, but rather they are central to rejecting PPC. What matters to the consequentialist is whether an action has better or worse overall consequences than the alternatives — taking *all* consequences into consideration, including the long term ones. We might loosely refer to "consequentialist theories of punishment" that try to justify punishment by reference to particular kinds of consequence, such as moral education or behavioural training. But to avoid confu-

sion, I prefer to call these latter kinds of theories "instrumentalist". Such theories maintain that punishment is justified by its instrumental value, that is, by *specific* kinds of outcomes punishment can achieve such as moral education or behavioural training, not by *all* the outcomes, as the consequentialist maintains. So an instrumentalist theory of punishment will look at one particular type of outcome to determine whether it's justified to depart from the default position of refraining from intentionally causing distress. In contrast, a consequentialist theory of punishment will look at *all* outcomes to determine whether it's justified to depart from the default position of refraining from intentionally causing distress. We will discuss consequentialism in more detail in Chapter 7.

For everyone other than the consequentialist, the long term harms and risks will be *additional* reasons to reject PPC. Unless someone is a consequentialist, they will give certain types of outcome greater weight when considering whether or not PPC is justified. For example, a moral education theorist might think that PPC is justified on the grounds that it morally educates children. For them, the educational outcomes determine whether or not PPC is justified, not *all* consequences, as for the consequentialist. If PPC is not as a matter of fact educational, that should be *sufficient* reason to show that PPC is not justified, according to the standards of the moral education theory. Further harms and risks provide *additional* reasons for such a theorist to reject PPC. But even if the evidence showed that PPC was morally educational, it should also be relevant at what cost this educational benefit is achieved. If, for example, severely beating a child could be shown to be morally educational, that wouldn't automatically justify beating as a punishment — even for the moral education theorist. That's because the moral education comes at too great a cost in terms of harm to the child. Yes, a child might learn that it's morally wrong for them to steal from the cookie jar, but if it comes at the cost of a black eye and a broken arm, the

punishment is presumably not justified by the standards of the moral education theorist, even though it results in moral education.

In this dissertation, I put a lot of emphasis on empirical evidence. I will discuss the evidence regarding whether PPC is an effective way to gain children's obedience or to morally educate them, what the evidence is regarding the long term risks, and so on. This emphasis on evidence should not be taken to imply that I am assuming consequentialism is true. As I've mentioned, it's not only consequentialists for whom the (evidence regarding) outcomes of PPC should be relevant — it also matters (or should matter) to any instrumentalist theory, such as the moral education theory. (And, in reality, I expect that most parents tacitly hold rough instrumentalist justifications for PPC.) If a moral education theorist is correct that moral education *would* justify PPC, it matters whether or not PPC actually *does* result in moral education. Only if PPC actually does result in moral education would PPC be justified, according to the moral education theorist — and to evaluate that we need to look at empirical evidence. Although retributivists tend to claim that empirical evidence is irrelevant to their position — deserved punishment is "appropriate", no matter what the evidence regarding its consequences — I think it's at least arguable that it *should* matter to them. Even if we grant that punishment is an appropriate response to wrongdoing regardless of consequences, the empirical evidence could still indicate which *type* of punishment best meets certain goals that the contemporary retributivist might have. For example, in a given society, does imprisonment or flogging best communicate to the population censure of a criminal act? Even though it's not the purpose of a punishment to elicit a genuine apology from an offender, if the retributivist thinks it's a desirable side effect if it does, which type of punishment is most likely to do so? We will look at retributivism in detail in Chapter 8.

Of course, whether or not moral education *could* justify PPC is a philosophical or theoretical question, not an empirical question. Suppose that the empirical evidence showed that PPC did in fact result in moral education, would that be sufficient to justify PPC? Why or why not? What else would be required? Could moral education justify PPC, even if there were more effective, and/or less harmful, alternatives? For each type of instrumentalist theory, such theoretical questions are important, along with the evidential issues, and I will address both kinds of question in this dissertation. PPC can fail to be justified by an instrumentalist theory, either because the evidence indicates that the purported benefit does not in fact result from punishment, or because (even if it did result) that benefit would not succeed in justifying PPC, or both.

Despite it being common sense that parents ought to punish their children, I believe that they actually ought not to do so, and this dissertation provides an empirically-supported argument for this view. This prohibition includes not only corporal punishment such as spanking, but also non-physical punishments, such as currently fashionable time-outs.

I acknowledge that, of course, children need *discipline*; they need to learn how to behave appropriately, they need to learn rules or principles of behaviour and morality. But discipline is not the same as punishment; punishment is just one way to discipline. Arguing that parents ought to refrain from punishing their kids is not to argue that they ought to refrain from disciplining their kids — because discipline can be non-punitive. (Even the most punitive parent uses non-punitive discipline some of the time — when they explain why a child is not allowed to do something, when they distract a toddler, when they ask a child to imagine how they themselves would like to be treated, and so on.)

I also acknowledge that disciplining children — with or without punishment — can be difficult. But I hope that over time, with the proliferation of information and advice on non-puni-

tive discipline, parents can learn to become less punitive. Attitudes can change, and they are changing regarding physical punishment.<sup>10</sup> I hope that parents can learn how to pursue better the worthy goals that they have for their kids — with the relief of understanding that they need not and should not punish their children in order to have the best shot at achieving those goals.

As already mentioned, in order to conclude that PPC is not justified and that parents ought not to punish their kids, I need only to show that there is not sufficient reason to depart from the default position of refraining from intentionally causing other people distress. However, since this conclusion is easier to accept if we have some idea of the alternatives to PPC, in the final chapter, Chapter 9, I will also touch briefly on possible non-punitive disciplinary alternatives to punishment and the currently available evidence in favour of them.

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<sup>10</sup>See, for example, Durrant et al (2014) and Osterman et al (2014).



## CHAPTER ONE: PRELIMINARIES

### *Why, and how much, parents punish*

Decent parents love their children and care deeply for their wellbeing. They don't *want* to hurt or upset them. But most parents think that they sometimes *need* to do so — on those unpleasant occasions when they have to punish their children. Decent parents do not enjoy punishing their children, but they likely believe that sometimes, they *must* do so — perhaps against their own gentler feelings and certainly against their children's feelings. They think that punishments are justified because the distress they inflict (physical pain, emotional upset etc) means that certain benefits will accrue — kids will obey, they will gradually learn how to behave better, they will become more morally educated, and so on.

I suspect that parents typically are not retributivists when it comes to their children's punishments. They might well have retributivist intuitions — especially in the heat of the moment — but I'm assuming that, typically, they think that PPC is justified by its *benefits*, and the bulk of this dissertation is focused on instrumentalist theories of punishment (such as the moral education theory). Even if parents have an intuition that a child *deserves* a punishment (in a retributivist sense), I doubt they would typically think this feeling was sufficient to justify punishing them in the absence of benefits to the child. Parents typically think that if they give in to their own gentler feelings and fail to punish their children, they will ultimately be doing a disservice to their children, despite the fact that punishments at the time upset or hurt their children. They are instrumentalists who think that the *benefits* of punishment are ultimately worth the short term

costs (in terms of their children's distress). However, there are elements of contemporary retributivism (which focuses less on desert and more on the function, meaning, or communicative value of punishment) that are perhaps more intuitively appealing as a defense of PPC than traditional retributivism. So, as well as considering various instrumentalist justifications of PPC, we will also discuss the possibility of a retributivist justification of PPC.

If the conclusion of my argument were widely accepted and acted upon, it would radically change most parents' behaviour towards their children. For example, in 2000, 26% of American parents of children between the ages of 19 and 35 months report spanking their children "sometimes" or "often"; 65% report removing a toy as a punishment "sometimes" or "often"; 70% report giving a time-out "sometimes" or "often".<sup>11</sup> Of a group of 923 American children who were three years old in the early 2000s, 44% "were spanked 2 times or more in the past month".<sup>12</sup> Also in the early 2000s, 65% of 3 year olds in an American urban population were spanked by one or both parents in the previous month.<sup>13</sup> Another study found that in the US in 2001-2003, "57% of mothers and 40% of fathers engaged in spanking when children were age 3, and 52% of mothers and 33% of fathers engaged in spanking at age 5... The use of spanking is highest for preschoolers and school-age children, but even in the first year of life recent evidence finds 11% to 15% of children spanked and as many as 34% of 1-year-old children in impoverished families [are spanked]."<sup>14</sup> One study of nearly 3,000 mothers in North Carolina showed that

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<sup>11</sup>Regalado et al (2004)

<sup>12</sup>Lee et al (2013)

<sup>13</sup>Taylor et al (2010)

<sup>14</sup>Mackenzie et al (2013)

70% of mothers reported that they had spanked their 2-year-old children.<sup>15</sup> Alarming, there's also some preliminary evidence that self-reports of spanking underestimate the real frequency.<sup>16</sup>

Approval of spanking is high. "In a 2005 US poll, 72% of adults reported that it was "OK to spank a child."<sup>17</sup> In 2012, 77% of American men and 65% of American women in a representative sample agreed with the claim that sometimes a child needs a "good, hard spanking".<sup>18</sup>

In Canada in 2004, 59% of mothers reported using physical punishment (mostly spanking and slapping) with their 3 year old children within a two week period.<sup>19</sup> In 2012-2013, 25.4% of Canadian parents of children aged 2-12 reported that they had spanked their child in the previous month, with younger children being more likely to be spanked than older children.<sup>20</sup>

UNICEF published a survey of child punishment in 33 low and middle income countries in 2010. 76% of children aged 2-14 had experience some form of (physically or psychologically) violent discipline in the past month.<sup>21</sup> Half of the children experienced physical punishment within the previous month.<sup>22</sup> As of 2016, UNICEF states that "6 in 10 children between the ages of 2 and 14 worldwide (almost a billion) are subjected to physical punishment by their caregivers on a regular basis".<sup>23</sup>

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<sup>15</sup>Zolotor et al (2011)

<sup>16</sup>Holden et al (2014)

<sup>17</sup>Taylor et al (2010)

<sup>18</sup>See the report on attitudes towards spanking produced by the non-profit, non-partisan, research centre, *Child Trends*: <http://www.childtrends.org/?indicators=attitudes-toward-spanking>

<sup>19</sup>Ateah et al (2005)

<sup>20</sup>Perron et al (2014) p. 41

<sup>21</sup>P. 21, [http://www.childinfo.org/files/report\\_Disipl\\_FIN.pdf](http://www.childinfo.org/files/report_Disipl_FIN.pdf)

<sup>22</sup>P. 23

<sup>23</sup>UNICEF global databases, 2016, based on Demographic and Health Surveys (DHS), Multiple

### *The role of empirical evidence, and the role of values*

In this dissertation, I aim to show that all the purported justifications for PPC fail. Instrumentalist theories, which are based on the idea that punishment is *useful* for achieving certain goals (obedience, better behaviour, moral education) — they all fail. Consent theory fails. Retributivism fails.

Although my argument is empirically supported, my rejection of PPC isn't based *entirely* on empirical evidence. For example, if the empirical evidence showed that spanking was effective at gaining child obedience, say, that wouldn't be sufficient to conclude that spanking children is morally justified, in my view. After all, severely beating children might be effective at getting child obedience, but that wouldn't be sufficient to conclude that beating children is morally justified. It also matters how much distress or harm is being inflicted (both intentionally and unintentionally) and how significant the resulting benefit is. It's hard to imagine any resulting benefit being 'worth' the harm — intended and unintended, short and long term — that is inflicted by a severe beating. There would also have to be no equally effective and/or less harmful way of achieving the same goal. The same goes for spanking.

Any instrumentalist theory, in order to justify departing from the default rule of behaviour "Do not intentionally cause others distress", and to justify punishment, has to meet three requirements:

- (1) The distress inflicted (both intended and not intended) is not excessive, compared to the amount and/or type of benefit gained.
- (2) The distress inflicted will likely lead to the intended goal.
- (3) There is no comparably effective alternative that causes less distress.

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Indicator Cluster Surveys (MICS) and other nationally representative surveys, 2005-2015. <https://data.unicef.org/topic/child-protection/violence/violent-discipline/#>

If *any* of those three requirements are not true, then the instrumentalist theory in question fails to justify PPC. So if, for example, punishment fails to contribute to moral education, then because (2) is false, the moral education theory fails to justify punishment. If, punishment does contribute to, say, deterring children from misbehaviour over time, but it does so only a tiny amount and/or by imposing an excessive amount of harm on a child, then because (1) is false, the deterrence theory fails to justify punishment. And if non-punitive discipline is just about equivalent in effectiveness at gaining compliance as punishment, then because (3) is false, the common sense view that PPC is justified by its effectiveness in gaining compliance is false.

For a retributivist theory to succeed in justifying departure from the default rule of behaviour "Do not intentionally cause others distress", and to justify parental punishment of children, it has to meet these three requirements:

- (1) The distress inflicted (both intended and not intended) is neither too much nor too little, compared to the wrong the child has done.
- (2) The distress inflicted will likely lead to, or instantiate, the intended retributivist goal.
- (3) There is no comparably effective alternative that causes less distress.

So if the retributivist goal is to for a parent to express condemnation of a child's action (drawing on the wall, say), then even if a severe beating achieves this, it would fail by the retributivist's standards because such a punishment is disproportionately distressing, compared to the child's wrongdoing, thus failing requirement (1). Retributivists seem inclined to think that their theory is not vulnerable to empirical evidence (unlike instrumentalist theories that are based on the *usefulness* of punishment). But so long as they maintain that punishment has a *goal* or a *purpose*, then it seems to me that empirical evidence is relevant. And if punishment is ineffective, or less effective,

tive than a less distressing alternative, it seems that retributivism fails to justify punishment. Rather than go into too much detail here, I will reserve further discussion until Chapter 8.

My view is that no theory of punishment succeeds in justifying PPC. Even if someone accepts a retributivist theory of criminal punishment, they could agree with me that retributivism fails to justify PPC. Even if someone accepts a deterrence theory of criminal punishment, they could agree with me that deterrence theory fails to justify PPC. A consequentialist could agree with me that consequentialism fails to justify PPC. And so on. I hope to be able to persuade people with many different views to agree that PPC is not morally justified.

My own view of PPC depends heavily on empirical evidence, but it also depends on values or principles (e.g. a child's bodily integrity is very important). Since I value non-violence and bodily integrity very highly, for me personally it would also be hard to accept spanking as a justified punishment even if it "worked". The benefits of spanking would have to be *very* significant in order for me to accept it as justified. For example, if all and only children who were spanked became kind and happy adults, and all and only children who were not spanked became unkind and unhappy adults, and there was no alternative method that was comparably successful but didn't involve physical violence, then I would be reluctantly compelled to accept spanking as justified.

Even though an imaginary person who ranks obedience, say, far higher than any other value might accept that it's permissible to inflict extreme amounts of pain in order to gain even a tiny amount of additional obedience, we would not agree. We value a child's physical safety and psychological wellbeing too highly, and obedience too little, to countenance the idea that a tiny amount of extra obedience would be 'worth' inflicting an extreme amount of pain on a child.

Of course, it would be a difficult task to come up with a principled way to rank values such as obedience, happiness, moral education, freedom from physical pain, and so on. However,

as it turns out, we don't need to decide how to rank values (obedience compared to happiness, bodily integrity compared to future kindness etc) in order to weigh parents' goals against the distress or harm they inflict when punishing. We don't need to do this because, even if PPC *would* be justified if the benefits were great enough, it turns out that it is not, as a matter of empirical fact, very effective at promoting the benefits parents are hoping for (obedience, non-aggression, etc).

So despite the fact that there is a *hypothetical* point at which I would (reluctantly) accept that the likely benefits of PPC are 'worth' the inflicted distress, I still nevertheless believe that PPC — in the actual world — is not morally permissible. Here's an analogy. Even though we generally believe that, say, punching people in the face is wrong, almost all of us would nevertheless hold the view that it would be acceptable to punch an innocent person in the face if this was the only way to prevent evil aliens from blowing up the planet. That outlandish counterfactual situation doesn't change the fact that, ordinarily, punching people in the face is wrong. Similarly, even if spanking a child (or even severely beating them) would be permissible (or even morally required) in order to prevent evil aliens from blowing up the planet, that doesn't change the fact that, ordinarily, spanking children (not to mention severely beating them) is wrong. An extreme counterfactual situation is required in order for our judgement to change on the permissibility of murder or the serious assault of a child. Less extreme situations are required for our judgement to change on the permissibility of less extreme actions. While we might require saving the planet in order to justify killing an innocent person, we require less benefit to justify breaking someone's arm, even less to justify a slap, and even less to justify giving a child a time-out.

Note that it's not only consequentialists who accept this kind of view; non-consequentialists can too. Rights can be "outweighed" by competing rights and duties. Rules can conflict and the solution is determined by the weighting of various values, and so on.

So, when it comes to considering the counterfactual situation in which "spanking works" or "time-out works", even if I would be willing to concede that, in those situations, spanking or time-outs would be permissible, that does nothing to change the fact that, ordinarily (in the actual world, rather than a counterfactual one), spanking, time-outs, and other punishments are not permissible. This view is consistent with both consequentialist and non-consequentialist moral theories. It does not make my moral position on PPC dependent *only* on the empirical evidence. It also matters how much different things are valued, such as obedience, future happiness, bodily integrity, parent-child relationship, autonomy, and so on.

### ***Not all negative consequences are punishments***

If a thief is required by the state to return stolen money, despite the fact that this may cause the thief distress, it is nevertheless not a punishment. The goal is for the victim to get their money back (and thus to partially make amends to the victim). The thief feeling distress — such as intense disappointment and resentment at having to return the money she was hoping to buy a yacht with — is irrelevant to that goal. The distress that is caused is incidental; the distress is not intended as a means to some end, as it is with punishment. If the thief does not feel any distress at returning the property, then this is *not* a failed sentence — unlike a punishment that fails to cause distress. (The point of a punishment is to reach some goal — such as moral education — *via* distress.) The goal is to have the stolen property returned to its rightful owner, and this is successfully accomplished *whether or not* the thief is distressed about returning it. And so



returning the money is *not* a punishment.

Similarly, negative consequences for misbehaviour that a parent imposes — which might cause distress and might happen to act as disincentives — aren't always punishments. For example, suppose my daughter gets a new Nerf gun and I'm concerned for the safety of our cat. I give my daughter instructions not to shoot at the cat because it might get hurt or scared, and tell her that if she does shoot at the cat (or finds herself too tempted to do so), I will need to protect the cat by taking away the Nerf gun and she will be allowed to use it only under close supervision. Of course, she is likely to be upset if this happens, but my goal is not to upset her (not even in part, not even as a means to an end). My goals are to protect the cat, and to help my daughter understand why the cat needs protection, perhaps also with a view to improving her future behaviour. If my daughter is not upset when I take away the Nerf gun, that's good. It was not part of my intention to upset her. If my daughter suggests an equally effective, less upsetting, alternative way to protect the cat such as keeping the cat in one part of the house while she uses the Nerf gun in another part of the house, I should prefer that — since I do not intend to upset her. If she lacks the self control or the understanding necessary to keep the cat safe, I need to take steps to address those issues. If she lacks self control, I can try to change the environment to help her and keep the cat safe — removing the Nerf gun or physically separating her and the cat. If she lacks understanding, I can explain to her that the cat will be hurt and scared if a Nerf dart hits it. Although she might be upset by my actions, I do not intentionally upset her. In this scenario, my action of removing the Nerf gun is not a punishment.<sup>24</sup>

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<sup>24</sup>Even if I didn't *intend* to upset her, inflicting such distress would still need to be justified. I don't escape needing justification for causing distress, just because I didn't intend her distress. In the non-punitive removal of the Nerf gun, my justification is protection of the cat — which is sufficient to justify my daughter's upset, *if* we cannot come up with an alternative way to protect the cat that does not upset her. Similarly, an air force commander's order to drop the bomb needs to have a good enough reason in order to justify both its intended effects and its unintended (and

On the other hand, if I intend to punish my daughter and say something like, "If you shoot at the cat, I'll take away the Nerf gun for a week, and then you'll be sorry!" I intend such a consequence to upset her. *I intend to upset her in order to teach her a lesson* not to shoot at the cat. (I also intend the threat of punishment to motivate her to behave properly.) I intend her negative emotion to be a means to the end of protecting the cat, and also "teaching her a lesson," perhaps to follow the house rules, or to do what she's told, or something along those lines. If I intend to punish her but she doesn't mind me taking the Nerf gun away — perhaps she was bored with it anyway — then my intentions will have been thwarted. The point of taking it away is to "teach her a lesson" by suffering a negative emotion, but if she isn't upset then my tactic has failed. In this scenario, my action of removing the Nerf gun is a punishment, because I intend to upset her as a means to an end (such as "learning a lesson").

How is my intention relevant? Does it make a difference to my daughter if I *intend* to upset her, if she loses the Nerf gun either way? Why might it make a difference to her if I remove the Nerf gun with the intention of upsetting her, or if I remove the Nerf gun without the intention of upsetting her, if she loses the Nerf gun in either case? Does it make a difference to her current distress or any future effects on her? Is my intention relevant in any way other than the effects it may have?

These are important questions but, first, it's crucial to note that my rejection of punishment is not simply on the grounds that it is the intentional infliction of distress. I do not maintain that intentional infliction of distress is always morally wrong. Indeed, sometimes I think it is morally justified (as in the obvious case of self-defense). I also don't mean to imply

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merely foreseen) effects. Law professor, Adam J. Kolber, has an interesting paper on the justification of the unintended harms of imprisonment: [http://ilvoices.com/uploads/2/8/6/6/2866695/unintentional\\_punishment\\_-\\_kolber.pdf](http://ilvoices.com/uploads/2/8/6/6/2866695/unintentional_punishment_-_kolber.pdf).

that intentionally causing distress is always worse (either morally worse, or having worse effects) than incidentally or accidentally causing distress.

Of course, if a parent *intends* to cause distress they are highly likely to do so. It's not difficult to upset a child or cause them pain. So when comparing a hypothetical action in which a parent intends to cause distress to one in which they don't, holding everything else as similar as possible, there's a good chance that the former will cause more distress than the latter (and so in that respect, intending to cause distress is likely to be worse than not intending to do so).

In addition to sometimes intentionally causing distress, parents' actions also sometimes cause distress incidentally — the distress is foreseen but not intended — as when a child is vaccinated or is taken to the dentist. And actions can be wrong when they incidentally cause distress, just as when they intentionally cause distress. For example, suppose a parent knows that their child will likely be upset by being made to kiss Uncle Frank, but the parent insists that they kiss Uncle Frank nonetheless. The parent does not intend (we can suppose) that the child become distressed, but they foresee that result and nevertheless insist that the child kisses Uncle Frank. The parent ranks (so-called) politeness towards Uncle Frank over the child's feelings (not to mention their bodily autonomy).<sup>25</sup>

Finally, a parent's action that accidentally causes distress can be morally wrong too. Suppose a child sustains serious injuries in a car accident partly as a result of their parent's allowing them to ride without a seatbelt. The harm caused to the child is accidental, but the parent's action that causally contributed to it is morally wrong.

So, although I don't maintain that only when distress is caused intentionally is it morally

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<sup>25</sup>Of course, it doesn't matter if you don't think that the parent is wrong in this particular example. It nevertheless illustrates the point that a parent's action *can* be morally wrong when the distress they cause is unintended, but foreseen.

wrong, it is important to my position that punishment is an instance of intentionally causing distress. This is important because *it makes a difference to the justification that is required* for performing an action that causes that distress. If distress is intended to be a means to an end, then to be justified in causing that distress it has to be the case that the distress will indeed causally contribute to bringing about that end (or at least that it is likely to do so),<sup>26</sup> and *also* that the end is 'worth' the distress (and that there are no equally effective alternative means to that end that are less distressing etc). To justify causing distress as a mere side effect, it's not necessary that the distress is causally efficacious in bringing about the end (it is a side-effect, after all). It would merely need to be the case that the end is 'worth' the distress.

A parent could enforce a time-out on a child with the intention of causing the child distress (as a means to the end of "teaching them a lesson"). Or, alternatively, they could enforce a time-out with the intention of protecting a sibling (and the child's distress is an unintended but foreseen side effect of the time-out). In the former case, the time-out is a punishment; in the latter, it's not. They may or may not result in the same amount of distress, especially because a child might become *more* upset at the thought that their parent *intends* them to be upset. Even if they result in the same amount of distress though, one may be justified and the other not (because the distress of the punishment is supposed to be causally efficacious but distress of the non-punishment is not). In sum, using distress as a means to an end requires a different kind of justification than if the distress is merely a side-effect.

To my knowledge, nobody has empirically compared the effects of the same kind of

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<sup>26</sup>It's not *rationally* justified to intentionally bring about x as a means to y, if you have no reason to think that x will indeed cause y. Furthermore, if x is someone else's distress, harm, unhappiness, or pain etc, it's also not *ethically* justified.

action, performed with and without an intention to inflict distress.<sup>27</sup> It is a reasonable hypothesis that children are sufficiently sensitive to parents' intentions that they can tell whether or not a parent intends to cause them distress<sup>28</sup> and it is actually worse for the child — more upsetting in the present moment — if they believe a parent intends to upset or hurt them than if they undergo the same type of experience, while not believing a parent intended to upset or hurt them. If I express my genuine regret that my daughter is upset at my taking away her Nerf gun, if she knows that I have tried to find ways not to upset her, or to minimize her distress, she will still be upset about the Nerf gun, but it's easier for her to feel that *I'm on her side* than if I am intending to upset her. She doesn't feel the additional distress of knowing that *I intend her to be upset*. Imagine in your own case the difference between how you would feel if someone stepped on your foot accidentally and how you would feel if they stepped on your foot to intentionally cause you pain. Even if the physical pain were the same in both cases, you would feel additional distress if you believed that they intended you to experience pain.

For all we know, some (or all) of the long term harms of PPC (such as damage to children's mental wellbeing) may depend on children's beliefs about their parents' attitudes and

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<sup>27</sup>Future empirical evidence might distinguish between the same type of action — removing a toy, say — when used as a punishment and when used non-punitively. It's not a punishment when the parent does not intend any distress to the child. Currently, empirical research does not make this distinction and simply investigates broad types of action, regardless of the intentions behind them. It doesn't distinguish between grounding intended to *upset* a teenager and grounding intended *solely* for safety, say. So this could be a confounding factor in some empirical results. For example, Chapman & Zahn-Waxler (1982) did not distinguish between physical coercion meant only to *protect* a child, and physical coercion meant to *hurt* a child — they merely lumped together all physical coercion.

<sup>28</sup>Even within the first year of life, children are already sensitive to that fact that humans have intentions and inanimate objects don't. See, for example, Meltzoff (1995). Within the first year and a half of life, infants can also understand that different people can have different intentions, and they can track intentions over time within the same person. See, for example, Buresh and Woodward (2007) and Woodward (2009).

intentions towards them. If this is right, it might help explain the common moral intuition that there is (at least sometimes) something morally worse about intending to harm someone, rather than knowingly but not intentionally harming them.<sup>29</sup>

So although there is no empirical evidence (to my knowledge) that compares the same kind of action performed with and without an intention to inflict distress, there is evidence that children do perceive parents' intentions differently when they discipline using reasoning and when they discipline using physical punishment. Children between the ages of 6 and 9 years old have a harder time attributing positive intentions (such as an intention to help their child) to mothers in pre-recorded vignettes who used physical punishment than to mothers who used reasoning as discipline.<sup>30</sup>

Of course, it might turn out that parental actions other than punishments can have criticisms leveled against them similar to those that apply to punishments, but those actions are not our focus here. For present purposes, our focus is restricted only to punishments — which are actions that parents *do* intend to cause distress, whether by physically hurting children or by upsetting them in some way. Ideally, we would want empirical evidence that distinguishes between punishments (which are intended to cause distress) and similar actions (which are not intended to cause distress). Since the currently available evidence does not make this distinction, our understanding of its conclusions has to take that into consideration. However, in many cases, it's obvious that the empirical evidence is describing actions that intentionally inflict distress. No parent spans a child without intending the child to experience distress (in the form of physical

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<sup>29</sup>Thanks to Geoff Sayre-McCord for the point that the different beliefs about agents' intentions might help explain the intuition of double effect. On the doctrine of double effect, see Quinn (1989) and also Foot (1967).

<sup>30</sup> See Sorbring et al (2006).

pain)! But time-outs, for example, can be used punitively (with the intention of causing the child some distress) or non-punitively (simply with the intention of helping the child to calm down), and this distinction is rarely made clear in the empirical literature. If non-punitive use of time-out was separated from punitive use of time-out, it's quite possible we would see that using it as a punishment is just as harmful as spanking! (It's also possible, of course, that time-outs are harmful to the extent that they are, whether they are used punitively or not.) So, to some degree, the empirical evidence is equivocal. As we proceed, I will note the limitations of the empirical evidence.

Incidentally, *refraining* from doing something can also be a punishment, just as much as *doing* something can. *Not* taking my kids to the fairground can be a punishment, just as much as putting them in a time-out can be a punishment. Whether something is an act or omission is, in itself, irrelevant to its status as a punishment.

### ***The argument***

Let me explicitly state my argument against PPC:

1. It's a default rule of behaviour to avoid intentionally causing distress.
2. Punishing children is an instance of intentionally causing distress (departing from the default rule of behaviour).
3. Intentionally causing distress (departing from the default rule of behaviour) requires justification.
4. Therefore, punishing children requires justification.
5. If punishing children is not justified, parents ought not to do so.
6. Punishing children is not justified.
7. Therefore, parents ought not to punish children.

Because punishment involves the intentional infliction of distress, it requires justification. Our default behaviour is to avoid intentionally causing others distress. This dissertation argues that

there is not sufficient reason for parents to depart from this default and punish their children; parental punishment of children is not justified. (In addition to the fact that there is no good reason to depart from the default, there is in fact also good reason to refrain from punishment, because of the long term harm it causes.)

And most of my time will be spent supporting premise 6, and showing how different theories of punishment fail to justify PPC. Punishing children is not justified by any instrumentalist theory because in order to justify departing from the default rule of behaviour "Do not intentionally cause distress", three requirements mentioned earlier must be true:

- (1) The distress inflicted (both intended and not intended) is not excessive, compared to the amount and/or type of benefit gained.
- (2) The distress inflicted will likely lead to the intended goal.
- (3) There is no comparably effective alternative that causes less distress.

For instrumentalist theories such as the moral education theory, for example, these three requirements would look like this:

- (1) The distress (such as pain or emotional upset) inflicted (both intended and not intended) is not excessive, compared to the moral education gained.
- (2) The distress inflicted will likely lead to moral education.
- (3) There is no comparably effective alternative method of moral education that causes less distress.

The empirical evidence that I summarize in this dissertation tends to show that (2) is not true for the various reasonable goals that parents might have for PPC — obedience, moral education, improved behaviour and so on, and for the various types of punishments that have been empirically studied. Since a number of different types of punishment have been studied (both physical and



non-physical), then we have no reason to think that (2) is true for an unstudied type of punishment. Although we have no reason to think that an unstudied type of punishment will lead to moral education, our *confidence* is stronger that spanking won't lead to moral education, because it has been thoroughly studied. In the absence of empirical evidence in favour of a punishment, parents should refrain from doing so and stick with the default rule of behaviour: Avoid intentionally causing others distress.

And here's a reminder of the three requirements for a retributivist:

- (1) The distress inflicted (both intended and not intended) is neither too much nor too little, compared to the wrong the child has done.
- (2) The distress inflicted will likely lead to, or instantiate, the intended retributivist goal.
- (3) There is no comparably effective alternative that causes less distress.

My conclusion applies to all forms of punishment — spanking, time-out, public shaming, washing a child's mouth out with soap, putting hot sauce on a child's tongue — because none of these forms of punishment have sufficient positive reason in favour of them to justify departing from the default rule of behaviour. They remain unjustified. Some of them, such as spanking, have been extensively empirically studied. Others, such as putting soap or hot sauce in a child's mouth or banning a teen from Instagram, have not been studied at all, as far as I know. (Parents can get pretty creative with their punishments and not all of them are widely practiced.) In both cases, justification is lacking, and parents ought to stick to the default position of "refrain from intentionally causing others distress." However, since spanking has been extensively studied, its lack of positive effects and its unintended harms are well documented, unlike with soap or hot sauce or Instagram bans. So it's *possible* that these latter, unstudied, punishments have all sorts of unknown positive effects that *would* be able to justify using them on children. So our *confidence*

in the conclusion that such punishments are unjustified is stronger for spanking than it is for hot sauce etc. However, it is still the case that for an unstudied form of punishment, parents ought not to use it — because there is no reason for them to depart from the default rule, "refrain from intentionally causing others distress".

Since I've acknowledged that the empirical evidence doesn't distinguish between a parental behaviour that is performed with an intention to cause distress and the same behaviour performed without that intention, one might wonder how the empirical evidence can be telling about punishment at all. Won't the evidence be relevant only against, say, time-out — and not against using time-out *as a punishment*?<sup>31</sup>

I've acknowledged that time-out, for example, can be used punitively (i.e. with an intention to cause distress) and non-punitively (i.e. without an intention to cause distress); and I've acknowledged that the empirical evidence doesn't clearly distinguish between these two different uses of time-out. And, unlike in the case of spanking, we can't safely assume it's used with an intention to cause distress. If recommendations in the popular media are anything to judge by, it's likely that time-outs are usually used punitively, but are sometimes used non-punitively, so it's likely that at least some of the studied instances of time-out are punitive, and some are non-punitive. This means that there are these limitations on the empirical research on time-out (and other parental behaviours that can be either punitive or non-punitive):

- ~ We don't know if it's used punitively, so we don't know if any of its bad effects count against using it punitively.
- ~ We don't know if its lack of positive effects count against using it punitively.
- ~ We don't know if any of its positive effects count in favour of using it punitively.

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<sup>31</sup>Many thanks to Geoff Sayre-McCord for raising this objection.

In which case, parents ought to stick with the default rule (Avoid intentionally causing others distress), in the absence of justification to depart from it. The empirical evidence fails to provide a reason to use time-out punitively. For time-out (and many other non-spanking punishments) we can accept (B), even if we can't accept (A):

(A) The evidence provides good reason to think that time-out is an ineffective or harmful punishment.

(B) The evidence fails to provide good reason to think that time-out is an effective and harmless punishment.

So, even if we are skeptical that the evidence against time-out is sufficiently conclusive to show that it is ineffective and harmful when used punitively (as opposed to when it is used either punitively or non-punitively), we can nevertheless conclude that it is not justified to use time-outs punitively because there is not sufficient evidence to justify departure from the default rule of behaviour: do not intentionally cause distress.

### ***Distress***

Some instances of the way that I will be using the word *distress* may be counterintuitive, so I will clarify what I mean. First, distress isn't necessarily a big deal, and it's also not necessarily minor. It can be physical or emotional. It need not be severe and long lasting, or minor and short lived. If a mother intentionally upsets her daughter by calling her a slobby pig, because her room is so messy, that's unlikely to result in a huge degree of distress — unlike a severe beating with a cane would cause — but the child's hurt feelings, or embarrassment etc, is some small amount of dis-

tress.<sup>32</sup> Causing intentional distress is sometimes a very small thing. Indeed, the very occasional intentional infliction of distress on children, through punishment, is likely not to be a big deal. However, this is not to deny that typically children do experience distress when they are spanked, insulted or forced to have a time-out, even if the distress is relatively small on each occasion. (And, remember, even a small departure from the default rule "do not intentionally cause other people distress" does require justification. You would no doubt appreciate this if I purposefully made a 1cm scratch your car, or rang your doorbell at 3 o'clock in the morning. These would not be instances of *major* wrongdoing, but even these minor cases of causing distress would be wrong, in the absence of justification for them.)

Distress is a kind of harm. But harm doesn't have to involve distress. Some might think that it's the intentional infliction of *harm*, rather than infliction of *distress* that characterizes punishment. I am inclined to think that distress (to some degree) is necessary for an action to succeed in being a punishment — simply because parents typically intend to "teach that kid a lesson" when they punish, and this would make no sense if punishments could be inflicted without a child's knowledge or negative emotional response. Suppose, intending to punish her, a father throws away his child's most educational book, but she doesn't know that he has done this (or she does know, but she doesn't care). Then the father has, let us suppose, *harmed* his child by hindering her education, but it seems to me that he has failed in his effort to punish her — because she is not upset and so can't possibly be motivated to "learn her lesson", which is the father's goal. I

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<sup>32</sup>Insults are perhaps not usually thought of as punishments, but if they're used to intentionally upset a child, in response to disapproved of behaviour, with the goal of "teaching her a lesson", then they are being used as punishment. If you disagree, and think that insults are not punishments for some reason, even when they involve intentional infliction of distress, that simply means there are other ways in which parents unjustifiably intentionally inflict distress on their children, in addition to PPC. These putative non-punishments would require justification too.

am inclined to think that he has failed to punish his daughter because he has failed to cause distress, even though he has (we can suppose) succeeded in causing harm. As Tadros (2011) puts it with respect to criminal punishment:

If offenders do not suffer, or are not harmed in some other way, they have not been punished, or at least they have not been punished very successfully.<sup>33</sup>

However, we don't need to come to an agreement on cases in which a parent inflicts harm without distress. Intentionally inflicting harm will generally involve intentionally inflicting distress so, in real life, the distinction won't make much difference. And since my argument concludes that parents ought not to punish their children, that has the practical (if not logical) implication that parents ought not to *try* to punish their children. Whether or not the parent in the above example succeeds in punishing or not is irrelevant for present purposes — he ought not to have tried to punish in the first place.<sup>34</sup>

### ***Dialectic strategy***

Before moving on to purported justifications for PPC, I would like to make a note on the dialectic strategy in this dissertation: My argument starts from a default moral principle: "Do not inten-

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<sup>33</sup>Tadros (2011), p. 1

<sup>34</sup>On the other hand, consider this example: If a mother intentionally upsets her child, without otherwise harming him she has, I think, still punished him. In response to her son's misbehaviour, suppose she says, "Now I *won't* take you to the circus!", when there wasn't a circus to go to anyway, so she had no prior intention of taking him. She has upset him (because he falsely *believes* he's been deprived of some future pleasure) but she hasn't harmed him — in addition to just upsetting him, that is — because she hasn't in fact deprived him of anything. We might think that she has succeeded in punishing him because she has successfully caused emotional distress, even though she did not cause any harm other than the emotional distress.

tionally cause others distress" and, unless there is good reason to depart from that default moral principle, punishment of children is unjustified. That is, in the absence of good reason to depart from the default, we stick with the default — which implies that parents shouldn't punish their children.

But it might be suggested that this dialectic strategy is misguided and that we ought to start from common sense, which dictates that children ought to be punished when they do wrong. And then the burden would be on me to show that we have good reason to depart from common sense and refrain from punishing children.

This disagreement makes a difference in the real world. With respect to physical punishment in particular, Elizabeth Gershoff, whose research demonstrates multiple potential harms of physical punishment maintains that "unless and until researchers, clinicians, and parents can definitely demonstrate the presence of positive effects of corporal punishment (including effectiveness in halting future misbehavior), not just the absence of negative effects, we as psychologists cannot responsibly recommend its use".<sup>35</sup> On the other hand, some researchers who defend the use of corporal punishment (on the grounds that it's no worse than any other form of punishment) tend to support the commonsensical status quo and think parents should be free to use whichever (non-abusive) discipline method they see fit.<sup>36</sup> Such researchers think that until and unless there is conclusive evidence that spanking is more harmful than alternative forms of punishment (such as time-out or removing privileges), then there should be no "blanket recommendations against its use".<sup>37</sup>

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<sup>35</sup>Gershoff (2002 b)

<sup>36</sup>See, for example, Larzelere et al (1997).

<sup>37</sup>Larzelere et al (1997), p. 7.

Gershoff thinks the default position should be to refrain from hitting children, until and unless it is shown to be beneficial to do so. Larzelere thinks the default position should be the common sense "parental liberty" to punish children by spanking, until and unless it's shown to be worse than alternative forms of punishment. While the US, Canada, and the UK, for example, have not joined many other countries in banning corporal punishment of children, organizations supporting and representing pediatricians in those countries are opposed to the practice. The *American Academy of Pediatrics* recommends that parents don't use spanking or other corporal punishment.<sup>38</sup> The *Canadian Paediatric Society* is a signatory to the "Joint Statement on Physical Punishment of Children and Youth" which maintains that parents should be encouraged to avoid physical punishment.<sup>39</sup> And the position statement of Britain's *Royal College of Paediatrics and Child Health* says that corporal punishment should not be used and it supports a legal ban on its use.<sup>40</sup> So theoretical discussions about the burden of proof can have real life implications.

It might be argued that it's reasonable to start with common sense as our default moral position because it has developed over many, many generations and billions of parent-child relationships. This surely gives us some reasonable — although of course defeasible — evidence that punishing children is effective, and thus morally justifiable. And the onus should be on those who would challenge the morality of the common sense position to provide the reasons to depart from it.

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<sup>38</sup><https://www.aap.org/en-us/about-the-aap/aap-press-room/aap-press-room-media-center/pages/discipline.aspx>

<sup>39</sup><http://www.cheo.on.ca/en/physicalpunishment>

<sup>40</sup>[http://www.rcpch.ac.uk/sites/default/files/asset\\_library/Policy%20and%20Standards/Policy%20Documents/Corporal%20Punishment%20Policy%20Nov09.pdf](http://www.rcpch.ac.uk/sites/default/files/asset_library/Policy%20and%20Standards/Policy%20Documents/Corporal%20Punishment%20Policy%20Nov09.pdf)

I think this position is mistaken. While I think that common sense dictates our *practical* starting place, it needn't dictate our *dialectical* starting place. Given that we have to *do* something (with inaction counting as doing something), the natural and sensible thing to do might be to do what we've always done, what common sense tells us to do — which in this case is for parents to punish their children when they judge it's appropriate. However, the fact that — practically speaking — we need to start from the common sense position, doesn't mean that dialectically we must start there.

Suppose we were considering the ethics of marriage. Given that we have to do something, our *behaviour* would be (and reasonably should be) to stick with common sense, which has developed over many generations, and carry on doing what we're doing (unless and until we have reason to depart from the common sense position). But granting this practical starting place, doesn't mean that common sense needs to be our dialectical starting place. We might start from "A liberal state has no legitimate role in the private and consensual affairs of its citizens" or "Consenting adults may do as they please so long as it harms nobody else" or "The definition of 'marriage' is a union between a man and a woman", and so on.

What determines the *correct* dialectical starting position? I don't think there's any one correct starting place. There are various possibilities and it makes sense to start from premises that one judges that as many people as possible will accept, and try to keep as many people on board as possible throughout one's argument, until one reaches one's conclusion. If common sense was supposed to be a dialectical starting point, and not only a practical one, it would form a premise in an argument (not necessarily a deductive argument). How might such an argument go?

(1) The common sense view is that PPC is permissible.



(2) Only if there is good reason to think that departing from the common sense view is morally preferable, ought we to depart from the common sense view.

Then, the supporters of common sense would be inclined to accept the following:

(3) There is no good reason to think that departing from common sense is morally preferable.

(4) Therefore, we ought not to depart from the common sense view.

(5) Therefore, we ought to believe that PPC is permissible.

Whereas of course I would defend the following:

(3') There *is* good reason to think that departing from common sense is morally preferable.

(4') Therefore, we ought to depart from the common sense view.

(5') Therefore, we ought not to believe that PPC is permissible.

The weight of common sense and premise (2) puts the burden on those (like myself) who would seek to reject the common sense view, and requires us to defend premise (3'), which is what I do in this dissertation. The reason that departing from common sense is morally preferable to sticking with it, is that we accept this moral principle: Avoid intentionally causing distress to others. And, unless we have reason to depart from *that*, parents ought not to punish their kids. (We will see shortly that common sense cannot provide a reason to depart from this default moral principle.)

However, perhaps the argument that starts from common sense is not supposed to be a moral argument (at least not directly, anyway). It could be less about the *permissibility* of punishment and more about the *effectiveness* of punishment. (It might lend support to a moral argument

on the grounds that effectiveness of PPC implies its moral permissibility.) How might this argument go? This is the reconstruction that I think is most problematic for me:

- (1) The common sense view is that PPC is effective.
- (2) Only if there is good reason to think that there is a more effective alternative to the common sense view, ought we to depart from the common sense view.
- (3) There is no good reason to think that there is a more effective alternative to the common sense view.
- (4) Therefore, we ought not to depart from the common sense view.
- (5) Therefore, we ought to believe that PPC is effective.

Unfortunately, I think that the currently available empirical evidence regarding non-punitive methods of discipline is not (yet) tremendously impressive. While there is some favourable evidence (which we will touch on in Chapter 9), there is not yet a consensus. So, for the time being, we cannot be confident in rejecting premise (3). This is why this is the most problematic argument for me. Luckily, however, I think we can reject premise (2). In order to legitimately reject the common sense view it is not necessary to show that there is a more effective alternative (although of course that would be preferable). We can reject the common sense view on the grounds that PPC is ineffective (and I will be marshalling the evidence that this is the case) even if we don't have conclusive evidence in favour of an alternative.

This is analogous to common sense telling us that a particular health or medical behaviour is effective, but scientific evidence demonstrating that it's not. (Examples would be things like: Avoid cramps by not eating before swimming; Eat carrots for better vision; Don't stay out in cold, wet weather in order to avoid catching colds; Take Tylenol to get rid of a headache.) It would be *good* if we had evidence in favour of an alternative treatment or course of action, but it's not *necessary* in order to argue successfully against the common sense view. We can rule out

not eating before swimming as a way to prevent cramps, without knowing what *would* prevent them.

So I think that the argument should go like this:

- (1) The common sense view is that PPC is effective.
- (2') If and only if there is good evidence that PPC is not effective, ought we to depart from the common sense view.
- (3') There *is* good evidence that PPC is not effective (despite common sense beliefs).
- (4') Therefore, we ought to depart from the common sense view.
- (5') Therefore, we ought not to believe that PPC is effective.

Premise (2') correctly puts the onus on those (like myself) who would reject common sense, but instead of premise (3), this dissertation supports premise (3'): there is evidence that various forms of parental punishment are not effective, especially spanking but also time-out and other punishments.

Bear in mind that this is *not* the argument I am relying on in order to conclude that parents ought not to punish their children. I summarized my argument earlier in this chapter. The gist is that it is a default moral rule of behaviour that we ought to refrain from intentionally causing others distress. And unless there is good reason to depart from that default (as in the case of self-defense), we ought to stick with that default — and thus not punish our children.

Even though it's not necessary for me to start my argument from the defeasible assumption that common sense is correct about PPC, I will nevertheless consider if common sense is able to provide a justification for departing from the default rule of behaviour and punishing children.

## CHAPTER TWO: Common sense justifications

PPC has certainly struck some philosophers as common sense, and the vast majority of people in Western society would agree that PPC is common sense. There are a number of different ways in which a common sense justification of PPC might go. Let us quickly dispense with the less sensible versions, before moving onto more sophisticated ones. One is simply based on assumptions about what behaviour is widespread, and I assume that nobody would take such a position seriously. It wasn't that long ago that it was considered common sense for a husband to beat a disobedient wife (and in some societies, it is still common sense); everyone else did it too, including their own fathers with their own mothers. I shall assume without argument that intentionally causing distress is not justified by the fact that everyone, or a great number of people, do something that intentionally causes distress, or that one's parents did something that intentionally causes distress.

A second variation on the common sense theme is to point to one's own case and claim that the fact that "I was punished and I turned out OK" justifies PPC. However, the existence of adults who experienced abuse as children and "turned out OK" does not justify *abusing* children; similarly, the existence of adults who experienced punishment as children and "turned out OK" does not justify *punishing* children. That's just not a sufficient justification for intentionally inflicting distress. That someone "turned out OK" isn't by itself sufficient to justify any aspect of their past treatment. Anyway, we could surely find people who *weren't* punished as children and who could truthfully claim, "I wasn't punished and I turned out OK". Someone turning out OK

does not, by itself, provide support for their parents' child rearing techniques. Furthermore, even if someone who was punished as a child "turned out OK", there's no reason to think that they wouldn't have turned out *better* (psychologically healthier, with stronger relationships, more ethical behaviour, and so on) had they not been punished. The fact that some people may be spared long term ill effects is hardly a resounding endorsement of a practice of inflicting intentional distress on someone else.

Even if a particular person didn't suffer any long term ill effects of punishment (indeed, even if that person benefited from it), that wouldn't justify intentionally inflicting suffering on someone else, because the lack of ill effects for one person is consistent with punishments carrying significant risks for various long term harms. A particular smoker could truthfully claim that they suffered no long term health problems but that doesn't mean that it's a good idea for someone else to smoke. Smoking increases the risk of long term health problems, and punishing kids increases the risk of various long term harms, as we shall see later.

Presumably, people who use this defense typically intend to imply that they *wouldn't* have turned out OK *without* being punished during childhood. But that is an empirical claim about the risks and benefits of PPC versus non-punitive discipline and there is no evidence to support the claim that it's better to punish kids than to raise them with non-punitive discipline. (They may be assuming that the only alternative to PPC is no discipline at all. In which case, they might be correct that some PPC is better than no discipline at all. But of course they're wrong that these are the only two options.)

### ***It's natural***

Now let's move on to more sophisticated common sense defenses of PPC. One might note that human beings have been punishing children for millennia, across all cultures — it would be mind

blowing to discover that it was not a good idea to punish children for their misbehaviour. It would be similar in magnitude to discovering that the common sense view "breastfeeding is healthy for babies" is false. Breastfeeding is natural, and human beings have been doing it for millennia, across all cultures. Surely when something is so universal and natural, we have reason to think it's beneficial for our species. And if it's beneficial for our species, that gives us reason to think that it's morally acceptable.

There are a number of ways to respond to this objection. (I will start with weaker versions of the objection, and progress to better versions.) First, we need to be wary of claims of universality. Is it in fact universal across all cultures throughout history and all over the globe, that parents standardly punish their children? The fact that we (in rich, Western societies) are surrounded by punitive parenting — both in our daily lives and in our media — doesn't mean that punitive parenting is the norm in other cultures, past or present.

In fact, there are many societies around the world that are non-punitive towards their children. For example, the Utku of the Canadian Arctic,<sup>41</sup> the Ammassalik of Greenland,<sup>42</sup> the Fore of Papua New Guinea,<sup>43</sup> the Bachiga of East Africa,<sup>44</sup> the !Kung of the Kalahari Desert,<sup>45</sup> the

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<sup>41</sup>See Briggs (1971) and Briggs (1994).

<sup>42</sup>Mirsky (1937) and Robert-Lamblin (1986)

<sup>43</sup>Sorenson (1976)

<sup>44</sup>Mandelbaum Edel (1937)

<sup>45</sup>Draper (1978)

Buid of the Philippines,<sup>46</sup> and the Semai of the Malaya peninsula<sup>47</sup> are generally non-punitive towards their children. There may well be others.

I do not mean to imply any endorsement of the typical parenting practices of these cultures more generally. For example, the Utku Inuit don't punish their children, but after infancy parents express very little affection towards their children. Adults are not affectionate towards one another either. The overriding values seem to be emotional neutrality and self-control. By mentioning these cultures, I am not attempting to provide evidence of the benefits of non-punitive childrearing. I am merely providing evidence against the "common sense" claim that it's universal that human societies punish their children.<sup>48</sup>

It's not always clear what "natural" means when talking about human behaviour. But it often seems to be taken to imply inevitability, and thus moral permissibility. (Conversely, when a human behaviour or tendency is described as "unnatural", it's taken to imply moral impermissibility.) However, I take it that even when a human behaviour or practice really *is* universal, that doesn't necessarily mean it's "natural" in any sense that implies inevitability.<sup>49</sup> Even if we disregard the evidence from other cultures regarding non-punitive parenting and suppose it's true that it is indeed (so far) universal that parents are punitive towards their children, we should not infer that it is therefore natural or inevitable, (and thus morally acceptable) that they are. Since much

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<sup>46</sup>Gibson (1989)

<sup>47</sup>Knox Dentan (1968) and (1978)

<sup>48</sup>Thank you to Gerald Postema for pushing me to clarify my point here.

<sup>49</sup>As John Stuart Mill observed in *The Subjection of Women*, "Whatever any portion of the human species now are, or seem to be, such, it is supposed, they have a natural tendency to be." Mill (1869)

human behaviour is learnt from previous generations, there is no in principle reason to think that even completely universal behaviours couldn't be changed over time.

Another sense of natural is that humans are "designed" by evolution to behave a certain way. And this is sometimes taken to imply that this is how humans *should* behave. This is the sense in which breastfeeding is natural. But, even if a practice *is* (so far) universal, and in this sense natural, there may nevertheless be better alternatives that we can strive towards. Natural and (so far) universal does not mean inevitable. For example, confirmation bias has likely affected all human cultures, at all times in history — perhaps it's useful in certain contexts that were common in our evolutionary past but it's a liability now; perhaps it's a harmful side effect of something else that is useful (either to individuals or to the survival of the species). The fact that a practice or habit is natural and (so far) universal doesn't mean that we can't now try to change it and do things differently, and better. Currently, breastfeeding is best for human babies; that doesn't mean that it always will be. We might come up with a better way of feeding them. Granted, we should be highly skeptical of claims that there is a better alternative to something we have evidence is beneficial and that has survived through millennia of human evolution (as we should be highly skeptical of current baby formula manufacturers' claims) but when we know that a practice causes harms (as punishment does, as confirmation bias does) we need not be quite so skeptical of purported alternatives. We know that harmful habits, practices or even physical traits can persist throughout millennia of evolution. Evolution, even over millennia, doesn't guarantee the best possible design, or even a good design — merely a design good enough to propagate the species in its ecological niche.

Furthermore, even if a natural practice has enabled our species to survive and thrive, that doesn't imply that it's morally acceptable. If a mother chooses to breastfeed her child, it harms



nobody — that is why it is morally permissible for her to do so. The benefit to the species' survival isn't what makes breastfeeding permissible. Benefit to the species (in contrast to benefit to the individual *members* of a species) cannot by itself justify actions that are otherwise harmful. Killing other animals for food might have been essential to our species' survival, but that doesn't mean that it's now a morally acceptable practice — perhaps it is, perhaps it isn't. Even if we suppose that rape has been beneficial for our species' survival — perhaps by propagating the genes of physically strong, aggressive males — that wouldn't mean that rape is a morally acceptable practice. So even if PPC had (somehow) enabled our species to survive and thrive, that wouldn't imply that it is morally acceptable.

Common sense defenses that depend on claims of the universality of PPC, or its naturalness, do not succeed in providing a reason to depart from the default rule to avoid intentionally causing distress, and so do not succeed in justifying PPC. However, we will now proceed to stronger versions of the common sense defense of PPC, that will be more difficult to counter.

### ***Immediate compliance***

Another version of a common sense justification might be that parents can *observe* that punishment *works* on their own children, and by *working* they mean that it tends to get them compliance. After all, parents spend a lot of time with their children, especially when they are young, and so they are able to make many observations of the effects of punishment, over an extended period of time. There is perhaps some plausibility to the idea that parents can observe — over numerous instances — that punishment tends to get them immediate compliance. Parents spank Bobby, or give him a time-out, and afterwards he does what he was told. (And, on the next occasion, a mere *threat* of the same punishment gets compliance from Bobby.) It's less plausible that

they can observe how their punishment would compare to alternatives. It's not plausible that they can observe the long term effects of their punishments. And, even if they are correct and do get immediate compliance, would it be enough to justify PPC?

This idea that punishment is useful for immediate compliance does have some empirical support — but the evidence is not as compelling as it might at first seem. A classic experiment described in Forehand et al (1976) compared three different discipline techniques (negative attention, isolation, and ignoring, plus a combination) with respect to their effect on child noncompliance — both during the three sessions in which the techniques were used (treatment phase) and also in the four subsequent sessions in which they weren't used (recovery phase). Here is how the authors describe the different discipline techniques:

For the isolation condition the mother stated, "You did not do what I said, so I am going to leave the room for a while." Subsequently, the mother left the room for one minute. For the ignoring condition, the mother stated, "You did not do what I said, so I'm not going to watch you for a while." Then the mother read a magazine for one minute and did not respond to the child. For the negative attention condition the mother stood up and stated, "You did not do what I said; I do not like it when you disobey me." Subsequently, she crossed her arms and glared at the child for one minute.<sup>50</sup>

All discipline techniques reduced noncompliance during the sessions in which they were being used. Once the techniques were no longer being used, noncompliance crept up again, but mothers' expressed negative attitude towards noncompliance (reprimand combined with glaring at the child) resulted in the lowest levels of noncompliance both during treatment and recovery — lower than ignoring, isolation, and a combination of methods.

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<sup>50</sup>Forehand et al (1976), p. 116.

The paper doesn't describe how the children appeared to feel about the various treatments, so it's not clear if the children were upset by them. We cannot know if the intention was to cause the children distress by ignoring, isolating, or reprimanding them. However, the paper does make explicit that the reprimand is *communicative* and the mother's tone of voice is merely "firm" (rather than angry or threatening):

The reprimand is designed to communicate two messages to the child: an explicit statement of the violated parental expectancy and of the parent's disapproval regarding the violation.<sup>51</sup>

All the discipline methods did indeed have the immediate effect of reducing noncompliance, but unfortunately we can't really know how punitive the methods were in practice. That is, we can't know whether the methods employed by the mothers in the experiment were intended to upset their children, or rather to communicate disapproval to them (without the intention of upsetting them). So, while this classic study may support<sup>52</sup> the idea that parental *discipline* tends to result in immediate compliance — it's not clear whether *punitive* discipline produced that result. A verbal reprimand and glare may or may not be punitive. That is, the action may or may not be intended to upset the child (i.e. to cause the child distress). It could have been merely expressive of the parent's displeasure.<sup>53</sup> And given the authors' explicit statement that the reprimand is communicative and in a firm tone of voice, rather than being angry or threatening, there is some reason

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<sup>51</sup>Forehand et al (1976), p. 110.

<sup>52</sup>At best, it would support this conclusion only weakly though — because there were only 32 mother-child pairs in one experiment and 28 mother-child pairs in another.

<sup>53</sup>Well, in this case, *feigned* displeasure, since it was an experimental situation in which mothers were instructed to say certain things to their children.

to think that it *wasn't* supposed to be punitive. On the other hand, there is also some reason to think it *was* supposed to be punitive, because the authors also say, "The aversive quality of the stimuli emitted by the authority person while administering the procedure is also maximized. These stimuli include posture, gestures, and tone-of-voice."<sup>54</sup> Which makes it sound as though the mothers' actions were supposed to be as unpleasant as possible to the children, perhaps intending to cause them distress. So, given that we can't be sure if the reprimand was non-punitive, we can't use this study as evidence in favour of non-punitive discipline. Similarly, however, we can't use this study as evidence in favour of punitive discipline. It does provide some (weak) evidence in favour of using discipline of some kind to deal with noncompliance — all the discipline methods used were more effective than simply repeating commands.

Another article that is often referenced as evidence in support of parental punishment being useful for immediate compliance is Chapman & Zahn-Waxler (1982). This small study<sup>55</sup> lends some support to the idea that "love withdrawal" (which includes time-outs, as well as withdrawing affection or attention) is helpful for gaining child compliance. Compared with the other discipline methods the researchers considered — reasoning, verbal prohibition, physical coercion (including both physical restraint and physical punishment) — love withdrawal appeared to be the most effective in gaining child compliance. However, as with Forehand et al (1976), it's not clear which of their discipline methods are punitive. In particular, it's not clear that what they call "love withdrawal" is always punitive. Leaving a child alone for a few minutes to calm down may

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<sup>54</sup>Forehand et al (1976), p. 110.

<sup>55</sup>It involved only 24 mothers and their toddlers. Over a 9 month period, the data collected was on 514 reported disciplinary incidents. This means that, for example, the combination of reasoning + physical coercion (which was used in 3.8% of the 447 incidents that ended with unambiguous compliance or noncompliance) was used in only about 17 incidents. That is a very small number of discipline incidents to base any comparative conclusion on.

not be punitive; locking him in his room because a parent intends to upset the child *is* punitive. Similarly for physical coercion, which may or may not be punitive. We simply don't know how much of the "physical coercion" was spanking (punitive), or if it's holding a child's arm to prevent them from hurting themselves or someone else (not necessarily punitive). We also don't know often the "verbal prohibitions" were things like calmly saying, "Honey, it is dangerous for you to play with that. So I need to put it away safely" which is likely not punitive; and how often they were saying things like, "You stupid kid! Don't play with that!" which likely is punitive (assuming the parent intends to upset the child into compliance).

If we suppose that "love withdrawal" is punitive (and it certainly sounds like something that is intended to upset a child) and we also suppose that reasoning and verbal prohibition are non-punitive, then this study would provide some weak evidence that the punitive method was superior to the non-punitive methods for gaining immediate compliance from children. The evidence is weak because there were only 24 mother-child pairs in the study. The children were also very young, only 10-20 months old at the beginning of the nine month study period. With children this young, it is unlikely that reasoning or verbal prohibitions alone would be consistently effective at gaining compliance. It's much more realistic to not expect much compliance to parental commands in the first place, so to keep them to a minimum. In the Forehand et al (1976) paper discussed above, the commands were things like "Play with the blocks now", "Play with the toy cars now". These are unreasonable demands to make on a child, and were in an experimental condition. In Chapman and Zahn-Waxler (1982), the demands were realistic (as this was a naturalistic study, not experimental), and they report that "children were significantly more likely to comply with parental wishes than not".<sup>56</sup> So the first thing that parents can do to reduce

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<sup>56</sup>Chapman and Zahn-Waxler (1982), p. 86.

the rate of noncompliance is to make sure their requests or instructions are reasonable! The second thing they can do is to reduce the possibility of noncompliance in the first place by, for example, putting locks on cupboard doors, putting things out of children's reach, and so on. Instead of expecting a toddler to comply with a parental demand not to open the fridge, or not to say "Dammit", which the child had heard their mother say (a couple of the examples mentioned in Chapman and Zahn-Waxler (1982)) it's much more realistic to distract a toddler, to keep the fridge locked, help the child get something from the fridge, put forbidden items out of reach, and so on.<sup>57</sup> Love withdrawal may well be more effective at reducing noncompliance than, for example, verbal prohibitions or reasoning with toddlers — but there are many other non-punitive methods that parents could be using or improving upon, not just these.

However, even if we grant that love withdrawal is an effective method at gaining toddler compliance compared to non-punitive methods, as the researchers say, "The short-term efficacy of love withdrawal does not constitute a prescription for its use."<sup>58</sup> We will return to this point, after completing the summary of the empirical evidence regarding the efficacy of punishment for promoting child compliance.

Larzelere and Kuhn's meta-analysis<sup>59</sup> looked at data from 26 different studies, which had investigated a number of different discipline methods, both punitive and non-punitive.<sup>60</sup> They did

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<sup>57</sup>I remember my own two year old going through a phase of being fascinated with the kitchen garbage can. Once I dropped my frustrated desire to get him to do as he was told, it was easy to come up with a solution. The garbage can was moved behind a door to the basement, which had a handle he couldn't reach. Not only did he forget about the garbage can most of the time because he couldn't see it, he also couldn't open the basement door to get to it. No need for parental instructions to leave the garbage can alone; so no opportunity for toddler noncompliance.

<sup>58</sup>Chapman and Zahn-Waxler (1982), p. 93

<sup>59</sup>Larzelere and Kuhn (2005)

<sup>60</sup>These included: privilege removal, reasoning alone, threaten/power assertion, love withdrawal, physical coercion, grounding, scolding, time-out/isolation, conditional spanking, customary

indeed find that certain punitive discipline methods (such as spanking and time-outs) were associated with child compliance. So, this data supports the common sense position that punishment is, to some extent, effective at gaining child compliance.

However, they also found that "customary spanking" (i.e. spanking as parents typically do it), for example, actually has a *weaker* association with child compliance than reasoning and ignoring (which may or may not be punitive).<sup>61</sup> "Conditional spanking" — which is spanking that meets certain conditions, not necessarily ones that parents achieve — was one of the most effective discipline methods and it has stronger associations with compliance than customary spanking. However, verbal prohibition "did not differ significantly from conditional spanking in its associations with child outcomes!"<sup>62</sup> In other words, in terms of association with child compliance, there is no reason to think that conditional spanking differs significantly from verbal prohibitions. (Just as it's reasonable to assume that spanking is punitive, I think it's reasonable to assume that verbal prohibitions are not punitive. That is, they are not typically issued after wrongdoing with the intention of causing distress.)

So even if a parent can observe over time that their favourite punishment method (spanking, say) is often followed by compliance, they cannot see how it compares to a non-punitive discipline method they don't use, or that they rarely use. And this meta-analysis provides no reason to think that any of numerous methods of punishment is any better at gaining immediate compliance than verbal prohibitions. So even if common sense is correct and punishment is at least

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spanking, overly severe spanking, ignoring, diverting, verbal prohibition.

<sup>61</sup>See Table V on p. 22 of Larzelere and Kuhn (2005) for the data on customary spanking compared to other discipline methods. See also Table IV on p. 20 of Larzelere and Kuhn (2005).

<sup>62</sup>Larzelere and Kuhn (2005), p. 26.

somewhat effective for gaining compliance — and this meta-analysis supports that position — that does *not* mean that PPC is justified, even if all parents cared about was compliance (which of course, they don't). Verbal prohibitions (which I'm assuming are non-punitive) were just as strongly associated with child compliance as one of the most effective punitive methods for gaining child compliance, conditional spanking.<sup>63</sup>

Although Larzelere (2000) lists it as supportive of spanking, Ritchie (1999) doesn't appear to support spanking for child compliance. It looked at many different outcomes of discipline on 3 year old children, including compliance, passive non-compliance, whining, negotiating, defiance, physical non-compliance, and so on. Although this study was not actually looking at the question of which discipline methods had better effects,<sup>64</sup> it is apparent that non-compliance is more likely than compliance for almost all the maternal disciplinary responses considered — both punitive and non-punitive. (These are three year olds after all!) The "unsuccessful" discipline methods were: spanking, removing privileges, time-out, reasoning, verbal power assertion, threatening, and "giving in" i.e. consenting to the child's suggested alternative.

The *only* disciplinary responses that were more likely to result in compliance than non-compliance in this sample were: offering an alternative, physical power assertion (e.g. removing a forbidden thing from the child), and "no response" (e.g. ignoring a child's complaints about

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<sup>63</sup>"Combining data for all outcomes, the weighted mean effect sizes for specific tactics favored only 2 of 13 alternative tactics over conditional spanking, albeit non-significantly so." Larzelere and Kuhn (2005), p. 26. Since the difference between conditional spanking and two other discipline methods was "non-significant", that's effectively a tie. The two other tactics were nonphysical punishment + reasoning, and verbal prohibition. These three methods were tied for the most strongly associated with child compliance.

<sup>64</sup>It was looking at whether there are differences in outcome for single discipline encounters versus extended discipline encounters.



tidying up their toys).<sup>65</sup> It's not clear that these disciplinary responses are punitive, so this article lends no support to the compliance justification for PPC. That is, contrary to common sense judgement, punishment (at least as used by these parents) isn't very good for gaining toddler compliance. (It may, however, support the idea that expecting 3 year olds to comply frequently with parental instructions is unrealistic!)<sup>66</sup>

Owen et al (2012) is a review article that looked at reported effects on child compliance of praise, positive nonverbal responses (e.g. high fives and hugs), reprimands, and negative nonverbal responses. Importantly, reprimands and also some negative nonverbal responses (such as stern looks, crossed arms, shaking head) are *communicative* — that is, they are meant to communicate the parent's disapproval of a child's behaviour or remind children of the rules. The authors contrast reprimands and these communicative nonverbal responses with what they call "backup response costs", and what most people would call punishments, such as "loss of privileges, loss of points, or time-outs."<sup>67</sup>

This distinction is important for our purposes. A parent's frown or shake of the head can communicate to a child that the child is being too noisy or that the child is not allowed to jump on the couch. The frown or head shake is not intended to cause distress, it is intended to communicate the parent's disapproval of the child's behaviour, or remind the child of the household

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<sup>65</sup>No reward option (e.g offering to read to the child once they've tidied their toys), and no cooperation option (e.g. offering to help the child tidy their toys) were included, so we don't know how they would have compared to the other methods.

<sup>66</sup>It also seems that the sample size is small, although it's not very clear. "Ninety mothers of three-year-old children participated in the study... Thirty-one percent of the mothers could be reached and agreed to participate." Ritchie (1999), p. 581. 31% of 90 is about 28.

<sup>67</sup>Owen et al (2012). They have a behaviourist inclination and call anything that successfully extinguishes a behaviour a 'punisher'.

rules.<sup>68</sup> Punishments, such as loss of privileges, are intended to cause distress (and no doubt they communicate parents' disapproval too).

Despite this important distinction, the authors' conclusion does not distinguish between the effects of the *communicative* and the *punitive* negative nonverbal responses. They claim that reprimands and negative nonverbal responses — as an entire class — are effective in gaining child compliance. When we look at the details of the individual studies, in some of them it's not clear if the negative nonverbal response was punitive, such as Forehand et al (1976), which we've already looked at.<sup>69</sup> The other articles that report positive results of nonverbal negative responses are all based on the use of time-out with clinical samples.<sup>70</sup> That leaves the positive results of reprimand, which is unlikely to be punitive.<sup>71</sup> So this review paper, which considered results from 41 articles that met the authors' inclusion criteria, supports the view that *verbal reprimand* is useful for compliance in the nonclinical population that we are concerned with in this dissertation. It does *not* support the use of punishment for compliance in that population.

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<sup>68</sup>If a child is not upset by the frown or head shake, then the parent's action has not failed. Of course, in such a situation, a parent would hope that the child's understanding of such information will result in compliance with the explicit or implied instruction not to jump on the couch. If it doesn't, then they have failed to elicit the desired behaviour, but they did not fail to achieve the desired *psychological* effect of the nonverbal behaviour — which was communicative, not emotional. A punishment would aim at the same end behaviour (compliance) as the communication, but *via* causing distress.

<sup>69</sup>And many of the studies were looking at the results of parent training programs which involve implementing a variety of techniques simultaneously, and do not attempt to tease apart the effects of the different techniques.

<sup>70</sup>Roberts et al (1978) was with "clinically deviant" children; Bean and Roberts (1981) used a "clinic referred" sample, as did Roberts (1982). The sample of 13 children in Roberts and Hatzenbuehler (1981) were referred by "local professionals for the treatment of conduct problems" and displayed a "clinically deviant" level of noncompliance (p. 108). The three subjects in Jones et al (1992) were rated as "deviant" on a standardized scale of aggression.

<sup>71</sup>These are Minton et al (1971), Reid et al (1994). Kuczynski et al (1987) and Kuczynski and Kochanski (1990) looked at *frequency* of reprimand, not effectiveness.

Specifically regarding physical punishment and child compliance, a major meta-analysis, Gershoff (2002), which looked at "88 studies conducted over the last 62 years",<sup>72</sup> concluded that, "There is general consensus that corporal punishment is effective in getting children to comply immediately."<sup>73</sup> However, she also points out that:

Three remaining issues qualify the overall positive relation of parental corporal punishment to children's immediate compliance. First, the studies constituting the mean effect size for immediate compliance were not consistent; two of the five individual studies found corporal punishment to be linked with *decreased compliance*. This inconsistency argues for caution in accepting that corporal punishment and immediate compliance are favorably associated... Second, three of the five studies in the meta-analysis of immediate compliance only included target children who had been *referred for conduct disorder*... Third, although immediate compliance is often a valid short-term goal for parents, their long-term goals are that children continue to comply in the future and in their absence... Immediate compliance can be imperative when children are in danger, yet successful socialization requires that children internalize moral norms and social rules... Consistent with previous research that power assertion impedes children's moral internalization..., the studies examined here found corporal punishment to be associated overall with *decreases in children's moral internalization*, operationalized as their long-term compliance, their feelings of guilt following misbehavior, and their tendencies to make reparations upon harming others.<sup>74</sup> [Italics added]

thirteen of fifteen studies (eighty-seven percent) found that parents' use of corporal punishment was significantly correlated with *less* long-term compliance and less moral and pro-social behavior<sup>75</sup>

So even when research suggests that a particular type of punishment (in this case, physical punishment) is effective for child compliance, it's important to bear in mind that it might be for only

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<sup>72</sup>Gershoff (2002), p. 549

<sup>73</sup>Gershoff (2002), p. 549

<sup>74</sup>Gershoff (2002), p. 549-550

<sup>75</sup>Gershoff (2010), p. 37

a specific sub group (such as children with oppositional defiance disorder), and that there might be long term negative effects, even on the very behaviour that is supposed to be promoted (in this case, child compliance).

To wrap up this section: The common sense judgement that PPC is effective for child compliance is supported to a certain extent by some empirical evidence, but it is challenged by other empirical evidence. However, even if it's granted that PPC is effective in gaining child compliance, that is not sufficient for justification. Recall the three requirements that have to be met for an instrumentalist justification of PPC to be successful:

- (1) The distress inflicted (both intended and not intended) is not excessive, compared to the amount and/or type of benefit gained.
- (2) The distress inflicted will likely lead to the intended goal.
- (3) There is no comparably effective alternative that causes less distress.

So, even if we grant that PPC has a good chance of meeting (2), that still leaves (1) and (3) to be met. Even in the studies that seem to support the common sense view that PPC is effective for compliance, punishment is not shown to be any *better* than non-punitive alternatives. Non-punitive alternatives such as verbal prohibitions and reprimands are not intended to cause distress and so are highly likely to cause less distress than a parental action that is intended to do so. And of course there are non-punitive alternatives that weren't even considered that may well do better than the punitive (and other non-punitive) methods that were studied. So it can't be assumed that requirement (3) is met either.

Furthermore, it matters how the value and 'amount' of compliance weighs against the distress inflicted (as well as the long term harms that might be unintentionally caused). Burning a

child with a cigarette butt might 'work' to gain compliance, but it would not be acceptable because it inflicts too much harm. Does spanking inflict too much distress? Time-out? Privilege removal? Of course, it's going to depend to a certain extent on the particular child how distressing they find various punishments but, in general, there is no reason to believe that obedience gained is 'worth' the distress parents inflict, both intentionally and unintentionally. Also, the value of compliance surely depends, in part, on what behaviour is being enforced. ("Don't play with the stove knobs" versus "Pick up your toys" or "Kiss your Uncle Bert".) Parents' requests and instructions are not always reasonable. And even when they are, it's not clear that inflicting a punishment is overall the best route for parents to take.

Even if common sense is correct that PPC is an effective way to get compliance, it also matters what side effects it has, both short term and long term. If 'love withdrawal' is used punitively — i.e. with an intention to cause distress — it seems likely that it could be a particularly pernicious form of discipline. Young children are completely dependent on their parents for safety and security (physical and emotional) and to give the impression that parental love is being withdrawn could have quite significant side effects that parents do not intend. We don't *know* that this is the case (the researchers didn't follow the subjects long term) but in the absence of evidence that this form of punishment is harmless, compliance to parental demands (which themselves may or may not be reasonable) does not seem sufficient benefit to justify the risk of potential harms.

So it seems that requirement (1) is also unlikely to be met. We will look in detail at the long term harms and risks of PPC in Chapter 6, but for the time being, suffice it to say that it seems unlikely that the benefits of compliance are sufficient to justify the use of PPC, rather than parents sticking to avoiding intentionally inflicting distress on their children by using non-puni-

tive methods of achieving child compliance. This includes parental behaviours such as distraction, but also using methods that reduce the possibility for noncompliance in the first place, such as locking cupboard doors and putting gates at the stairs, and so on. With the proliferation of such products in recent years, this has become much easier for parents to achieve.<sup>76</sup>

### ***Punishment plus reasoning for child compliance***

At this point, common sense might remind us that parents aren't purists. Typically, parents don't *only* punish their children, just as they don't *only* reason with their children. They combine punitive discipline with non-punitive discipline. They use punishment to emphasize the importance of the reasoning, or they punish sometimes and use non-punitive discipline at other times.

The most favourable evidence regarding the benefit of punishment for compliance supports using punishment as a "back-up" for reasoning. Using punishment as a back-up means that children are more frequently reasoned with in the absence of punishment, but from time to time, punishment is used to reinforce the importance of parents' rules and reasoning. However, although it is the best available evidence in favour of punishment, it is still very weak evidence.

The classic paper, Parke (1969), concluded that punishment + reasoning was more effective than punishment alone, but as we shall see it does not provide good evidence in favour of parents combining punishment with reasoning. The experiment was based on kids in the lab being allowed to play with certain toys, but not with others. After a child learns which toys are allowed and which are forbidden, the experimenter leaves the room, and each child is surreptitiously watched to see if they obey the rules about which toys they're allowed to touch. The

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<sup>76</sup>For an idea of how many such products there are, just take a quick look at [www.mypreciouskid.com](http://www.mypreciouskid.com).

reason children were given for not being allowed to play with some of the toys was that they might get broken or worn out if the kids were allowed to play with them. (Unfortunately, there's no information on what the toys actually were, so it's not possible to know how plausible this reason is. Perhaps the children were quite reasonably skeptical and that's why some of them ignored the prohibition on certain toys.) In any case, the conclusion that punishment + reasoning was more effective than punishment alone doesn't help support punishment as a discipline method (even together with reasoning) because (1) there was no comparison with a completely non-punitive alternative and (2) the 'punishment' that was used wasn't really a punishment anyway — it was just a buzzer sound which, presumably, wouldn't cause a child distress.<sup>77</sup> In effect, although Parke referred to the buzzer as a punishment, it was really just a form of basic *communication* about which toys were "off limits" for the kids in the experiment.<sup>78</sup> And the conclusion of Parke's experiment should be that the buzzer + reasoning is apparently better than the buzzer alone at getting children to avoid playing with certain toys. This does provide evidence that it's helpful to give children *reasons* for the rules we want them to obey. But it doesn't provide evidence in favour of combining reasons with punishments.

In the 1990s, Robert Larzelere and his colleagues published two papers<sup>79</sup> that explicitly compare a "reasoning alone" condition with a "reasoning + punishment" condition and a "pun-

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<sup>77</sup>The buzzer didn't make a sound loud enough to cause pain, which would have made it punitive — but it also would have made an unethical experiment! It was 69 decibels in one condition and 86 in another. (The dial tone of a phone is 80 decibels, a piano's fortissimo is 92-95 decibels.)

<sup>78</sup>Parke's definition of a punishment is whatever *successfully* extinguishes an undesired behaviour. So a 'punishment' could even be something *pleasant* if it succeeds in conveying the necessary information about the relevant rules, such that they are subsequently obeyed.

<sup>79</sup>Larzelere et al (1996) and Larzelere et al (1998)

ishment alone" condition. (They define "reasoning" as a "description of consequences, explanation, and seeking information".<sup>80</sup>) The sample was small and very young: 40 children, aged 2 and 3 years old. They looked at the effects of combining reasoning and punishment over time and concluded that reasoning alone is more effective at delaying toddler misbehaviour recurrences *if* there has been a more recent punishment back-up. If the punishment back-up was longer ago, reasoning alone is less effective than if the punishment back-up was more recent. The authors also claim that the effectiveness of reasoning alone depends on how often parents combine punishment and reasoning. The punishments were "time-out, withdrawal of privileges, hand slapping, and spanking".<sup>81</sup> These were compared to responses in the "other" disciplinary category, which included: command to stop, reward, threaten, planned ignoring, diverting child, other corporal punishment — so a mixed bag of punitive and non-punitive responses.

Let's look first at the purported positive effects. The effects are very small. For example, "The median delay [until the next misbehaviour incident], given an immediately preceding back-up, was 2.3 hours, whereas the median delay was only 1.6 hours when it had been 55 incidents since the latest back-up."<sup>82</sup> This is a difference of 0.7 hours (42 minutes) in the median delay of misbehaviour. So even if we accepted the results at face value, the best possible scenario is that punishment makes a tiny positive contribution to reasoning's effectiveness with 2 and 3 year olds. Intentionally inflicting distress on a child, including hitting them, gained an extra 42 minutes of good behaviour.

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<sup>80</sup>Larzelere et al (1998), p. 392

<sup>81</sup>Larzelere et al (1998), p. 392

<sup>82</sup>Larzelere et al (1998), p. 396



Why might punishment be useful in increasing the effectiveness of reasoning, even if only a little bit?<sup>83</sup> I suggest that if a parent is *sometimes* punitive, very young children do learn to take parental reasoning more seriously if it's accompanied by punishment (even if they don't really understand that reasoning). If a parent typically punishes for serious infractions, but they didn't punish on some particular occasion, it's reasonable for the child to infer that this particular infraction was not very serious.

We might be tempted to think that parents who don't use punishment could, therefore, enhance the effectiveness of their discipline — even if only a little — by adding punishment "back-ups". While this *might* be true, this study has provided no reason to think it is. Even if it's true that, for parents who use both punitive and non-punitive discipline, punishment enhances the effectiveness of reasoning, it could nevertheless be the case that occasional punishment makes non-punitive discipline *less* effective than it otherwise would have been. For all this study shows, it could be that non-punitive discipline is taken less seriously by kids who are sometimes punished than it would be by kids who are never punished. A child who receives only non-punitive discipline doesn't have the contrast with punitive discipline and so can't infer on that basis that non-punitive discipline needn't be taken seriously. While we can't conclude that punishment *wouldn't* enhance the discipline methods of completely non-punitive parents, this study provides no reason to believe that it *would* do so. And so in the absence of a positive reason to intentionally inflict distress on their children, parents ought to stick with the default and refrain from doing so.

Even if we grant that this study provides evidence that, for parents who use both punitive and non-punitive discipline, punishment makes reasoning slightly more effective, this minimally

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<sup>83</sup>Thanks to Geoff Sayre-McCord for raising this question.

effective disincentive doesn't seem sufficient to justify using punishment as a back-up for reasoning. This is because the gains were minimal, the comparison between punishment and reasoning is developmentally arguable for such young children, alternative non-punitive methods would need to be considered before drawing such a conclusion, and the harms of punishment would also need to be taken into consideration. (It's obvious we need to take harms into consideration — as soon as we remember that abusive punishments, such as burning children with cigarette butts, may well act as disincentives too.) So, reasoning + punishment fails to meet requirements (1) and (3), even if we grant that it (barely) meets (2).

It would be useful to compare the effects of reasoning alone — with older children, for whom it's more appropriate — when used by completely non-punitive parents with that of reasoning alone by sometimes-punitive parents. My suggestion is that sometimes-punitive parents' use of punishment would make reasoning less effective than when reasoning is used by completely non-punitive parents. However, there is no empirical evidence that makes this comparison, so we currently don't know whether or not the effectiveness of reasoning is undermined by the occasional use of punishment — but neither do we have reason to think that punishment enhances reasoning.

There are additional reasons why we shouldn't put too much stock in the conclusions of these studies anyway. First, the sample is small; only 40 children were enrolled to begin with and only 33 mothers completed the follow up questionnaire. Second, at best the results would apply only to very young children — for whom one wouldn't expect "reasoning alone" to be particularly effective at preventing or delaying misbehaviour anyway. Third, the authors didn't put all the punishments that parents used into their "punishment" category. They excluded all corporal pun-

ishment other than hand slapping or spanking.<sup>84</sup> This means, for example, that slapping a child's face would have been excluded. We can have no idea how the results would have turned out if such punishments had been included in the data analysis. Finally, and most importantly, the authors didn't look at non-punitive discipline methods other than reasoning — and there are likely to be much more effective non-punitive discipline methods than reasoning with such young children (e.g. distraction).

In addition, there could be ways to make reasoning more effective, without the use of punishment as a disincentive. Perhaps it would help if parents were trained in the use of NVC (non-violent communication). Perhaps it would help if parents knew more about child development and appropriate expectations for their children. These studies did not explore any of these alternatives. So even if reasoning + punishment is better than reasoning alone, that's only one possible non-punitive discipline method. How does reasoning + punishment compare with distraction? Or with reasoning + reward? Or how would distraction + non-violent communication work? All sorts of possibilities regarding non-punitive alternatives were not compared to the punishment options, and so it's unwarranted for Larzelere and his colleagues to draw the conclusion that "reasoning can be effective with 2- and 3-year-olds but only when it is combined with punishment"<sup>85</sup> and it would certainly be unwarranted to infer that punishment + reasoning is more effective than any other non-punitive discipline method.

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<sup>84</sup>Larzelere et al (1998), p. 392. They excluded corporal punishment other than hand slapping or spanking ostensibly because it was more likely to be abusive. But this is not a good enough reason to exclude it from the analyses. Spanking is more likely to be abusive than time-outs, so why not exclude spanking too?

<sup>85</sup>Larzelere et al (1996), p. 54.

In summary, there is some (weak) evidence supporting the view that the combination of reasoning and punishment is more effective than "reasoning alone" and "punishment alone" for 2 and 3 year olds. However, even if we ignore the small sample sizes and so on, and take the conclusions at face value, the effect is minimal. Given that punishment inflicts immediate distress or pain on children, and there's evidence, as we shall see, that it increases the risk of long term harms too, such as anxiety and increased dishonesty, there is no reason to think that it's overall beneficial to use punishment, either alone or in combination with reasoning, in order to gain child compliance. Even if adding punishment to reasoning delays misbehaviour by some small period of time, compared to reasoning alone, that is not sufficient to justify PPC — not least because "reasoning alone" is not the only non-punitive discipline method that should be compared with punitive discipline (especially with toddlers). Even if we grant that punishment enhances reasoning's effectiveness with toddlers (for whom one wouldn't expect reasoning to be particularly effective anyway), for all we know, rewards could enhance reasoning's effectiveness more. Or perhaps distraction + reasoning works best of all. In the absence of reasons to prefer intentionally inflicting distress (in the form of punishment + reasoning) to non-punitive discipline, parents ought to stick with the default rule of behaviour of avoiding intentionally inflicting distress.

### **CHAPTER THREE: Behavioural training and the deterrence theory of punishment**

Many parents think that punishment is justified not by immediate compliance (or not only by that), but by its usefulness for *training* kids to behave properly in the long term. That is, they think it can be useful, in the longer term, for training kids to be honest, non-aggressive, responsible, and so on.

It's very commonsensical to think that since human beings respond to disincentives, then *of course* parental punishment of children is beneficial and thus justified. Without disincentives, children wouldn't learn over time to do what they should or avoid doing what they shouldn't. On this view, the reason to punish children is to provide a disincentive to misbehaviour, so that over time they can be *trained* to behave properly. This commonsense justification is clearly related to the philosophical deterrence theory of punishment. The common factor is that both views are instrumentalist theories, which focus on using punishment as a means to improve behaviour over time. In the case of criminal deterrence theory, punishment is supposed to improve the future behaviour of those who have already offended, and punishment of one offender is also supposed to deter other potential offenders from actually offending. (The *threat* of punishment is credible only if offenders are often enough *actually* punished.) In the case of PPC, I assume that the focus is on improving the punished child's behaviour in future, rather than on deterring other children, such as siblings, who might witness the punishment (although of course it might have that welcome side effect).

In this chapter, we will first look at the evidence regarding criminal punishment and deterrence. Then we will turn to what we might call "natural incentives and disincentives" things like empathy and guilt, and see how they might serve to "train" young children to gradually behave better over time. Finally, we will consider the empirical evidence regarding punishment of children and its effectiveness at training children to behave properly and deterring them from undesirable behaviour.

### ***Criminal deterrence***

It may seem intuitively obvious that punishments deter potential offenders and also deter offenders from re-offending — but, despite its common sense appeal, the deterrence theory of criminal punishment is not actually strongly supported by the empirical literature.

To take the deterrence of *potential* offenders first. There are many factors involved when someone refrains from committing a crime (that they otherwise might be tempted to do), the possibility of punishment being only one of many: the likelihood of detection; the likelihood of being charged; the chances of failing to successfully commit the crime; anticipating feelings of shame and guilt at having done something wrong; anticipating feelings of shame, embarrassment etc at being apprehended or charged; anticipating the social costs (e.g diminished reputation) of being apprehended or charged; the physical risk of committing the crime; the opportunity costs of committing a crime instead of, say, going to work or going on a cruise; and so on. On the other hand there are also possible *benefits* of committing the crime, which the potential offender is judging (explicitly or not) are not worth the risks: the likely financial benefits of committing the crime; the likely social benefits (e.g. increased "coolness" or "respect") of committing the crime; the other likely personal benefits (e.g. convenience, excitement, pleasure). Deterrence theory,

with its focus only on punishment, is too narrow. There are clearly many factors that may or may not deter potential offenders, and many factors that they fail to be sufficiently attracted by. The broader Rational Choice Theory<sup>86</sup> is actually a better fit as an explanation for criminal behaviour, but it would take us too far afield to explore that literature here. It's quite possible, consistent with the empirical evidence, that it would be more effective (i.e. there would be a greater deterrence effect) to eliminate punishment, but to decrease the attractiveness of crime relative to alternatives (e.g. by improving educational and employment opportunities) or to increase the chances of apprehension (e.g. by increased policing or other observation). So even if punishment is a criminal deterrent to some degree, it's not clear that it is a very effective deterrent or that it is *more* of a deterrent than other, non-punitive, alternatives. (Of course, the costs of various elements would need to be taken into consideration too, in order to decide exactly which combination would be the best in a particular society, all things considered.)

To turn briefly to the idea of using punishment in order to deter offenders from re-offending. There seems to be a consensus that imprisonment, at least, is not very effective at preventing offenders from re-offending after release:

Despite being used on a massive scale and consuming huge amounts of the public treasury, prisons have largely failed to reduce offender recidivism.<sup>87</sup>

[T]here is growing evidence that compared to noncustodial sanctions, imprisonment either has no effect, or a slight criminogenic effect, on recidivism.<sup>88</sup>

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<sup>86</sup>Loughran et al (2016)

<sup>87</sup>Cullen et al (2012), p. 77

<sup>88</sup>Cullen et al (2012), p. 79

It is reasonable to believe that increasing the number of police officers on the street does deter some amount of crime, and increasing the risk of incarceration does as well... the evidence does not suggest that either imprisonment itself or the length of imprisonment is effective in deterring crime for those who experience it.<sup>89</sup>

In England and Wales, for example, recidivism is high for both young (75 per cent) and adult (50 per cent) ex-prisoners, and even here these data only measure those ex-prisoners who both offend and are caught... Indeed, prisons not only fail to deter 'crime' but also have criminogenic effects...<sup>90</sup>

Studies show that almost 60 percent of adult offenders are returned to prison within three years of their release for either a technical violation or a new crime.<sup>91</sup>

The answer is *not* to make prison sentences harsher. Harsh prison experiences tend to make the problem even worse. For example, solitary confinement — compared to regular imprisonment — actually increases recidivism rates:<sup>92</sup>

The more painful prisons are, the more likely they are to increase recidivism.<sup>93</sup>

Research on recidivism for both juveniles and adults has shown that rehabilitative and transition programming, as well as less punitive and restrictive conditions, can help reduce recidivism.<sup>94</sup>

Studies of prisons that have used solitary confinement less frequently show that this action actually increased public safety.<sup>95</sup>

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<sup>89</sup>Paternoster (2010), p. 818

<sup>90</sup>Scott (2013), p. 12

<sup>91</sup>MacKenzie (2008), p. 5

<sup>92</sup>Gordon (2014), p. 498

<sup>93</sup>Cullen et al (2012), p. 80

<sup>94</sup>Gordon (2014), p. 519

<sup>95</sup>Gordon (2014), p. 526-8



None of the programs focusing on punishment, deterrence or control, such as boot camps, electronic monitoring or intensive supervision were effective in reducing recidivism.<sup>96</sup>

So, as we can see, the evidence from criminal punishment does not clearly favour the idea that punishment is an effective deterrent. We should bear this in mind when we consider parental punishment of children — what seems obvious and commonsensical may not actually be true.

### *Natural incentives and disincentives*

Before delving into the evidence relevant to behavioural training of children with the use of punishment, we should note that there are what we might call "natural" incentives and disincentives that can help children learn to do what is right and refrain from doing what is wrong (and thus learn appropriate or sensible habits of behaviour). For example, the natural incentives of being kind to other people, feeling good about your own behaviour, avoiding others' distress, making others feel good, as well as the natural disincentives of upsetting people, feeling bad about your own behaviour, others' distress, and so on. Because young children lack the understanding, self-control, and communicative abilities that adults have, perhaps many parents underestimate how much children do care about others' feelings and wellbeing. But the evidence supports the view that children begin to develop care and concern for others very early in life:

18- to 25-month olds were significantly more likely to offer assistance to an adult whom they had previously witnessed being harmed by another person, compared to an adult who had not been harmed.<sup>97</sup>

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<sup>96</sup>MacKenzie (2008), p. 14

<sup>97</sup>Thompson (2014)

Children attempt to alleviate the distress of others, and they show concern about other people being frightened or worried, well before they are able to articulate their understanding verbally.<sup>98</sup>

Observations of children within their families... make clear not only that children are concerned about the welfare of others who are distressed, and show the beginnings of empathic responsiveness to another's distress, but that they understand people can cause pain to others... It is not, in the second and third year, a wide or differentiated understanding of the notion of harm to others, but although limited, it is an essential foundation for sensitivity to moral issues that are related to the idea of harm to others, and others' welfare.<sup>99</sup>

Modest levels of other-oriented empathy were already evident at 8- and 10-months [of age].<sup>100</sup>

Empathic concern [for others]... exists during the 1st year of life.<sup>101</sup>

And this care and concern for others can translate into prosocial behaviour (i.e. "overt actions intended to benefit others" not merely an absence of antisocial behaviour, such as aggression)<sup>102</sup>:

[P]rosocial behavior of many different sorts appears in the second year of life, possibly earlier for some forms. In a growing number of studies, infants between 12 and 24 months of age have been shown to help, comfort, share, and cooperate with others.<sup>103</sup>

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<sup>98</sup>Dunn (2006)

<sup>99</sup>Dunn (2006), p. 333

<sup>100</sup><http://www.sciencedirect.com/science/article/pii/S0163638311000506>

<sup>101</sup><http://onlinelibrary.wiley.com/doi/10.1111/cdep.12028/abstract>

<sup>102</sup>Carlo (2014) p. 209

<sup>103</sup>Brownell (2013)

[I]nfants as young as 14 months of age help others achieve their instrumental goals by removing obstacles and fetching out-of-reach objects for them.<sup>104</sup>

[Children at 18 months old and at 25 months old] showed more concerned looks toward the victim while the victim was being harmed than while she was not being harmed. They also showed more subsequent prosocial behavior toward the victim after they had seen her being harmed than after they had seen her not being harmed. Moreover, the level of children's concern in response to viewing the harm was positively related to the degree of their subsequent prosocial behavior toward the recipient.... Thus, by 18 months of age, children sympathize not only with a victim displaying overt distress cues but also with a victim who is displaying no emotional cues at all—where harm has to be inferred from overt actions. They also act prosocially toward victims, and importantly, their concern for the victims correlates with and perhaps motivates their prosocial behavior. The feeling of sympathy for others thus underlies prosocial behavior from early in development.<sup>105</sup>

Furthermore, there is evidence that even very young children can experience the distinct emotion of *guilt*. (Guilt is, roughly, an uncomfortable emotion that combines taking responsibility for one's own actions and feelings of sympathy or concern for those affected by one's actions.) Two year olds are able to feel sympathy for another person who is harmed by a mishap, but they are no more likely to help that person if they themselves caused the mishap than if somebody else caused it. Three year olds, on the other hand, feel sympathy for the other person, *and* are more likely to make reparations when they themselves were the cause of the mishap:

By at least 3 years of age, children make amends for their transgressions by attempting to repair and verbally expressing guilt.<sup>106</sup>

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<sup>104</sup>Hepach et al (2013)

<sup>105</sup>Hepach et al (2013)

<sup>106</sup>Vaish et al (2016)

It might be tempting to suggest that perhaps children are able to experience things like guilt or sympathy this early simply *because* they've been taught to feel it through punishment at a young age. But there is no evidence that this is the case. On the contrary, there is evidence that

Many inclinations [that comprise social concern] appear very early in life, before there has been much opportunity for social learning. Very young children, for example, are inclined to form strong attachments to caregivers and to help others in distress. Many inclinations are exhibited by nonhuman primates, where social learning plays a much smaller role. For example, nonhuman primates often show concern for the pain of others; try to avoid causing harm to others, especially close others; and display some commitment to reciprocity... The inclinations are somewhat independent of social learning. For example, the tendency for young children to help others is maintained regardless of whether it is rewarded or ignored... And the inclinations have some genetic basis and are linked to aspects of brain structure and functioning.<sup>107</sup>

So it appears that very young children are biologically endowed with the capacity to behave prosocially with those around them, before there has been much chance for social learning — in particular, the tendency is present independent of reward and punishment. However, parents' behaviour can tap into these natural tendencies and there are parenting practices that can help kids become more empathic and engage in more prosocial behaviour. (And thus reduce the perceived need for punishment.) This is analogous to how children learn to speak. They are naturally endowed with the capacity to learn language from those around them; but parents don't (typically) *teach* children how to speak — certainly not with rewards and punishments as they might teach them table manners or how to pour milk from a carton without spilling it. However, there are behaviours that parents can engage in that *help* kids learn language, such as having conversations with them, reading to them, and so on.

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<sup>107</sup>Agnew (2014)

Brownell et al (2013) found that the way parents talk with their toddlers about others' emotions makes a difference to the quality of those toddlers' prosocial behaviour. In their experiments, mothers were recorded reading picture books to their 18-30 month old children. And then the children were given opportunities to engage in sharing and helping tasks. (For example, the experimenter would say she was cold and ask if the child could get her a blanket, or the experimenter would express sadness at not having a toy when the child had toys to play with, and so on.) The results were that *how* the parents engaged with their children when reading picture books with them made a difference in children's subsequent prosocial behaviour:

While reading picture books with their toddlers, parents who more often asked children to reflect on and talk about the emotions depicted in the books had children who helped and shared with a needy adult more quickly and more often. Moreover, parents' encouragement of their children's active participation in discussing others' emotions explained helping and sharing above and beyond the child's age and how much parents themselves labeled and explained the depicted emotions. Thus, it was not how much parents talked about emotions with their toddlers that mattered, but how they talked about them, and in particular, how much they encouraged the children themselves to think about, label, and explain others' emotions.<sup>108</sup>

Parenting that encourages children to take the perspective of others is associated with greater development of cognitive empathy skills<sup>109</sup> (i.e. the ability to infer the mental states of others), which leads to more prosocial behaviour in three to six year olds.<sup>110</sup>

[H]igher levels of maternal (dispositional) cognitive empathy were associated with an increased likelihood of engaging in parenting that encourages the child to take the perspective of others, which was in turn associated with greater development of child cognitive empathy skills...<sup>111</sup> Children with greater cognitive empathy skills displayed

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<sup>108</sup>Brownell et al (2013)

<sup>109</sup>Cognitive empathy contrasts with emotional empathy, which involves the "vicarious experience of emotion" and typically develops earlier. Farrant et al (2012).

<sup>110</sup>Farrant et al (2012)

<sup>111</sup>There were no significant *direct* associations between mothers' cognitive or emotional empathy

more prosocial behaviour. These findings suggest that the development of explicit [perspective taking] skills may facilitate children's prosocial behaviour.

This study is part of a growing body of research demonstrating the importance of children's cognitive empathy skills and their relationship to prosocial behaviour. If parents think of discipline more broadly to include any parenting behaviour that helps children gradually learn to behave better (instead of focusing solely on responses to misbehaviour), then it's clear that it's important for parents to encourage (or perhaps, at least not hinder) the development of their children's cognitive empathy skills.

Parents might learn to improve their ability to tap into children's natural empathy in order to provide natural incentives and disincentives, and so avoid using the artificial disincentive of punishment. For example, instead of punishing their child when they grab a playmate's toy, a parent could help them to see that their playmate is upset because their toy was taken. The discomfort a child feels when they appreciate someone else's upset is a natural disincentive to future misbehaviour — a disincentive that has the potential to make artificial disincentives in the form of punishments unnecessary.<sup>112</sup>

If a parent encourages their child to notice a playmate's upset, even if the parent intends it to cause their own child some degree of distress, then — even though the parent is intentionally causing their child distress — this is *not* a punishment. Remember that recognizing one's wrongdoing and/or sympathizing with one's victim is a *goal* of discipline (both punitive and non-punitive), and that experience (which may be felt as guilt) can of course be distressing. However, that

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and children's prosocial behaviour.

<sup>112</sup>Note that punishment is typically based on self-interest. Empathy provides disincentives based on the interests of others.

goal can be pursued punitively (through the intentional infliction of distress, such as physical pain) or non-punitively (without the intentional infliction of distress). A parent might try to help a child to feel sympathy by pointing out that the victim of their wrongdoing is crying, or they might simply explain to their child that they did something wrong. Those actions are not punishments. If my child didn't notice that grabbing the toy upset another child, and I point this out, my child may or may not become distressed and might simply return the toy to the other child — because they have recognized that their actions caused someone else to become upset, and they simply wish to rectify it. I do not fail in my task if my child experiences no distress! (If I had intended to punish my child, on the other hand, I *would* fail if they didn't experience any distress.)

Indeed, intense personal distress — including feelings of shame — can actually be detrimental to prosocial behaviour. It can make a child want to *avoid* a situation, instead of rectifying it. Empirical research distinguishes between empathic concern and feelings of guilt for wrongdoing on the one hand, and personal distress and shame on the other (which might be caused by the same stimulus, such as someone else's suffering), and has shown that the former, but not the latter contributes to prosocial behaviour:

While empathic concern refers to the individual's other oriented feelings of sympathy and concern for someone in distress, personal distress refers to experiencing unpleasant feelings oneself, in response to witnessing another in distress.<sup>113</sup>

[W]e conducted a study with hospice nurses caring for terminally-ill patients. What we found was that possessing empathic concern was positively related to the nurses' performance, but personal distress was negatively related. We surmised that if hospice nurses felt their patients' pain (and family members' distress as well), it made them less able to do their job of providing comfort to the patient and family because they

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<sup>113</sup>Williams et al (2014)

had their own emotions that they had to deal with.<sup>114</sup>

[W]e found that personal distress (positively), empathic concern (negatively), self-judgment, isolation and over-identification (positively), were associated with burnout [in nurses].<sup>115</sup>

[E]mpathic concern for sadness does lead to prosocial resource allocation in young children both by promoting sharing and decreasing envy.<sup>116</sup>

Guilt appears to motivate reparative action, foster other-oriented empathy, and promote constructive strategies for coping with anger.<sup>117</sup>

[E]mpirical results converge, indicating that guilt but not shame is most effective in motivating people to choose the moral paths in life. The capacity for guilt is more apt to foster a lifelong pattern of moral behavior, motivating individuals to accept responsibility and take reparative action in the wake of the occasional failure or transgression.<sup>118</sup>

If parents knew better how to tap into their children's capacity for empathic concern for others and feelings of guilt for their own wrongdoing, perhaps parents would feel less need to resort to PPC. Empathic concern for others and feelings of guilt "naturally" help deter children from misbehaviour. And, for young children, much "good behaviour" is indeed based on the feelings of others. Don't hit, because it hurts; don't take other kids' toys, because it upsets them; use inside voices, because Mommy doesn't like shouting; be careful with Grandpa's nicknacks, because he'd be sad if they were broken; and so on. Once children get older, of course their empathic abilities

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<sup>114</sup>Riggio (2011)

<sup>115</sup>Duarte et al (2016)

<sup>116</sup>Williams et al (2014)

<sup>117</sup>Tangney et al (2007)

<sup>118</sup>Tangney et al (2007)



are greater, as is their capacity for appreciating more complex reasons for moral and prudential behaviour: Eat your vegetables before you have dessert, because vegetables help you to be healthy and if you eat dessert first you might be too full to eat your vegetables. Do your homework, so you can practice your math skills, which will help you in school and in your future life beyond school.

Since some punishments are intended not to deter moral transgressions, but for training prudential behaviour, and/or to providing disincentives to self-destructive behaviour (e.g. not brushing teeth, riding a bike without a helmet, not doing homework, etc), empathic concern and related emotions are unlikely to be helpful in all discipline scenarios.

So let's grant the reasonable view that at least sometimes, children are not sufficiently motivated by natural incentives and disincentives to behave appropriately, or such disincentives are inapplicable. This is how common sense judges that punishments such as spanking should work:

How might spanking promote children's social competence? Spanking is a form of punishment that associates a negative stimulus (e.g., physical pain) with an undesirable behavior in order to reduce its recurrence... If parents accompany the spanking with a message about what socially competent behavior they would like to see instead (e.g., taking turns with a sibling's toy), spanking may make the child's positive behavior more likely. Given that most parents have the goal of increasing their children's social competence through parental discipline, whether spanking predicts social competence is an important question for research.<sup>119</sup>

However, even if there was some evidence that common sense is correct and at least some punishments are useful for training children, that would not be sufficient to imply that in-

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<sup>119</sup>Altschul et al (2016)

flicting those punishments is morally justified. Whether or not punishments are justified for training purposes depends on more than just whether or not they are effective disincentives. Recall the three requirements for an instrumentalist justification of punishment to succeed:

- (1) The distress inflicted (both intended and not intended) is not excessive, compared to the amount and/or type of benefit gained.
- (2) The distress inflicted will likely lead to the intended goal.
- (3) There is no comparably effective alternative that causes less distress.

So, first of all, it would depend on how the distress inflicted weighs against the benefits gained. We wouldn't think that burning a child with cigarette butts was justified simply because it was effective for training purposes. Similarly, we shouldn't think that spanking or time-outs are justified simply if they are effective for behavioural training purposes. It matters *how much* benefit is gained for *how much* harm or distress. This goes for intentionally inflicted distress and distress that is not intentionally inflicted. It wouldn't be morally preferable for a parent to try to improve a child's behaviour by engaging in non-punitive amateur brain surgery or treating a child with large, repeated doses of sedatives, without consulting a doctor — because the harm inflicted is so great compared to the likely resulting benefit. An action that doesn't *intentionally* cause distress isn't automatically preferable, no matter what else, to an action that *does* intentionally cause distress. Second, it also depends on what alternatives to the particular punishment are available. If there is a less harmful, equally effective, one available then that would be preferable. Third, to justify intentionally inflicting distress it has to be the case that there is good reason to think that the distress is required in order to produce the desired result. If it's not, then there's no reason to intentionally inflict it.

Common sense is simply not in a position to judge the overall balance of harms and benefits. That's why carefully gathered empirical evidence is so important. (Even though our common sense judgement may be that Tylenol is effective for headaches — because we've personally had multiple experiences of taking Tylenol and having our headaches improve — of course, there's room for empirical evidence to show us that, as a matter of fact, Tylenol is *not* very effective.<sup>120</sup> It could also demonstrate long term side effects that common sense is unaware of, and so doesn't take into consideration.<sup>121</sup>) Punishments cause immediate distress (that's the point of them), but they also increase the risk of various long term harms, as we shall see later. Parents are simply not in an epistemic position to assume that using punishment in order to provide a deterrence against unwanted behaviour — such as hitting a sibling or refusing to eat vegetables — is justified. This is because they are not in an epistemic position to evaluate either the long term effectiveness of the training method or the long term or "hidden" harms of punishment.

So *even if* punishment was effective for training purposes, that wouldn't be sufficient to justify it (as can easily be seen by the cigarette butt example). Other factors would have to be taken into consideration too — such as the overall balance of harms and benefits, as well as the available alternatives. But, in any case, there is empirical evidence that punishment is not, in fact, as effective as we might imagine for behavioural training purposes.

Before we turn to that evidence, we should note that often it's a *threat* of punishment that is supposed to deter a child from instigating or continuing a specific instance of misbehaviour. (For example, "If you don't pick up your toys, I'll throw them in the garbage", "Do as I say or you'll get a spanking", and one I remember from my own childhood, "Stop crying, or I'll give

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<sup>120</sup>Cochrane Review (2016)

<sup>121</sup>Zolot (2017), Lin et al (2017)

you something to cry for.") So a *successful* punitive deterrent is one that isn't actually used on a particular occasion; instead the threat prevents the behaviour in question.<sup>122</sup> But if a punishment is issued, it's supposed to contribute to *future* deterrence. Punishments, over time, help make future threats of punishment credible, and punishments are also supposed to provide a disincentive to future misbehaviour (with or without an explicit threat). So we need to look at the effects of using punishments *over time*. This is in contrast with punishment used for immediate compliance. If a punishment is successful for gaining compliance, we need to look at individual punishments and their tendency to be immediately followed by compliance. But for behavioural training or deterrence, we need to look at levels of punishment and levels of misbehaviour over an extended period of time.

### ***Empirical evidence regarding punishment for behavioural training***

We should note that even pro-punishment researchers have concluded that punishment of multiple different kinds "does not enhance positive development,"<sup>123</sup> such as empathy or concern for other people. But, as mentioned earlier, empathy and concern for others produce relevant disincentives against bad behaviour in both the short term and the long term, and young children's "anticipation of the emotional consequences for another of one's behavior can be an important curb on antisocial conduct, or incentive to helping behavior."<sup>124</sup> But the question is, even if punishment doesn't contribute to the development of things like empathy and concern for others, is it

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<sup>122</sup>We might think of a threat of a punishment as a punishment itself, if it is in response to misbehaviour. It is intended to cause distress — to scare or worry a child — in order to correct the child's behaviour.

<sup>123</sup>Larzelere and Kuhn (2005), p. 28

<sup>124</sup>Thompson (2014), p. 80

useful for improving children's *behaviour* over time? Is it a successful deterrent against misbehaviour over time?

If punishment is effective for behavioural training, there should be some level of punitive parenting at which the behaviour of those children gradually improves over time (even if the children of more punitive parents start off with a higher level of misbehaviour than the children of less punitive parents).<sup>125</sup>

Let's look at the evidence regarding physical punishment first. It's not only that spanking is *associated* with aggression and antisocial behaviour at any given time (which is what we would expect *either* if spanking causes aggression *or* if children's bad behaviour makes parents more likely to spank them and more likely to spank them more frequently). Rather, there is evidence that spanking contributes to *increases* in child aggression and antisocial behaviour over time:

The child outcomes most often linked with spanking are aggression and antisocial behavior, and several large, longitudinal studies have now linked early spanking with increases in children's aggression or antisocial behavior over time, including from age 1 to age 2 in the Early Head Start Research and Evaluation Project...; from age 1 to ages 3, 5, and 9 in several studies using the Fragile Families and Child Wellbeing Study...; from kindergarten to third grade in the Early Childhood Longitudinal Study...; and from kindergarten to middle school in the Child Development Project and the Pitt Mother–Child Project...<sup>126</sup>

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<sup>125</sup>Children's behaviour gradually improves as a matter of normal development. See, for example, Snyder et al (2005) and Di Bartolo and Braun (2017), p. 152. So if a child does not have any diagnosable disorder, the expectation would be that their behaviour would improve over time.

<sup>126</sup>Altschul et al (2016). See also Grogan-Kaylor (2005).

Altschul (2016), for example, found that maternal warmth predicts an increase in social competence between the ages of 3 and 5, and it is not associated with changes in aggressive behaviour over time. In contrast:

[M]aternal spanking at age 3 remains a significant predictor of increase in child aggression from ages 3 to 5, but it was not a significant predictor of change in child social competence across the same time period.

Spanking not only failed to increase children's social competence between the ages of 3 and 5, it was associated with *increases* in child aggression. (These associations are small, but given that spanking is of course supposed to *improve* kids' behaviour, it's cold comfort that it apparently contributes only slightly to making children's behaviour worse over this two year period. Child aggression at age 3 was a much bigger predictor of child aggression at age 5; and maternal spanking at age 3 was also a major predictor of maternal spanking at age 5.)

A small 2014 pilot study used audio recorders in the homes of 33 families with children aged 2 to 5 years old, and recorded how parents responded to conflict with children. It was found that, after being subjected to corporal punishment, children "were misbehaving again within 10 minutes after 73% of the incidents."<sup>127</sup> Now, of course, this is consistent with the most badly behaved children getting spanked more frequently than the less badly behaved children. However, it does indicate that, by any reasonable measure — for these children at least — spanking is not effective at controlling misbehaviour.

Gunnoe (2013) is a survey based study of 158 American 13-18 year olds. They were asked (among other things) about their parents' discipline methods and their own current ex-

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<sup>127</sup>Holden et al (2014)

ternalizing or delinquency behaviour. For example, they were asked how often during the past year they had done things like "Lied to get money", "Cheated on your schoolwork" or "Physically attacked someone". They were also asked about their depressive symptoms during the last thirty days. On a scale of 1 to 5, they were asked how often they had experienced things like "I felt I could not keep from being sad", "I enjoyed life", "I thought my life had been a failure". The externalizing scores and the depressive scores were combined (somewhat arbitrarily, as far as I can see) into a single "maladjustment" score. The subjects were classified into groups that experienced no spanking, spanking after age 12, and "age-delimited" spanking (i.e. they were spanked, but it stopped before age 12). The results for maladjustment was that the subjects in the 12+ group were the most maladjusted. There was no difference between the other two groups with respect to their maladjustment score. Spanking did not overall appear to have harmed the kids whose spanking stopped before age 12, but nor did it appear to have helped them, compared to kids who were not spanked.

The author's intention appears to be to support spanking. I don't think it the study succeeds in doing so.<sup>128</sup> First, it doesn't show any *benefit* of spanking, even if we grant that it shows lack of harm in the age delimited group (compared to kids who were not spanked). Second, it doesn't distinguish frequency of spanking. So, for all we know, almost all of the age-delimited

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<sup>128</sup>It is based on subjects' recall, which we might be inclined to doubt is accurate about whether children were spanked when they were very young. However, it's likely that the subjects *did* accurately remember whether they were spanked at all and when that spanking ceased. "Adolescents' ability to accurately recall parents' use vs non-use of different types of aggression during childhood has been demonstrated in a prospective study. Greenhoot, McCloskey, and Glisky (2005) surveyed children aged 6–12 years about abuse and less severe aggression (push, grab, shove, slap or spank, hit with an object). Six years later (when participants were the same ages as the youth in this study) participants' recall was assessed with specific yes/no questions ("Did \_\_\_ ever ... hit you that year?"). Of the 22 teens included in the analyses, only one misreported (forgot) the experience of less severe aggression." Gunnoe (2013), p. 953.

group could have been spanked only once or twice in their entire childhood, which could be why they show no worse effects than the non-spanked group. And, third, for all we know, the non-spanked kids received high rates of non-physical punishment, perhaps higher than the age-delimited group.<sup>129</sup> In which case, it might show that occasional age-delimited spanking is no worse than some amount of non-physical punishment — but it doesn't show that spanking isn't worse than non-punitive discipline. Finally, the measure of "maladjustment" seems a little awkward and I wonder if it was a post hoc decision to put externalizing scores and depressive scores together into one "maladjustment" score. ("Five aspects of youth adjustment were assessed: externalizing, depressive symptoms, academic rank, volunteer work, and optimism."<sup>130</sup> The first two of these were combined into a "maladjustment" score, and the other three into a "competence" score. But why was this particular combination chosen? The five scores could have been combined into, say, a "behavioural" score combining externalizing, academic rank, and volunteer work; and a "psychological" score combining depressive symptoms and optimism; or they could have been left as five separate scores. The article is silent on the choice to combine the scores in one way rather than another.) Because of these doubts about the study, I wouldn't use it to support non-punitive discipline. But I also think that it does not support punitive parenting.

Mackenzie et al (2015) used data from the Fragile Families and Child Wellbeing Study which is based on interviews with parents, starting in the hospital shortly after their child was born, between 1998 and 2000, in twenty medium to large cities in the United States. Interviews

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<sup>129</sup>It did ask the group who reported being spanked about whether they experienced other punishments more or less than spanking. Those who reported more spanking than nonphysical punishment were excluded from the "age-delimited" group on the grounds that "excluding them was thought to increase the likelihood that youth in the age-delimited group had experienced only non-abusive, confrontive rather than coercive spanking". Gunnoe (2013), p. 952.

<sup>130</sup>Gunnoe (2013), p. 953-4



were repeated when the child was 1 year old, and again at 3, 5, and 9 years of age. The sample is large — 1874 families — and diverse. They found reciprocal effects between spanking and child externalizing behaviour:

Our results indicate that maternal spanking predicts increases in later child's externalizing behavior at each wave, taking into account earlier child's behavior. And, children's externalizing predicts increases in maternal spanking, taking into account earlier spanking.... Analyzing children through age 5, [it was] found that spanking at age 3 had an effect on child's behavior at age 5. We find similar results to age 5 but add to this the finding that spanking at age 5 continues to affect child's behavior at age 9. In addition, we find that early spanking in the first year carries effects extending through age 9, and that early externalizing also elicits later increased spanking.<sup>131</sup>

So, this study finds that child externalizing behaviour has effects on parental spanking, and spanking has effects on child externalizing behaviour. It is the case that the biggest predictor of whether or not a parent spans at age 5 say, is whether that parent spanked at age 3. As with Altschul (2016), earlier parental behaviour is more predictive of later parental behaviour than say earlier or concurrent child behaviour. Similarly, earlier child behaviour is more predictive of later child behaviour than either earlier or concurrent parental behaviour. But even taking these influences into consideration, it was still the case that spanking contributed to future externalizing behaviour. Instead of spanking being shown to be *helpful* for improving children's behaviour, it was shown to *contribute* to future externalizing behaviour.

Physical punishment is standardly thought of as the most aversive form of PPC. And if it's not a successful deterrent against misbehaviour, common sense might lead us to expect less aversive forms of punishment to be even less successful. Alternatively, however, it could be the case that nonphysical punishment is sufficiently aversive to provide a deterrent to bad behaviour,

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<sup>131</sup>Mackenzie et al (2015), p. 666

but without the side effect of increasing aggression and antisocial behaviour as physical punishment does. We will consider that possibility after first looking at a claim that has been made a few researchers: That spanking has beneficial behavioural effects on certain subgroups of children.

***Is spanking beneficial for any specific sub-group of children?***

A few studies purport to provide evidence of the behavioural benefits of spanking for a specific subgroup of children. For example, Gunnoe & Mariner (1997) claims to provide evidence to support the view that "spanking may deter aggression among black children".<sup>132</sup> However, even if we grant that children from a particular subgroup (e.g. black children under age 7), if they are spanked, have less aggression 5 year later, say, than children from that subgroup who are not spanked, then that does not provide evidence for positive effects of spanking compared to non-punitive discipline.

Depending on the details of the particular study, the group of non-spanked children that is contrasted with the spanked children can include those who are hit with an implement (such as a paddle or a hairbrush), yelled at, insulted, receive punitive time-outs, have hot sauce put on their tongues, have privileges removed, and so on. So even if we grant that, within a certain subgroup of children, those who are spanked turn out to perform better on some measure (such as frequency of fighting) than those who are not spanked, that does *not* support the idea that *punishment* is beneficial — because the category of children who are not spanked is likely to include children who receive other punishments instead (unless the study explicitly re-categorizes children who receive different kinds of punishment). The previously mentioned Gunnoe & Mariner (1997), for

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<sup>132</sup>Gunnoe & Mariner 1997, p. 774

example, relies on survey data<sup>133</sup> that asks about spanking and yelling, but not about any other possible punishments that parents might use. So even if, within a particular subgroup of children, being spanked appears to have beneficial effects on behaviour compared to not being spanked, that doesn't mean that spanking is beneficial compared to non-punitive discipline (it could just be better — or less bad — than the hot sauce or time-out methods of punishment, say).

So it is not warranted to infer that "spanking may deter aggression among black children" means that black children should be spanked. We'd need to know to what extent aggression was deterred; we'd need to know how much harm (intended and unintended) was caused by spanking; we'd need to know what the comparison class is. If spanking deters aggression better than, say, burning a child with cigarette butts or hitting them with a wooden paddle, then we can clearly see that's not a recommendation for spanking! We would need to know how spanking compares to *less* distressing discipline methods. And Gunnoe & Mariner (1997) cannot tell us this, since the original data it relies upon comes from a survey that asks only about spanking and yelling.

Let's look at a different one of these kinds of examples in some detail. Ellison et al (2011) uses the same survey data as Gunnoe & Mariner (1997) and it claims that American children from conservative Protestant backgrounds, but not from other backgrounds, might actually benefit behaviourally from spanking. Specifically, the article claims that, in contrast to children from other backgrounds, conservative Protestant children who were spanked only during toddlerhood (and not later) have better behaviour later (between the ages of 7 and 10) than children who were not spanked at all. A background hypothesis is that being a member of a community in which spanking is the norm protects children from its otherwise harmful effects, perhaps because it is

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<sup>133</sup>The National Survey of Families and Households: <http://www.ssc.wisc.edu/nsfh/>

seen by the children themselves as part of loving parenting.<sup>134</sup> Alternatively, it could be because parenting advice received by parents in such a community instructs parents how to "correctly" use corporal punishment, in the context of an otherwise loving, warm relationship.

T1 is when children were between the ages of 2 and 4; T2 is when children were between the ages of 7 and 10. The survey does not ask the same behavioural questions at these two times, because of course not all the same behaviour is applicable. For example, at T2 it makes sense to ask how often a child is disobedient at school, or how often do they cheat or tell lies. Those questions are much less sensible at T1. So the study does not attempt to measure changes in behaviour over time. Instead it compares, at T2, the behaviour of conservative Protestant kids who were spanked at T1 and conservative Protestant kids who were not spanked at T1. It turns out that among conservative Protestant kids, unlike kids from other backgrounds, those who were spanked at T1 end up with *better* behaviour at T2 than those who weren't spanked — which, at first glance, seems to support the idea that spanking helps to train at least this subgroup of children to behave better, lending support to the behavioural training justification of PPC. I will argue, however, that this article fails to provide any reason to think that punishment is useful for training conservative Protestant kids to behave better.

So: among the conservative Protestant sub group of children, the group that was spanked at T1 has better behaviour at T2 than those who were not spanked at T1. This certainly appears to

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<sup>134</sup>Note that a later article (Petts and Kysar-Moon 2012) that investigated the possibility of a protective effect of conservative Protestantism over time stated: "We also explored whether the relationship between corporal punishment and problem behavior over time differed for conservative Protestants, using the study by Ellison et al (2011) as a guide... [Spanking] was associated with increased externalizing and internalizing problem behavior; being spanked at W4 or at both waves was associated with increased externalizing behavior, and being spanked at any wave was associated with increased internalizing behavior. However, these models provided *no evidence that conservative Protestantism moderated the relationship between corporal punishment and problem behavior.*" Italics added.

support the hypothesis that spanking conservative Protestant kids has beneficial effects on their behaviour. What could explain the better behaviour of the group of spanked kids, other than the spanking? The study considered other factors, such as mother's age, race, whether or not the mother had depression, and so on. But none of these other factors match the pattern. For example, it's not the case that the non-spanked kids have younger mothers and so that feature cannot explain why the non-spanked group has worse behaviour than the spanked group.

There *is* a factor that the study did not consider, however, and there is good reason to suppose that it has interfered with these results, such that we have no reason to suppose that spanking is beneficial: *They did not look at what other punishments the children received.* (The original survey did ask parents about yelling at their kids, but the study did not mention that.) For all we know, the non-spanked kids experienced *more* overall punishment than the spanked kids. For all we know, the non-spanked kids experienced harsher punishment than the spanked kids, either or both of which could be part of the explanation of the non-spanked kids' worse behaviour. There is no way of telling whether the non-spanked children experienced other harsh punishments, because the original survey did not ask about that.

However, we do have other evidence to draw on. It's not just an unknown, open question whether the non-spanked kids received harsher punishment than the spanked kids (which is sufficient to cast doubt on drawing any conclusions about the benefits of spanking). We actually have positive reason to think that they *did* receive harsher punishment. This is because this article considered only slapping and spanking, which is a punishment administered with an open hand, usually to a child's buttocks. Importantly, slapping and spanking does not include striking children with an implement, such as a paddle or a switch. It's important that studies distinguish between these types of punishment because it's possible that there could be harmful long term effects of

striking a child with a paddle, even if there aren't harmful long term effects of spanking a child with an open hand. If all corporal punishment is lumped together, then there isn't any way of teasing these effects apart. Ellison et al (2011) is specifically talking about spanking and slapping. However, *in the subgroup of conservative Protestants there is reason to think that the group of non-spanked kids does indeed include children who are hit with implements*. As Ellison himself notes in a previous article, Ellison (1996):

Most Conservative Protestant child-rearing writers advise against using hands or other body parts to spank or slap children, contending that hands should be used only to convey affection... Some take the biblical references to "the rod" literally and advocate the use of branches or switches..., while others endorse impersonal objects like wooden paddles and spoons, belts or straps, or other instruments for punishment.<sup>135</sup>

This means that even though the group of spanked conservative Protestant kids likely includes some kids who were hit with an implement as well as being spanked, the group of *non-spanked* conservative Protestant kids also likely includes some kids who were hit with an implement. And we can have no idea how many kids that is likely to be, since the survey data does not include that information.

So the fact that the spanked group had better behaviour at T2 than the non-spanked group does not support the hypothesis that spanking has beneficial effects on kids' behaviour, *compared to non-corporal punishment*. For all we know, the spanked group having better behaviour than the non-spanked group might be (partly? largely? entirely?) due to the non-spanked group receiving *corporal punishment that is even worse than spanking*. We simply cannot tell from this study. Ellison et al (2011) indicates that the spanked children in the conservative Protestant sub-

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<sup>135</sup>Ellison (1996), p. 10

group end up with better behaviour than the non-spanked children. But because we have reason to think that the non-spanked kids received *other* punishments, including harsh punishments such as being hit with an implement, this provides no reason to think that spanking has better effects on these kids' behaviour than either non-punitive discipline or nonphysical punishment.

### ***Nonphysical punishment and behavioural training***

Unfortunately, compared to research on spanking, there's relatively little empirical research on the effects over time of nonphysical punishment on children's misbehaviour. However, the little evidence that there is does *not* support the common sense view that punishment will act as a deterrent to undesirable behaviour and so gradually train kids to behave better over time.

However, it has been demonstrated that punishment contributes to "training" some unwanted behaviour — that of deception in order to hide a transgression and thus avoid punishment:

There is a body of evidence which suggests that punishment often may not be as effective in suppressing unacceptable behaviors as parents and other caretakers might hope it would be... [P]arents who claimed to employ a power-assertive disciplinary style to punish rule-breaking behavior in their children at home often had children who demonstrated higher levels of rule-breaking when away from home... These results suggest that the use of punishment may teach punished individuals a more complex lesson than the punishing agent intends. The person who is punished may learn to discriminate punishing versus non-punishing situations. He/she might then refrain from demonstrating the behavior only when punishment is likely to follow and yet remain likely to demonstrate the behavior when punishment is not likely to follow.<sup>136</sup>

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<sup>136</sup>Toner (1986), p. 31

This isn't tremendously surprising — it's also pretty commonsensical that people will try to avoid detection if they believe that detection will likely lead to unpleasant consequences for themselves.

Talwar & Lee (2011) compared the behaviour of children attending more or less punitive schools. Children were placed in a situation in which most kids reliably lie. "Children were told not to peek at a toy when left alone in a room. Most children could not resist the temptation and peeked at the toy."<sup>137</sup> The researchers noted that although most kids in their sample of 48 three and four year olds peeked at the toy when left alone in the room, "the majority of punitive school peekers lied about peeking at the toy while significantly fewer nonpunitive school children did so."<sup>138</sup> This particular study had a small sample size, but the effect was replicated in the much bigger Talwar et al (2015) study.

In Talwar et al (2015), 372 children between 4 and 8 years old were placed in the same kind of situation in which most kids reliably lie. They were "instructed not to peek at a toy while they are left alone for a short period of time."<sup>139</sup> This particular study did not record how many kids peeked at the toy, but instead measured how likely kids were to lie about having peeked at the toy, depending on the type of appeal they heard:

Children were told not to look at a forbidden toy while the experimenter was out of the room. Upon the experimenter's return, children who heard an appeal that emphasized the positive consequences of telling the truth were more likely to tell the truth about peeking at the toy. In contrast, *those who expected punishment for their transgression were more likely to lie.*<sup>140</sup> [Italics added]

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<sup>137</sup>Talwar & Lee (2011), p. 1751

<sup>138</sup>Talwar & Lee (2011) p. 1751

<sup>139</sup>Talwar et al (2015)

<sup>140</sup>Talwar et al (2016) The kids were told a story about honesty *after* they had had the opportunity



So the expectation of punishment made children more likely to lie. Perhaps a threat of punishment before being told not to look at the toy in the first place would have made children less likely to disobey instructions and peek. But, even if that were true, it's nevertheless the case that the expectation of punishment had a detrimental effect on children's truth-telling behaviour.

Using survey data with a resulting sample size of 785 families, Larzelere et al (2010) compared the effects of spanking to three nonphysical punishments: grounding, removing privileges and sending to room, and found that

more frequent use of all three types of nonphysical punishment was associated with higher subsequent antisocial behavior, with effect sizes similar to spanking.<sup>141</sup>

The researchers repeated their analyses after removing from the sample the kids who didn't receive any disciplinary tactics during the referent week (on the assumption that these were the best behaved kids). In this case, after controlling for initial antisocial behaviour, the nonphysical punishments predicted subsequent antisocial behaviour, just as much as spanking did. If this study detects a (small) causal effect of spanking on increases in antisocial behaviour, it gives us reason to think that nonphysical punishments are no better than spanking in this regard.<sup>142</sup> So

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to peek at the forbidden toy, but *before* they could either tell the truth or lie about having done so.

<sup>141</sup>Larzelere et al (2010), p. 11

<sup>142</sup>This is not what the researchers' conclusion was, however. They want to claim that the small effect size linking spanking and increased antisocial behaviour is *not* evidence of a causal effect. Their argument for this is that there are similar effect sizes linking nonphysical punishments (and psychotherapy) with increased antisocial behaviour. And they claim that since these are likely to be the effect of residual confounding, then so is the relationship between spanking and increased antisocial behaviour. But if we don't assume the harmlessness of nonphysical punishments then we have no reason to doubt that the apparent effects are real effects. And it's not surprising to see worsening over time of the behaviour of children who are diagnosed with a behavioural disorder

common sense appears to be wrong about punishment and its effect on antisocial behaviour over time. Instead of punishment being a successful deterrent over time, it makes antisocial behaviour worse.

Despite its common sense appeal, the behavioural training hypothesis is *just* a hypothesis. There is no positive reason to believe that PPC is more effective than alternative discipline methods that do not cause intentional suffering. In addition, we have seen some evidence that punishment is counterproductive when it comes to children's behaviour. We will look at more evidence of this in Chapter 6, on the risks and harms of PPC.

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and need to see a psychotherapist, *despite* seeing a psychotherapist. (The best evidence-based psychotherapy for youth is slow to reach actual clinical practice. See, for example, Weisz and Gray (2008) and Silverman and Hinshaw (2008).) If punishment worked to reduce antisocial behaviour, however, we would expect to see decreases in antisocial behaviour over time. But we don't.

## CHAPTER FOUR: Moral education

Parents want immediate compliance from their children, and they want their children to behave properly over time. We looked at those child outcomes in Chapters 2 and 3. But they also want their children to come to have correct moral beliefs and feelings. They want their children to be *morally educated*.

What is moral education? In part, it seems to be accepting some very general values that are shared by members of a community. So, for example, we might think it's important that everyone accepts some general principles such as, say, people should not be discriminated against on the basis of race, or that kindness is generally good, or that violence is generally bad. Beyond these general principles, we don't think it's necessary that everyone have the same moral beliefs. For example, while we think it's important for community members to accept that, generally speaking, violence is bad — we don't think it's important for everyone to agree on the exact cases when violence is justified, or even what counts as violence. So moral education is unlikely to involve the inculcation of a list of more specific moral truths, beyond very general principles or statements of value. If, through punishment, an offender came to learn that, generally speaking, violence is bad and that attacking people in order to steal their money is not a sufficient justification for violence, then that would count as a success for the moral education theory — even though many may still disagree with him about, say, whether or not killing in war is justified violence, whether or not abortion is justified violence, and so on.

In addition to acceptance of broad values, instead of moral education involving the acquisition of more and more moral facts, psychologists think more in terms of: First, young children coming to understand and care about the needs and emotions of others (as distinct from their own); second, an appreciation of one's responsibility for one's own actions that impact the needs and emotions of others; and third, a gradual increase in degrees of sophistication of moral reasoning (which is compatible with arriving at different moral beliefs). This means, of course, that people on the political left and right can both be highly morally educated, despite disagreeing on many moral issues.

Proponents of the moral education theory of punishment typically don't specify what they have in mind as moral education, beyond teaching "right from wrong". In young children, this might mean believing some simple moral absolutes such as "Hitting is wrong" and "Be kind". But I think that it's plausible that both scholarly and parental proponents of moral education envision the goal of moral education not to be inculcation, by adulthood, of a longer and longer list of simple moral truths, but instead the ability to engage various moral principles or values one has and to think carefully about complex moral situations, appreciating that moral principles sometimes conflict and that there might be circumstances in which it's permissible or required to lie, or to break the law, and so on. That's really what "knowing right from wrong" means — being able to use one's broad moral principles or values to engage in sophisticated moral evaluation of complex circumstances. Together with empathy (which is important, because otherwise people can know the "correct" moral principles, but not care about them) this gradual process is what psychologists refer to as "moral internalization". So when we consider how *effective* punishment is at moral education, rather than relying on measures of the moral *beliefs* that punishment manages to inculcate over time, we will instead be looking at its influences on moral internalization

generally, or separately on empathy and, in older children and young adults, moral reasoning (which is often called "prosocial reasoning").

Adults' and adolescents' moral reasoning is sometimes tested with the Defining Issues Test (DIT), which presents respondents with stories that involve moral dilemmas and they have to respond with both their answer to the dilemma and rate the importance of various issues that are (or should be) relevant or irrelevant to the decision:

The DIT assesses the cognitive processes used during the analysis of social-moral problems. Participants are presented with a series of moral dilemmas and are asked to reach a decision concerning the most appropriate solution to each situation. Participants are then asked to rate a series of factors that could have influenced their decision.<sup>143</sup>

The test is less about giving the "right" answer to each dilemma, but more about the sophistication in the moral reasoning needed to reach an answer. Respondents fill in bubble sheets about the degree of importance of various issues when deciding what they think is the correct answer to a moral dilemma. For example, one of dilemmas is about someone stealing food from a rich person in order to feed their starving family, and the issues to be rated according to their importance or relevance to the dilemma include, "Would stealing bring about more total good for everybody concerned or wouldn't it?" and "Shouldn't the community's laws be upheld?" Whereas the question of whether the man has a recipe for bark soup should be rated as irrelevant.<sup>144</sup>

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<sup>143</sup>Lopez et al (2001), p. 196. On the reliability of the DIT, see Bailey (2011) and Thoma & Dong (2014).

<sup>144</sup>This example is from the DIT-2 (<http://www.washburn.edu/academics/general-education-files/DIT2.pdf>). I wasn't able to find a copy of the older DIT-1 online.

The moral education theory, as proposed by Jean Hampton and Herbert Morris,<sup>145</sup> has intuitive and common sense plausibility for the justification of PPC (whether or not we think it provides a plausible justification for punishing adult criminals). It's intuitively appealing that punishment is justified if it's for a child's "own good" and that it "teaches them a lesson". The moral education theory is an instrumentalist theory of punishment. Punishment is the instrument, or means, of reaching the goal of moral education. Decent parents believe and hope that punishment is actually, in the long run, beneficial for their children despite the short term distress it inflicts.<sup>146</sup> If punishment genuinely does result in moral education — presumably a significant benefit to the child — it seems at least a *promising* possibility that punishing children could be justified. (Of course it would depend on the degree of moral education achieved, the harshness of the punishment, and the availability of alternative methods that do as good a job, but don't cause as much distress, including unintended harms.)

As an instrumentalist theory, the following three requirements have to be met for the moral education theory to succeed in justifying punishment:

- (1) The distress (such as pain or emotional upset) inflicted (both intended and not intended) is not excessive, compared to the moral education gained.
- (2) The distress inflicted will likely lead to moral education.

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<sup>145</sup>Hampton (1984), Morris (1981)

<sup>146</sup>Someone might suggest that PPC is justified on the grounds that children need to experience suffering in order to come to understand suffering in others — that this is the specific way in which punishment can be morally educational. However, even if it's true that children need to suffer themselves in order to come to understand others' suffering, that would not justify PPC — because children experience suffering "naturally" without parents having to intentionally induce it in their children. (Furthermore, punishing a child on this grounds would also seem to justify intentionally causing children to suffer, even when they have done nothing wrong. I expect proponents of PPC would not generally be content with that consequence.) Thanks to Geoff Sayre-McCord for raising this issue.

(3) There is no comparably effective alternative method of moral education that causes less distress.

In this chapter, after looking at the theory in a little more detail, we will consider philosophical objections to the moral education theory, seeing how they can apply in the case of children. Then we will turn to the empirical question of whether or not PPC actually does morally educate.

In the case of criminal punishment, the moral education theory of punishment maintains that punishment is justified because it helps improve the wrongdoer's (and also perhaps observers') moral internalization. Punishment is justified in order to *morally improve* the recipient; punishment is for the recipient's own good. Jean Hampton says:

[M]y interest in moral education theory is connected with my desire to justify punishment as a good for those who experience it, and to avoid any theoretical justification of punishment that would regard it as a deserved evil.<sup>147</sup>

The idea is that when an offender receives a deserved (i.e. proportionate and otherwise appropriate) punishment for breaking a morally just law, the punishment is justified because it enables (not forces) the offender to morally educate him or herself. It does this, first, by demonstrating that the crime is "fenced off". The punishment marks a boundary for acceptable behaviour, which those living in the society in question ought not to transgress. Hampton acknowledges that the moral education theory has this much in common with a deterrence theory of punishment — simply appealing to the offender's (or potential offender's) self-interest and demonstrating that

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<sup>147</sup>Hampton (1984), p. 237

transgressing society's moral boundary would be harmful to the offender. But punishment is supposed to do more than simply deter — after all, an electric fence deters an animal from transgressing its boundary into forbidden territory<sup>148</sup> — it's also supposed to morally *educate* the offender:

[U]nlike the animal in the pasture, a human being will also be able to reflect on the reasons for that fence's being there, to theorize about why there is this barrier to his freedom.<sup>149</sup>

[O]ne distinction between the moral education view and the deterrence justification of punishment is that on the moral education view, the state is not concerned to use pain coercively so as to progressively eliminate certain types of behavior; rather, it is concerned to educate its citizens morally so that they choose not to engage in this behavior.<sup>150</sup>

Hampton explicitly wonders *how* "inflicting any pain upon a criminal [can] be morally educational?"<sup>151</sup> And her answer is:

By giving a wrongdoer something like what she gave to others, you are trying to drive home to her just how painful and damaging her action was for her victims, and this experience will, one hopes, help the wrongdoer to understand the immorality of her action.<sup>152</sup>

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<sup>148</sup>Hampton (1984), p. 211

<sup>149</sup>Hampton (1984), p. 211-212

<sup>150</sup>Hampton (1984), p. 214

<sup>151</sup>Hampton (1984), p. 223

<sup>152</sup>Hampton (1984), p. 227



This is, perhaps, intuitively plausible, especially given Hampton's idiosyncratic definition of punishment: "disruption of the freedom to pursue the satisfaction of one's desires."<sup>153</sup> Assuming an offender was pursuing their self interest when they broke the law,<sup>154</sup> a punishment acts as a deterrent by being contrary to the offender's self interest, and the pain (loosely defined) that they experience through punishment also has the potential to help them appreciate the harm that they caused to their victim. But Hampton intends punishment to be more than a mere deterrent. It's crucial to her theory that punishment — as she understands it — is morally educational. "Given that punishment is understood in this way, how do coercion and the disruption of one's self-interested pursuits convey a *moral* message?"<sup>155</sup> Since Hampton's understanding of punishment is a disruption of the pursuit of one's self-interest, it helps to deter offenders who have, after all, *pursued their own self-interest at the expense of their victim*. And if they come to appreciate the parallel between what they experience through punishment and what they inflicted on their victim, they will understand the reason behind society's placing a moral boundary, disallowing people from performing that kind of action. At least that's the hope, anyway.

Although Hampton doesn't explicitly say this, we can also charitably interpret her as saying that punishments are supposed to be proportionate because they best represent the harm done to the victim. A punishment that is proportionate to the crime communicates — both to the offender and to the general public — the degree of harm caused by the offender. A disproportionate

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<sup>153</sup>Hampton (1984), p. 224

<sup>154</sup>The idea of criminal activity being characterized by pursuit of self-interest is likely overly simplistic. This issue is currently being explored in criminology. See, for example, Agnew (2014).

<sup>155</sup>Hampton (1984), p. 225

punishment (whether too harsh or too lenient) would fail in this communicative task, and thus fail in its educational purpose.<sup>156</sup>

One philosophical objection to the moral education theory can be dispensed with relatively quickly by someone who proposes it as a justification for punishing children.

It's clear that offenders' autonomy is very important to moral education theorists. They do not want offenders to be coerced or forced into becoming morally upstanding citizens. They want them to *freely choose* to "turn to the good". But, since punishment is forced on offenders by the state — moral education theorists do not advocate offenders freely choosing whether or not to be punished — why is that a legitimate infringement of autonomy, while somehow forcing or coercing an offender into becoming morally upstanding is not legitimate? Whether or not advocates of the moral education theory of criminal punishment can adequately respond to this objection, we can see how the response would go in the case of PPC. Parents have a moral duty to override children's autonomy when it is in their children's best interest to do so. Whether it's preventing them from playing with matches, or making them get vaccinated, decent parents sometimes have to force or coerce a child into doing things the child doesn't want to do, or prevent them from doing something they do want to do, no matter how strongly the child disagrees — for the child's own benefit.

Whether or not PPC falls into the category of something parents are entitled or obligated to do for their children's own benefit is exactly the question at issue. But the issue doesn't depend on whether or not it overrides children's autonomy. Because even if it does, that would not be sufficient to make the parental action morally wrong, as can be seen from the matches and vaccines examples.

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<sup>156</sup>This is similar to the view expressed by von Hirsch (1990), p. 279.

Similarly, objections based on the state being unjustifiably paternalistic when it punishes offenders "for their own good" can be dispensed with in the case of PPC. Of course parents are justifiably paternalistic towards their own children. That's part of what being a decent parent is — taking care of children's best interests because they are limited in their capacity for doing so themselves.

Another philosophical objection to the moral education theory is that it seems to allow punishing the innocent. That is, the moral education theory seems to imply that it's permissible for the state to "punish" (i.e. intentionally inflict distress or suffering on) those who have broken no rule, on the grounds that they are nevertheless in need of moral education. Of course, strictly speaking, intentionally inflicting distress on someone who is (known to be) innocent is not a punishment, since a punishment is inflicted in response to (perceived) wrongdoing. Nevertheless, such a "punishment" (with inverted commas) or intentional infliction of distress would still need justification. And if a theory of punishment implies that a "punishment" or intentional infliction of distress may permissibly be performed on an innocent person, that theory needs to respond to that objection. In what follows I will refer to the problem of *punishing the innocent*, because everyone knows what that standard phrase means, and it's less awkward than constantly using inverted commas or the phrase "intentional infliction of distress". I will, however, distinguish between genuine punishment and "punishment" when necessary to avoid confusion.

We will focus on Boonin (2008)'s version of the punishing the innocent objection. He says that, if the moral education theory of state punishment was correct, someone who cheats on their spouse, even though this is not illegal, could be punished by the state since they are apparently in need of moral education. Boonin puts the objection as follows:

[T]here are many people who do not break the law but who nonetheless need moral education: vicious racists whose behavior remains within the law, verbally abusive spouses, people who are unfaithful to their loved ones, who lie to their friends, talk behind people's backs, and so forth. In all of these cases, the person in question would benefit from moral education. And so, if it is true that punishing offenders is permissible because it benefits them by enlightening them, then it will also follow that punishing these people will be morally permissible for the same reason.<sup>157</sup>

Since we don't want the state to punish people who have not broken the law, but we do (according to Boonin) want the state to morally educate (some) people who have not broken the law, it would seem to follow that punishment is *not* moral education after all. To put the same point a different way, if the state is permitted to punish people on the grounds that it is morally educational, it would seem it is permitted to punish those who have not broken the law (i.e. they would be permitted to punish the innocent). Since the state punishing the innocent is wrong, the moral education theory must be false.

In the case of PPC, the punishing the innocent objection perhaps has even more force. If it were justified to intentionally cause a child distress in order to morally educate them when they *have* done something wrong, it seems it would also be justified to intentionally cause a child to distress in order to morally educate them when they *haven't* done anything wrong. If spanking a child, or removing their video game privileges, genuinely helped a child to become more morally educated, the moral education theory seems to imply that parents needn't wait until they grab their sibling's cookie before doing those things to them. The moral education theory seems to imply that kids should be punished whether or not they've done anything wrong. But even those who defend spanking children, would likely find the idea of spanking children who have done

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<sup>157</sup>Boonin (2008), p. 189

nothing wrong repulsive. So how can the moral education theorist respond to the punishing the innocent objection?

Hampton's response to the punishing the innocent objection, regarding criminal punishment, is that

the state should refrain from punishing immoral people who have nonetheless committed no illegal act, not because they don't need moral education but because the state is not the appropriate institution to effect that education. Indeed, one of the reasons we insist that the state operate by enacting laws is that doing so defines when it may coercively interfere in the lives of its citizens and when it may not; its legislation, in other words, defines the extent of its education role... So if the state were to interfere with its citizens' lives when they had not broken its laws, it would exceed its own legitimate role.<sup>158</sup>

Hampton is trying to avoid the conclusion that the state ought to morally educate citizens who need it but who have not broken the law, because otherwise she would seem to be committed to the state punishing citizens who have not broken the law. She does this by claiming that it's not the state's place *generally* to morally educate citizens, and by referring to an independent limit on who the state may not "coercively interfere" with: anybody who has not broken the law.

Boonin maintains that the first part of Hampton's response (the state is not the appropriate institution to morally educate those who have not broken the law) is mistaken. He says, we have no problem accepting that the state has a role in educating people about some things that are not illegal, such as smoking tobacco, so we should have no problem with the state morally educating people about other things that are not illegal (such as talking behind people's backs).

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<sup>158</sup>Hampton (1984), p 132-4

Hampton might respond by conceding the state's legitimate role in educating citizens about health issues, but insist that it's not the state's place to *morally* educate its citizens about matters that are not illegal. Hampton could support her case by pointing to examples of things that we might agree are immoral, but nonetheless recognize that it's not the state's business to educate citizens regarding them: all the examples that Boonin mentions in his objection (such as lying to one's friends). She could claim that Boonin has illegitimately lumped together legal practices that it *is* the state's place to educate citizens about (e.g. health related things like smoking) and legal practices that it is *not* the state's place to educate citizens about (i.e. moral issues).

But, Boonin says, even if we grant that the state should stick to moral education only regarding illegal acts, it doesn't follow that the state needs to wait until such an act is committed before doing so. In which case, Hampton would still be left with the undesirable consequence that the state ought to punish some people who have not broken the law. For example,

A man who publicly states that all women deserve to be raped, for example, or that it is morally permissible for men to rape their wives, may break no law, but the state's presumably legitimate interest in preventing rape would seem to give it as good a reason to educate him as to educate those who commit rape.<sup>159</sup>

Whether we think Hampton or Boonin is ultimately successful in the case of criminal punishment and the state, we can see in the case of PPC, it is very much the role of parents to morally educate their offspring; indeed, it might be argued that this is one of the most important tasks of a parent. But this means that even if Boonin's objection can be defanged in the criminal case (by taking Hampton's route that it's not the state's place to morally educate citizens about

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<sup>159</sup>Boonin (2008), p. 189

things that are not illegal) this response doesn't work in the case of PPC. Parents punish their kids; and parents *do* have the legitimate role of morally educating their children (regardless of the children's guilt or innocence). And so Boonin's objection still has force against the moral education theory of PPC: If intentional infliction of distress were justified on the grounds that it is morally educational *after* a child has done something wrong, then it seems that intentional infliction of distress would also be justified on the grounds that it is morally educational when a child has *not* done anything wrong. Boonin's objection, as applied to PPC, would be that if punishment is justified on the grounds that it is morally educational, and kids need moral education even when they haven't done anything wrong, then it would be justified to punish kids who haven't done anything wrong — i.e. to intentionally inflict distress on them. And since this strikes us as grossly unfair, it seems to show that the moral education theory of PPC must be false.

We recognize that not only are parents sometimes *permitted* to do things to their children that cause them distress, for the child's own good (such as confining a child to bed for their health),<sup>160</sup> it's their *responsibility* to do so. So, Boonin might argue, since it is parents' responsibility to morally educate their kids regardless of wrongdoing, it is therefore parents' responsibility to punish them, regardless of wrongdoing — and that seems to imply that the moral education theory is false. We don't think it's right to spank a child, or withhold their allowance, or take away their TV watching privileges, if they have done nothing wrong! And we certainly don't think it's a parent's responsibility to do so.

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<sup>160</sup>Thanks to Geoff Sayre-McCord for this example. Note that it's not a punishment because the distress of being bed-ridden is not intended. A parent would try to minimize such distress, unlike with a punishment.

Boonin also thinks that the second part of Hampton's response (the state may not "coercively interfere" in its citizens' lives when they have broken no law) is unsuccessful, because it begs the question:

Her response depends on the claim that when the state passes a law prohibiting a given behavior, this makes it "legitimate" for the state to "coercively interfere" in the lives of those who nonetheless engage in that behavior. But whether or not that state's prohibition of a given behavior renders such a response morally permissible is precisely the question that the moral education theory is attempting to answer.<sup>161</sup>

Here, I think Boonin is being somewhat uncharitable towards Hampton. On a charitable interpretation of her words, Hampton's response to the "punishing the innocent" objection depends on the claim that it is *impermissible* for the state to coercively interfere with citizens when they have *not* broken the law. That is sufficient grounds for maintaining that it's not acceptable for the state to punish those who have not broken the law, even if they do need moral education.

This claim does not imply that it *is* permissible for the state to coercively interfere when citizens *have* broken the law. That is a separate claim, and if Hampton's response to the objection was to say that the state may coercively interfere when people have broken the law, then that would indeed beg the question. But she does not have to say that.

Hampton could quite reasonably make the following claims: (1) The state may not coercively interfere with citizens who have broken no laws.<sup>162</sup> (2) The state ought to morally educate

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<sup>161</sup>Boonin (2008), p.190

<sup>162</sup>We might think that, strictly speaking, saying that the state may not "coercively interfere" with citizens who have broken no laws is not quite accurate — after all, we accept that the state may "coercively interfere" in law-abiding citizens' freedom when, for example, it requires taxes to be paid or when it makes hate speech illegal. So, if necessary, we might again be charitable to Hampton and change her wording somewhat. Instead of "coercively interfere", perhaps what we object to is the state forcing hard treatment (such as incarceration, pain, humiliation, etc) on



citizens who have broken the law. (3) Moral education justifies state punishment (a form of coercive interference). This means that the moral education theory of criminal punishment is not vulnerable to this version of the punishing the innocent objection. Claim (1) is based on the value of autonomy, which also drives the moral education theorist's insistence that moral reformation is to take place (when it does) voluntarily; that is, the state cannot force citizens to become morally educated.

Shafer-Landau (1991) is also satisfied that the moral education theory does not beg the question when it avoids the problem of punishing the innocent:

Attention to the restricted scope of moral education theories enables the theorist to counter one of the traditional problems in the philosophy of punishment. The narrow compass of the moral education view explains why its proponents are not committed to using punishment to morally educate those who haven't broken the law. If moral education were an overriding aim of a political theory, there would apparently be no bar to "educating", via hard treatment, those perceived to be in need of such treatment. But as the educationists have sketched it, the only claim made about fundamental political values has to do with the value of autonomy. They make no attempt to situate their view on punishment within a more comprehensive theory, thereby avoiding the "punishing the innocent" scenarios which so often plague consequentialist theorists.<sup>163</sup>

So, the response to the punishing the innocent objection in the case of state punishment turns on the idea that the state may not "coercively interfere" with law-abiding citizens. Our values of autonomy and freedom from interference preclude allowing the state to coercively interfere with citizens, even if it's "for their own good" (e.g. moral education).

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citizens who have broken no laws. Thanks to Geoff Sayre-McCord for raising the point that "coercively interfere" may be too broad.

<sup>163</sup>Shafer-Landau (1991), p. 192

However, we can see that it's problematic to take this route when responding to the punishing the innocent objection in the case of parental punishment of children. Although the state ought not to coercively interfere with citizens' autonomy (so long as they have broken no law) it's *not* the case that parents ought not to coercively interfere with children's autonomy (so long as they have broken no rule). Even if a child doesn't want to get any shots — they do hurt, after all — not only is it permissible for parents to override their child's autonomy, they are arguably required to do so, given that vaccination is demonstrably in the child's long term best interests.

So even if we allow that the moral education theory does not beg the question when it sidesteps the problem of the state punishing innocent citizens, it nevertheless needs a response to the problem of punishing children who have not done anything wrong. Rejecting "coercive interference" on the grounds of children's autonomy can't do the job. This means that the moral education theory of justification for PPC is left with the problem of punishing kids who have done nothing wrong. If punishing a child is justified on the grounds that it is morally educational, then it seems that there would be no reason to wait until a child actually does something wrong. The moral education theory seems to imply that kids should be punished, whether they've done anything wrong or not.

Ultimately, I think the moral education theory as applied to children can survive the punishing the innocent objection. I have two separate responses to the objection. The first is to bite the bullet and accept that *if* PPC was genuinely morally educational, it would therefore be permissible to punish (i.e. to inflict intentional distress on) children who have done nothing wrong. Suppose that spanking, say, really was morally educational and let's imagine, for simplicity's sake, an extreme kind of case: that all and only children who are spanked exactly once become morally educated. If it really was true that children who did not receive their one spanking did

not learn right from wrong (e.g. they had no idea that hurting others for fun was wrong etc), then it would indeed be a parental responsibility to make sure kids got their one spanking. And it would be a parental responsibility to issue this one spanking regardless of whether the child had done wrong or not. If the distress caused by that one spanking is *somehow* causally efficacious in morally educating children, and *somehow* necessary, then it would be a parental requirement to intentionally inflict that distress on their children.

I suspect that our reluctance to punish children who haven't done anything wrong stems from our intuition that if they are innocent of wrongdoing they do not *deserve* to have distress, or hard treatment etc, intentionally inflicted on them. But of course children do not deserve the pain of a shot, but they should have it inflicted on them nonetheless. (We could even imagine that somehow the pain of the shot was causally efficacious in generating the immune response so that someone *intentionally* inflicting pain is a necessary element of the vaccination process.) If PPC was genuinely morally educational (to a significant extent, with no significant side effects, with no less distressing alternative, etc) then it would fall into the same category as vaccinations — something that causes kids distress, and that parents might not like to inflict, but that is necessary for their own good. It would be parents' responsibility to ensure it happens.

Of course, we might also conclude that if spanking was like a vaccination, and needn't be inflicted after wrongdoing, that it would therefore cease to be a punishment. I think this is true, but as mentioned earlier, pointing it out does not avoid the punishing the innocent objection. We could just recast the original objection in terms of "intentionally inflicting distress on the innocent". We might think it's justified to intentionally inflict distress on the guilty, but balk at intentionally inflicting distress on the innocent. And if a theory such as the moral education theory seems to have the consequence of it being permissible to intentionally inflict distress on the inno-

cent, the theory needs a response to that problem. (In the case of criminal offenders and innocent citizens, Hampton did this by invoking a principle that the state is not permitted to "coercively interfere" in the lives of innocent citizens, and that the state oversteps its legitimate role when it seeks to morally educate citizens who have broken no law.) In the case of PPC, it's more plausible to bite the bullet and accept that "intentionally inflicting distress on the innocent" would be justified if doing so was morally educational — because we don't have the worry of "coercively interfering" with children's autonomy, or with overstepping the legitimate role of a parent.

My second response to the "punishing the innocent" objection takes a completely different tack. The moral education theorist could plausibly respond that punishment is morally educational only if it is inflicted on an agent *after* that agent has themselves transgressed, and not at any other time. They might try to make the case that parental punishment acts as a proxy for a guilty conscience and that is why it is morally educational. If a child associates their action of a certain type with parental disapproval and their own feelings of distress (intentionally inflicted by the parent), the idea is that the child will come to learn that actions of that type are forbidden (and because they are forbidden by a respected authority), thus morally wrong.

I think that both of these responses to the "punishing the innocent" objection are at least plausible in the case of the moral education theory's justification for PPC. However, I think that, ultimately, they both fail on empirical grounds. As a matter of empirical fact, punishment is *not* an effective way to morally educate children (even when they themselves have done wrong), and (fortunately) there are less distressing ways in which parents can help their children become morally educated. But before turning to that evidence, let us consider a couple more objections the moral education theory of criminal punishment raised by Shafer-Landau (1991) and consider how they apply in the case of PPC.

Shafer-Landau asks: Why think that we ought to allocate resources to benefit criminals (when there are innocent people who could use our help)? After all, a murderer has amply demonstrated what an awful person they are, so if we as a society are going to decide which citizens to help with our scarce resources, we don't have good reason to help those who commit terrible crimes — when there are so many more deserving people who could be helped instead.

Even if we grant the debatable premise that offenders are awful people who do not deserve help from the state, it would be possible to defend moral education by appealing to the benefit of doing so to society at large. If offenders who are punished and become moral educated as a result could become upstanding, contributing citizens who poses no danger to other people, that would of course be a huge benefit to society.

However, in the case of children, we can see that the objection doesn't even get off the ground. *Of course* parents of children who have broken rules should invest time and energy into morally educating them. It is uncontroversial that parents ought to try to ensure that their kids are morally educated — both the well behaved ones and the badly behaved ones.

Shafer-Landau points out that the moral education theory depends on the assumption that becoming a morally better person is objectively a good thing, even if an offender has no desire to become a morally better person. (Let us grant that there is no important difference between becoming more morally educated and becoming a morally better person.) It's supposed to be in the offender's interests to become a morally better person, which is why it's a good for them to receive moral education in the form of punishment (and, on the other hand, bad for them not to receive it). But, Shafer-Landau suggests,

There appears to be no *prima facie* reason for thinking that immoral individuals are necessarily harmed by their immorality, that a moral education necessarily constitutes a benefit conferred. It seems that we are justified in believing that immoral individu-

als may live successfully, until such time as we are given a persuasive account of how immorality necessarily impedes human flourishing.<sup>164</sup>

Perhaps it's possible, although no doubt difficult, to come up with an argument that shows that moral education (when successful) necessarily confers a benefit on an offender. Criminals who have already committed a crime, perhaps multiple crimes, may not personally *benefit* from coming to appreciate that their actions are immoral. They may be embedded in a criminal community, with few contacts outside that community; they may have no skills that are relevant outside a criminal lifestyle; their material and social advantages may be significantly lessened if they refrain from crime; they may also suffer psychologically as a result of moral education showing them their actions have been morally reprehensible. We might think some of these kinds of effects are right and just — but they are not clearly *benefits* to the offender. (And this was the driving force behind Hampton's theory — she wanted to justify punishment as a benefit to the person it is inflicted on.) Alternatively, of course, we could make the reasonable claim that the state has a duty *to society at large* to morally educate offenders, but then this removes one of the moral education theorists' key claims — that punishment is for the offender's *own* good.

However, for children it does seem plausible to suppose that becoming morally educated and growing up to become a morally upstanding adult is *more likely* to result in being a happier, better adjusted adult — and therefore it *is* in the child's own interest to morally educate them.

And, while it's not clear that the *state* has a moral duty to morally educate offenders, when there's a good chance that it won't make them better off (indeed, might make them worse off), it's never-

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<sup>164</sup>Shafer-Landau (1991), p. 210-211

theless uncontroversial that parents have a moral duty to morally educate their children — both for the sake of society at large, and also for the children's own benefit.

So it seems that even if we think that Shafer-Landau's objections are successful against the moral education theory as a justification for criminal punishment, they do not succeed against the moral education theory as a justification for PPC. Moral education remains a plausible candidate to justify the punishment of children.

However, even if we grant the intuitive plausibility of the moral education theory, and suppose that there are adequate responses to all the philosophical objections, that is not sufficient. Any instrumental theory needs to satisfy these three requirements:

- (1) The distress inflicted (both intended and not intended) is not excessive, compared to the amount and/or type of benefit gained.
- (2) The distress inflicted will likely lead to the intended goal.
- (3) There is no comparably effective alternative that causes less distress.

My view is that we have no good reason to think that punishment is an effective method of moral education. Hampton supposes that a punishment will enable an offender to reflect on the harm they have caused and thus persuade them to repent. In the absence of actual evidence, this is ungrounded optimism. Shafer-Landau puts the objection like this:

Suppose... we had a system of incarceration free from the present problems that beset our own prisons. It remains unlikely that being put behind bars in a respectable environment will bring about moral change. Incarceration, even under the best conditions, seems at most to provide only the setting in which the real moral education can take place. Incarceration simpliciter will not do the job, or, more realistically, it will do the job in only a handful of cases. What's required is some form of education that's to take place during incarceration. But this education is not punishment; the education is not any kind of hard treatment (unless it uses conditioning techniques that involve aversive stimuli of the kind already ruled out by the [moral education theorist's] con-

cern with autonomy). The punishment itself — incarceration — is simply insufficient to attain the educationist's goal.<sup>165</sup>

What we really need is empirical evidence regarding the likelihood of (different types of) punishment being effective in morally educating an offender.<sup>166</sup> But although Hampton gives a passing nod at empirical evidence — "I would argue that it speaks in favor of this theory that it rejects many forms of incarceration used today as legitimate punishments, insofar as they tend to make the criminal morally worse rather than better."<sup>167</sup> — she doesn't go any further than that. Similarly in the case of PPC. We need good reason to think that punishment — intentionally inflicting distress in response to wrongdoing — is an effective way to morally educate children.

Secondly, for punishment to be justified it has to not only be effective, the benefits have to be 'worth' the distress inflicted, and there has to be no comparably effective method that causes less distress. As we saw above, Hampton doesn't even consider the possibility of punishment not being justified at all. She *starts* from the assumption that it is justified and then argues for a particular theory of justification, *given* that it is justified. Once we drop that assumption, we can

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<sup>165</sup>Shafer-Landau (1991), p. 200. We might think that Norwegian prisons (or at least the famous Bastøy and Halden prisons) could function as evidence in favour of this view. Bastøy, for example, is minimum security, despite housing murderers and rapists. The surroundings are very pleasant — an entire island, with cottages and a lighthouse, no impregnable concrete walls — and there are many educational and social opportunities for the prisoners. They develop relationships with the guards, who are unarmed. In as much as they gradually become more morally educated, it is not because of any *punishment* they are receiving. It is notoriously difficult to compare recidivism rates, but it certainly appears that Bastøy does very well in this regard.

<sup>166</sup>There is evidence regarding which prison *programs* work and which don't, if we use reducing recidivism as our proxy measure for moral education. For example, adult education is effective and boot camps for adults or juveniles are not. See, for example, MacKenzie (2008).

<sup>167</sup>Hampton (1984), p. 228



see that non-punitive alternatives need to be considered. In the absence of an empirical comparison between punishment and non-punitive alternatives, we have no reason to think that punishment is justified as a method of moral education. In the criminal case, this means that we would need to show that punishments such as imprisonment are more effective methods of moral education than non-punitive alternatives such as attending classes on the consequences of crime, empathy workshops, watching video taped victim impact statements, reading books about ethics, and so on. (Or that punishment in conjunction with these other methods does a better job than the non-punitive options alone.) Similarly in the case of PPC, we would need evidence that punishments such as spanking, time-out, and privilege removal are more effective methods of moral education than non-punitive alternatives such as talking with a child and helping them to understand why what they did was wrong. (Or that punishment in conjunction with a non-punitive method does a better job than the non-punitive options alone.)

Overall, my impression is that Hampton doesn't *really* want to intentionally cause distress, but because she's starting from the assumption that punishment is justified, feels that she must find *some* way to make it acceptable. She puts the question like this:

[W]hy isn't the infliction of mild sorts of pain and deprivations also climbing into the moral gutter with the criminal? The moral education theorist must provide an explanation of why certain sorts of painful experiences (whose infliction on others we would normally condemn) may legitimately be inflicted in order to facilitate moral growth. But is such an explanation possible? And even if it is, would the infliction of pain always be the right way to send a moral message?<sup>168</sup>

As we might put the problem with respect to children: Why think that the infliction of distress on children is morally educational? Furthermore, why isn't it "climbing into the moral gutter" and

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<sup>168</sup>Hampton (1984), p. 223

teaching kids that it's morally acceptable to intentionally cause distress to someone less powerful than oneself when one believes that the weaker person is morally lacking? Is it morally acceptable to send a moral message through distress, pain or suffering?

Regarding Hampton's question of whether punishing children is "climbing into the moral gutter", that's really the issue we're discussing: Is intentionally causing distress to a child in the form of punishment morally justified? An occasional, mild punishment is unlikely to be *very* wrong — hardly climbing into the moral gutter — but the more frequent and/or more distress the punishments cause, the closer a parent gets to the "moral gutter".

Hampton does not attempt to answer her own question regarding how punishment can be educational, but Morris does. To illustrate the special connection between punishment and learning how to become more "attached to the good", Morris refers to parental punishment of children, as the archetypal case of moral education. According to Morris:

[P]unishment has some special and logical relationship to wrongdoing and to the possibility of a child's acquiring the concept. Because of this relationship, punishment is connected with the good... in a way that blame or disapproval by themselves are not.

First, because of punishment children come to acquire an understanding of the meaning of a limit on conduct. Logically connected with the concept of wrongdoing is the concept of a painful response that another is entitled to inflict because of the wrongful conduct. Second, a punitive response conveys to children the depth of parental attachment to the values underlying the limit. Just as children know from experience that they are disposed to strike out when they or what they care for are injured, so they come to appreciate the seriousness of their parents' attachment to the limit and to the values supported by its existence by the parents' visiting some pain upon them. The degree of punishment, then, conveys to the child the importance parents attach to their child's responding to the limit and promotes in children, not just an appreciation that something is wrong, but how seriously wrong it is. It conveys, too, the significance of different degrees of fault in the doing of what is wrong. Further, particular punishments that are chosen often communicate to children the peculiar character of the evil caused by their disregard of the limit, the evil to others and the evil to themselves.<sup>169</sup>

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<sup>169</sup>Morris (1981), p. 266

Even if we are charitable and don't take literally the talk of a "logical connection" between punishment and acquisition of the concept of wrongdoing, it is nevertheless mysterious why Morris thinks that punishment is *necessary* in order for children to "acquire an understanding of the meaning of a limit on conduct". Indeed, even the most punitive parents are unlikely to punish their kids *every* time they cross the limit of acceptable behaviour. Being too noisy in the library might make a parent frown and put a finger to their lips, which the child understands as meaning that they've been too noisy and they need to quieten down. Children can clearly understand a limit on conduct *some* of the time without the need for punishment, and Morris gives us no reason to think that they couldn't understand such a limit *every* time without the need for punishment — indeed the existence of people who were not punished as children but who nevertheless acquire the concept of wrongdoing would seem to show that punishment is not necessary for the acquisition of the concept. Morris has provided no reason to think that punishment is necessary in order for a child to acquire the concept of a limit on conduct, so this point fails to provide a justification for punishment.

We might be able to *speculate*, as Morris does, on possible ways in which punishment might be necessary. Morris suggests that punishment and gaining the concept of wrongdoing (a limit on conduct) are closely connected because wrongdoing *entitles* another person to inflict a painful response on the wrongdoer *because* of the wrongdoing. Of course, it's precisely this entitlement that is currently at issue: we are looking at the issue of whether parents *are* entitled to inflict distress on a child because of that child's wrongdoing. However, whether or not such an entitlement exists, it wouldn't be doing any work itself; it would be the children's and the parents' *beliefs* regarding such an entitlement that would be causally efficacious in the acquisition of the

concept of wrongdoing. Here's the thought: Children believe that their parents are entitled to punish them for wrongdoing, and so children come to acquire the concept of wrongdoing, of a limit on conduct.

It is hard to see how the belief *that my parent is entitled to punish me for wrongdoing* could be psychologically prior to the concept of *wrongdoing* or of a *limit on conduct* (which it would need to be if punishment was to be justified on the grounds that it is necessary in order for children to acquire the concept of wrongdoing). So Morris needs to give us a plausible psychological mechanism here, which he does not do. And so we are left with mere speculation about how punishment is necessary in order for children acquire the concept of wrongdoing, which means that Morris has not provided a justification of PPC. We could equally speculate about how punishment is *detrimental* to the acquisition of the concept of wrongdoing or a limit on conduct. For example, we might reasonably think that children are often *confused* by their parents' apparent assumption that parents are entitled to spank their children or confine them to their room, but a child is not entitled to hit her little brother or lock him in his room when he does something wrong.

Morris also suggests that children understand the parental punitive response because they understand how they themselves are inclined to strike out when they have been wronged. This suggestion is problematic because some children are inclined to strike out in the same way whether it's because their sibling kicked them or if there's an odd number of peas on their plate. On the other hand, some children are mellow and rarely inclined to strike out. There are also unfortunate children who do not strike out at all, despite being the victims of serious wrongdoing, such as physical, psychological, or sexual abuse. So reflecting on their own behavioural inclina-

tions may not be at all helpful in analyzing how serious their parents consider a particular instance of wrongdoing to be.

Morris might concede that different children have differing inclinations to strike out, and so different children have differing tendencies to associate wrongdoing and punishment. But this would likely mean that a child whose tendency to strike out is greater than another child's would have an advantage when it comes to internalizing the association between wrongdoing and punishment; more aggressive kids would learn the association between wrongdoing and punishment faster, and thus acquire the concept of wrongdoing faster. Morris provides no reason to think this is true though. *Do* more aggressive children learn the association between wrongdoing and parental punishment faster than less aggressive children? Do more aggressive children thereby come to have the concept of wrongdoing sooner than less aggressive children?

Morris has given us various *hypotheses* regarding the acquisition of the concept of wrongdoing, which he thinks would justify punishment (that punishment is necessary for children to acquire the concept of wrongdoing). However, he has not given us any good reason in favour of those hypotheses. And while we might speculate about how punishment might help with concept acquisition, we can equally speculate about how it might be a hindrance.

However, we might be inclined to be charitable to Morris here and not take so literally his statements about acquiring the concept of wrongness and parental entitlement to punish. Perhaps we can preserve the kernel of truth in Morris' idea here if, first, we focus on moral internalization — a very gradual, complex process — rather than the acquisition of the concept of wrongdoing (which at least *sounds* like a single event). And second, if we focus on parental *authority* rather than parental *entitlement*. If we do this, it becomes more plausible that a child's moral internalization is facilitated by their recognition of parental authority. It's true that when children

accept their parents' authority (and most young children do), then their parents' approval or disapproval of their actions is influential. It *matters* to young children what their parents think about their actions; parental approval and disapproval influences children's moral development. The question is whether or not it helpful for parental disapproval to be expressed or reflected in a punishment.

### ***Empirical evidence***

Instead of speculation, we need empirical evidence. What does the empirical evidence indicate about punishment's ability to morally educate children? If PPC *did* succeed in morally educating kids it would be at least plausible that PPC would be justified, given that the long term benefits of moral education are considerable. However, the evidence does not favour punishment.

Larzelere and Kuhn's 2005 meta-analysis found that no kind of punishment enhanced positive child development, such as conscience development, positive behaviours and feelings. That is, no punishment was helpful for purposes of moral education. Furthermore, "reasoning was more effective than nonphysical [and physical] punishment for enhancing positive child characteristics."<sup>170</sup> Other research has also found that conscience development is best achieved through rational, rather than coercive, means. Indeed, it's best (for development of conscience) if rational communication about values, culpability, responsibility and so on, happens when children are less emotional — rather than during a conflict over misbehavior.<sup>171</sup> Punish-

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<sup>170</sup>Larzelere and Kuhn (2005), p. 29. The authors do not describe the kind of reasoning examined by the various studies they analyzed.

<sup>171</sup>As summarized in Thompson (2014).

ment appears to slow down children's moral internalization; the emotional arousal caused by punishment actually makes it harder for them to learn moral lessons.<sup>172</sup>

Shen et al (2013) focused on a sample of 504 young adolescents (age 9 - 13) from three different ethnic groups and asked them (among other things) about their parents' discipline practices and also, using "five short stories depicting different situations where the protagonist's needs are placed in opposition to another's",<sup>173</sup> the subjects' moral reasoning was evaluated. The most sophisticated level of prosocial reasoning is when the child has "internalized" moral principles and makes judgements based on their own moral beliefs (in contrast to, for example, making judgements based on gaining the approval of others).

Overall, they found that "parental punitiveness directly and negatively predicted prosocial moral reasoning". That is, the youth who reported more punitive parenting also displayed less sophisticated prosocial reasoning. However, it is important to note that although this was the *overall* result for the whole sample, it did differ between ethnic groups and for the Taiwanese youth, punitive parenting was *not* related to prosocial reasoning either way. The authors suggest this may be because the Taiwanese subjects perceive the degree of their parents' punitiveness differently from either the Mexican American or the European American subjects, but they were unable to draw any conclusions from their own data on this. It is equally important to note that parental punitiveness was not shown to be *positively* related to prosocial reasoning for any of the ethnic groups, including the Taiwanese. That is, for none of the groups was punitive parenting shown to be beneficial for moral education.

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<sup>172</sup>Kochanska and Thompson (1997), Kochanska et al (2003), Parke (1969).

<sup>173</sup>Shen et al (2013)

Lopez et al (2001), however, *did* find a negative relationship between "minor corporal punishment"<sup>174</sup> during childhood and both empathy levels and moral judgement in young adulthood. On the other hand, parental "induction" (i.e. parents explaining to children the effects of their actions on self and others, etc) during childhood was a significant predictor of empathy levels in young adulthood; and empathy was a significant predictor of moral judgement. This research supports the idea that moral education is fostered by parental induction, not by "minor corporal punishment".

These results are based on questionnaires completed by 109 undergraduate subjects about their childhood experience of parental discipline and their current moral judgements and empathic reactions. Moral judgement was assessed using the Defining Issues Test mentioned earlier and empathy was measured by a 33 item questionnaire, in which respondents rate on a 9-point scale their level of agreement with statements such as "It makes me sad to see a lonely stranger in a group".<sup>175</sup>

On the face of it, this evidence supports the view that minor corporal punishment is childhood not helpful for moral education by young adulthood, and that parental induction is helpful. However, we might wonder first about the reliability of the recall data. Perhaps subjects who are more empathic or have more sophisticated moral judgement are more likely to recall more positive parenting; and subjects who are less empathic or have less sophisticated moral judgement are more likely to recall more aggressive parenting. That is, we might doubt that this research

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<sup>174</sup>Parents' "severe physical aggression" didn't have significant positive or negative correlations with anything. The authors suggest that this was because this sample of college students experienced so little of that during childhood that their research would have failed to detect any significant relationships, even if they exist.

<sup>175</sup>Lopez (2001), p. 198



provides evidence of a causal connection from childhood corporal punishment to adult empathy and moral reasoning.

Second, we might wonder if children who misbehave more tend both to elicit more corporal punishment and tend to develop into less empathic adults with less sophisticated moral judgement. And so it's child behaviour and characteristics that cause *both* the parents' corporal punishment *and* lead to the lower levels of adult empathy and moral judgement. That is, once again, we might doubt that this research provides evidence of a causal connection from childhood corporal punishment to adult empathy and moral reasoning.

I will respond to these objections in turn. First, there is evidence that recall of childhood discipline is fairly reliable. Longitudinal studies that tracked childhood discipline and then asked young adults to recall that discipline demonstrate that they do tend to remember their parents' overall parenting tendencies, even if particular incidents are not well remembered.<sup>176</sup>

In response to the second objection, there is evidence that "parents increase the use of *all* forms of discipline interventions (not only corporal punishment) when confronted with more severe violations" [*italics added*].<sup>177</sup> So if children's characteristics explained *both* the childhood corporal punishment and the adult moral characteristics, we would expect to see correlations be-

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<sup>176</sup>See, for example, Asselmann et al (2015) and Greenhoot et al (2005). The latter is particularly interesting because it first interviewed children between the ages of 6 and 12, documenting both corporal punishment and abuse they experienced or witnessed that year. The children who had witnessed or experienced abuse or experienced corporal punishment were re-interviewed six years later, between the ages of 12 and 18. While only 5% completely forgot that they had been subject to corporal punishment, 82% had no memory of having experienced abuse. Various explanations of this contrast are discussed in the paper including repression of traumatic memories and the possibility that abuse is often a rare or unique experience (unlike corporal punishment) and so without the constant "reinforcement" of repeated exposure (through the same kind of action or through conversational recall) such memories tend to fade, just like other memories do.

<sup>177</sup>Lopez (2001), p. 201

tween *all* forms of childhood discipline and adult empathy and moral judgement. That is, in addition to there being a negative correlation between corporal punishment and adult moral characteristics, we would also expect to see a negative correlation between, say, non-physical punishments and adult moral characteristics. As Lopez (2011) puts it:

If children with low moral development simply require higher levels of discipline, a relationship between high levels of all types of discipline interventions and moral reasoning would be expected.<sup>178</sup>

But this is not the pattern that Lopez (2011) found.<sup>179</sup> No correlations were found for types of discipline other than minor corporal punishment or induction one way or the other. While this research implies that minor corporal punishment is detrimental to moral education (and induction is useful), it doesn't imply anything about the relationship between any other types of discipline and adults' empathy and moral reasoning.

Consistent with the evidence, it's *possible* that some type of punishment that hasn't been empirically investigated will turn out to be morally educational. But that hardly seems likely given the range of punishments that have been considered. There's unlikely to be something special about any particular type of punishment that enables it to succeed where other punishments fail. So, for the time being, moral education fails to provide a justification for PPC. And in the ab-

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<sup>178</sup>Lopez (2001), p. 201

<sup>179</sup>Similarly, Gershoff (2010) didn't find correlations between aggression and all forms of discipline (as would be expected if children's aggression explained increased parental discipline). Instead, they found correlations between only *some* forms of discipline (4 out of 11 different types) and children's aggression. (We will look at this particular research in more detail in Chapter 6, on the risks and harms of punishment.)

sence of positive evidence that punishments are morally educational, the default should still be to refrain from intentionally causing distress.

In addition to the evidence that punishment does not help children become morally educated, the evidence indicates that it is actually *detrimental* to children's moral development, as we shall see in Chapter 6, which is on the harms and risks of punishment. Not only does moral education fail to provide a reason for parents to depart from the "don't intentionally cause others distress" rule — PPC also carries the risk of long term harm with respect to moral education, providing additional reasons not to punish children.

In fact, there is evidence that certain non-punitive methods do a better job of moral education.

Methods that promote choice and autonomy and are characterized by parental explanations and minimal use of power are generally found to be more effective at facilitating child moral internalization than methods that are reactive, harsh, and physically coercive.<sup>180</sup>

We will go into this kind of evidence in more detail in Chapter 9, which is on the empirical evidence for non-punitive discipline.

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<sup>180</sup>Lansford et al (2009), p.1385

## CHAPTER FIVE: Consent theory/Social contract theory

This chapter will consider two related types of theory that originally addressed the problem of criminal punishment by the state: the consent theory of punishment and the related social contract theory. (These are *types* of theory, and individual theories differ in their details.) Importantly, these are not instrumental theories of punishment, so the three requirements we've been using to evaluate the success of instrumental theories do not apply.

I will describe a consent theory of criminal punishment by the state (specifically, as proposed by C. S. Nino), explaining how I think consent should be understood, and consider how such a theory could apply to parental punishment of children. I will conclude that, although it has more plausibility than it might at first have seemed, it is ultimately unsuccessful as a theory of justification of PPC.

Then I will turn to a related type of theory, social contract theories. These theories claim (roughly) that governments have legitimate power (including that of criminal punishment) over citizens because of those citizens' consent — explicit, tacit, or hypothetical — to be bound by that authority. In particular, we will look briefly at the work of Rawls. I will explain why neither Rawls' methodology of the original position, nor the decision-making principles resulting from it, are applicable in the case of punishing children — even if they are helpful in discussions of the justification of criminal punishment.

### ***Consent theory***

The version of the consent theory of criminal punishment that I will focus on is that described by C. S. Nino.<sup>181</sup> He holds that state punishment is permissible because an offender, when they break the law, *consents* to punishment. Ordinarily, it would be wrong to remove someone's property, or restrict their freedom but, Nino claims, it is permissible to perform these kind of actions on an offender because the offender actually *consents* to be treated that way when they choose to break the law:

A necessary legal consequence of committing an offense is the loss of immunity from punishment that the person previously enjoyed. This loss of immunity is obviously correlative... to the legal power on the part of certain public officials to punish the offender. The individual who commits a crime assumes a legal liability to suffer punishment and relinquishes the right that he would otherwise enjoy of seeking compensation or criminally prosecuting the official for the deprivation of rights involved in punishment.<sup>182</sup>

In just about every case of crime, of course there is no explicit consent to punishment so, if the offender consents to punishment, that consent is tacit consent, similar to how a passenger tacitly agrees to pay for their journey when they get into a taxi and ask the driver to take them somewhere, or a patron agrees to pay for their meal when they place an order in a restaurant. In these situations, there is (standardly) no explicit conversation about consent to pay, but nevertheless, a taxi passenger consents to pay for the journey by getting into the cab, and a restaurant patron consents to pay for the meal by ordering items from the menu. Note that it's not necessary that someone choose or consent to a consent-convention in order for them to have consented.

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<sup>181</sup>Nino (1983)

<sup>182</sup>Nino (1983), p. 297

The passenger didn't *choose* or decide to adopt the consent-convention of getting into a taxi and asking the driver to take them somewhere being sufficient to consenting to pay. That convention arose accidentally. But once it's in place, that is a meaning that performing that action conveys.

How might this kind of idea apply in the case of PPC? In the case of PPC, a consent theorist could maintain that, although it would ordinarily be impermissible for parents to intentionally cause their kids distress, if the kids consent to punishment when they break the rules, then it's permissible for parents to punish their kids (to inflict intentional distress on them). Of course, it's far from obvious that children *do* consent to punishment when they break the rules; and similarly, it's far from obvious that offenders consent to punishment when they break the law.

On the face of it — in both the criminal case and the PPC case — even if it's true that consent *would* justify punishment, it certainly seems implausible that either offenders or children actually *do* consent to be punished (whether tacitly or not). It seems implausible not least because if we asked offenders or children if they consented, they would deny it. But, as we shall see, it is possible to sincerely deny that one consented to something even though one did indeed consent to it. This can happen when the conventions surrounding tacit consent are so familiar that we don't necessarily even notice them as such.

There can be cases of genuine consent in which an agent doesn't *believe* that they've consented. Suppose a little old man falls over on the sidewalk next to me. If he asks for my help and I simply start to help him, it sounds a little odd to say that I consented to help him and we wouldn't ordinarily put it that way. But it's clear, nevertheless, that I *did* consent to help him. It's just that in a scenario like that, our consent is usually tacit and so familiar, that we don't even notice it as such. So I might be confused if someone asked me, "Did you *consent* to help him?" and I might even deny it. My sincere denial of consent does not mean that I did not in fact consent to

his request for help. Furthermore, it's a "conventional consequence" in such a situation that the obligation I incur as a result of my consent continues until I'm no longer needed (within conventional limits; I'm not obligated for the next decade even if in some sense he needs me). This might be when the man is fine and steady on his feet, or it might be when someone else takes over. I can't abandon him on the sidewalk, if he needs to go to the hospital, just because it's inconvenient to me. But if someone else offers to take him to the hospital, then my obligation is discharged. My action of offering my hand to pull him up, say, seems to count as consent (in part) because it was a communicative transaction that incurred *between specific persons* and I had sufficient *knowledge of the conventional consequences* of my action. And this is the case, even if I don't believe that I consented to help him (since that wouldn't be our normal way of describing such a situation).

So an offender's sincere denial that they tacitly consented to criminal punishment, or a child's sincere denial that they tacitly consented to parental punishment, is not sufficient to imply that they did not in fact consent.

There is, however, a different epistemic requirement. When someone is completely ignorant of the (likely) conventional consequences of their action, their action cannot count as consent to those consequences. Let's imagine someone who has no idea about the conventions of auctions, and they make eye contact with the auctioneer and nod, and so accidentally make the winning bid on a Ming vase. Depending on the details of the circumstances, we might be inclined to say that, despite their ignorance regarding auctions and how they work, they are nevertheless obligated to pay for the vase — but it doesn't seem correct to say that they *consented* to buy the vase. They would certainly deny that they consented to buy the vase, but as we've seen, sincere denial of consent doesn't mean that consent didn't take place. But their lack of knowledge

of the conventional consequences of their action does seem to imply that they did not in fact consent to incurring those consequences. They might have obligations, but these are *despite* their lack of consent.

In the auction case, the person's ignorance regarding auctions, in particular regarding the conventional consequences of their actions, seems to imply that they didn't really consent to pay for the vase (although they nevertheless may incur moral responsibilities as a result of their actions). But, supposing an offender has even rough knowledge of the law and the standard penalties for breaking them, then an offender can meet the "informed" condition on consent. Similarly for a child who is aware of the punishment for breaking a rule.

It seems that tacit consent is often (always?) a matter of known conventional consequences being in place and some of them are so familiar that we don't even notice them as such and don't feel the need to make our consent explicit. Once I start to help the little old man, he reasonably expects me to continue to help him — not change my mind and leave him lying on the sidewalk. And I have an obligation to continue to do so. That is a behavioural convention that has arisen between persons that it is reasonable to expect any sufficiently competent person in our society to be aware of. If an auction house invited a lot of new customers to come to an auction, it would make sense for them to provide information regarding the conventions around bidding, and thus consenting to pay for an item if your bid ends up being the highest one. Similarly, it would seem that the state has an obligation to educate a population on any new laws and expected penalties for breaking them. (If it comes to the state's attention that many citizens are indeed ignorant of a particular law that's already in place, that would also recommend an education program.) The state needn't use the terminology of "consenting to punishment" by breaking the law, but it could.



If informed consent to liability to punishment requires knowledge of the relevant law and the conventional consequences of breaking it, I don't think that poses much of a problem for the consent theorist. In the vast majority of cases, offenders are presumably well aware that they are breaking the law and that the conventional consequence of doing so is liability to punishment. When a new law is introduced that may not be obvious, such as seatbelt laws, for example, it is the state's responsibility to have a campaign to educate citizens on the new law and the consequences of breaking it (a fine in a certain range, or whatever). It would also make sense to have a period between the introduction of the new law and a deadline when it becomes a punishable offense. So perhaps there's a year after the new seatbelt law is introduced, and if someone is caught by the police during that year not wearing a seatbelt, they are not punished. But after a year of education (ads in the paper, billboards, mail outs, etc) it's reasonable to think that the state has discharged its duty to inform citizens of the new law and the punishments for breaking it, and it's reasonable to assume that citizens are informed.<sup>183</sup>

Note that "knowing about the conventional consequences" does not require completely accurate and detailed knowledge. Fairly broad brushstrokes are sufficient, just as in other contexts where informed consent is important. Informed consent to a medical procedure doesn't require complete, encyclopedic knowledge in the relevant area (law or medicine). It also doesn't have to be based on entirely true beliefs — that's too strong a requirement. It's possible to have some false beliefs and still to count as informed. If I wrongly believe that a particular study was performed by researchers at McGill rather than at Johns Hopkins, that's not enough to mean that

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<sup>183</sup>I think citizens also have a duty to take reasonable steps to ensure that they are informed about laws that they might otherwise inadvertently break. If you move to a new country, and you want to drive there, it's your obligation to make sure you are familiar with the traffic laws, for example.

my consent to the procedure was not informed. It's not necessary that I know all the details of all the studies that have ever been done regarding that procedure. But it is necessary that I know the approximate risk of the procedure and the chances of it being beneficial. Similarly, not knowing the exact dollar amount of a fine doesn't imply that an offender was not sufficiently informed when they know that breaking the seat belt law makes them liable to a fine. (How strict the requirements are for consent counting as "informed" depends on context. The standards for informed consent to brain surgery will be much higher than for informed consent to having your photo taken for the local newspaper.)

In the case of PPC, it's much easier for parents to ensure that there are no "ignorant offenders", i.e. they can make sure that children know the rules and the punishments for breaking them. The consent theorist of PPC can insist on a requirement that children are sufficiently knowledgeable about the rules and punishments. And if parents fail to ensure children have this knowledge — and understanding — then the consent theorist can maintain that it is not justified for parents to punish children who break the rules. A 3 year old can understand simple rules and punishments (even if she doesn't always have the self-control to obey the rules). Even though, legally speaking, a 3 year old is not cognitively competent to consent (to medical treatment, for example) she *can* consent in a family setting to simple things she understands — she can consent to being tickled, she can consent to a sibling having the bigger cookie, she can consent to feeding the goldfish, and so on. A medical procedure is too complicated, and the idea of probability of harm is too difficult, for her consent to have legal weight. But she can understand that if she crayons on the wall again, she will be spanked.<sup>184</sup>

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<sup>184</sup>I suspect that for many 3 year olds, even if they fully understand this connection, at the time of drawing on the wall, they do not think of the threat. Children that young are often so fully "living in the moment" that such threats may literally not occur to them at the time they break the rule. In which case, I am skeptical that the child could count as having consented to punishment when

Children will tend to have at least broad brushstrokes knowledge of the rules and potential punishments in their household (and the consent theorist for PPC could insist that it's a parental requirement to make sure kids do have this knowledge in order for punishment to be justified). If a child doesn't know or understand the rules, or the potential punishment for breaking them, it's open to the consent theorist for PPC to maintain that punishment in those circumstances would not be justified. As a child gets older, they come to have more rules, and more complicated rules, that govern their behaviour. And they are also able to infer some rules. If it's a rule for Jamie to wear a bike helmet every time he rides his bike, at some point he'll be cognitively competent enough to have the ability to infer that it would also be a rule for him to wear a bike helmet if he rides his friend's bike (because Jamie understands the reason behind the rule and can understand that there's no relevant difference between riding his own bike and riding his friend's bike).

So it is plausible, after all, to think that when an offender breaks the law, they consent to punishment (assuming they are sufficiently cognitively competent). This is because they know that, in our society, the action they perform has certain "conventional consequences", i.e. consequences that have been set up by persons, or have arisen between persons. And this can be the case even if they sincerely deny that they consented to punishment.

Sufficient knowledge and understanding of the conventional consequences of one's consent is one of the background conditions that must be in place in order for consent to have moral weight (and for it to even be consent at all). There are other conditions too, of course. Consent

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they break the rule, because they fail the "cognitively competent" requirement, despite understanding the rule and the consequences. The consent theorist might try to restrict their theory to older children who are more cognitively competent. However, I will put this issue aside for the time being, and continue trying to make a reasonable case for the consent theorist.

(tacit or explicit) always takes place in a context, and that context (background conditions) can determine the moral weight of the consent. For example, for it to be plausible that consent justifies punishment in the criminal case, it's necessary that the following background conditions hold: the laws need to be just, the offender needs to have broken the law (not falsely believe that they have done so), the law needs to be fairly consistently applied, the punishment needs to be reasonable, etc. So if someone breaks an unjust law (an apartheid law, say) then even if we're willing to say that they consented to punishment, it is nevertheless not morally justified for them to be punished.<sup>185</sup> Similarly for PPC. According to the consent theorist, in order for punishing a child to be justified, in addition to the child's consent, it would be necessary that various background conditions hold such as the child needs to have broken a rule, the rule needs to be fair, the rule needs to be consistently applied, the punishment needs to be reasonable, etc.

This is not anything special about consent in the case of punishment, or something specific to tacit consent. It's standard for *any* kind of consent, including ordinary explicit consent. As Manson and O'Neill (2007) put it, we must bear in mind "the complex social and normative framework that must be in place and must be respected for effective communication" of consent.<sup>186</sup> If the necessary background conditions are in place, consent can make the difference between an impermissible action and a permissible one.<sup>187</sup> That is, if the background conditions are

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<sup>185</sup>Boonin (2008), p. 156-171, makes a number of objections to the consent theory that can all be responded to by pointing out these necessary background conditions.

<sup>186</sup>Manson and O'Neill (2007), p. 49

<sup>187</sup>Is one of the necessary background conditions that the action consented to be otherwise permissible? Of course, this can't mean that it would be permissible *without* consent. There may well be some actions that are impermissible *despite* consent (and a necessary background condition would be that the consented-to action not be one of those) but of course it would beg the question for me to assume that punishment is one of those actions.

all in place, consent can be "morally transformative,"<sup>188</sup> i.e. the consent can make permissible an action which would otherwise have been impermissible.

So Boonin is mistaken when he claims that it's ad hoc for the consent theorist to maintain that just/reasonable laws are a necessary condition (along with consent) for the justifiability of punishment:

If consenting to be liable to punishment for violating a useful, effective law by breaking it suffices to permit punishment, why shouldn't consenting to be liable to punishment for violating a counterproductive, ineffective law by breaking it similarly suffice? If consenting to pay \$10 million for a valuable painting by raising your hand at auction suffices to obligate you to pay \$10 million for it, after all, then surely consenting to pay \$10 million for a worthless painting by raising your hand at an auction also suffices to obligate you to pay \$10 million for it. If putting your chips on the table means that you have consented to pay if you lose when making a wise choice with your cards, it must equally mean that you have consented to pay if you lose when making a foolish choice.<sup>189</sup>

It's not true that raising your hand at an auction or placing your chips on the table *suffices* for being liable to pay or to losing money. For you to be morally obligated to pay up, certain background conditions have to hold. And if they don't hold, the convention of raising your hand or placing a bet *does not* mean that you are obligated to pay. There are a number of necessary background conditions that need to be met in order for it to be the case that your consent obligates you to pay.

In the case of the auction, if the painting was stolen and it comes to the attention of the police immediately after the auction, but before you have paid, then you are not obligated to pay for the painting even though you consented to doing so. (If you had already paid, then you would

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<sup>188</sup>Miller and Wertheimer (2010 b)

<sup>189</sup>Boonin (2008), p. 169

be owed your money back.) However, if the painting turns out to be worthless and it's simply your own ignorance that prevented you from seeing that, in the context of an auction, that's hard luck. The painting's actually being worth \$10 million *is not* one of the background conditions that needs to hold in order for your consent to obligate you to pay for it. But the sale being legal *is* one of the conditions that needs to hold in order for your consent to obligate you to pay for it.

Similarly, if the cards in the deck had been stacked in order to cheat you out of your money, you would not be obligated to pay if the cards come up against you, even though you consented to doing so. One of the background conditions that needs to hold in order for your consent actually to obligate you to pay is that the deck is a fair deck — that the dealer is not trying to cheat you out of your money. It's not necessary (of course) that the cards come up in a way that is favourable to you, but it is necessary that the dealer isn't stacking the deck.

Furthermore, if someone had nodded their head and believed they were consenting to pay for a painting at an auction, but they had not in fact been attending an auction, then they would not be obligated to pay for it. If someone accidentally walked in on a re-enactment of an auction of a valuable painting and, believing it to be a real auction, raised their hand to make a bid of \$10 million, then they would not be obligated to pay \$10 million to anyone, because there was not in fact an auction happening — even if we grant that they did consent to being liable to pay \$10 million for the painting, they are not obligated to pay \$10 million and nobody has a right to \$10 million of their money.

In the case of breaking the law, one of the background conditions that needs to hold in order for it to be morally permissible to punish the lawbreaker is that the law is just and reasonable. According to the consent theorist, the criminal's consent is one necessary condition that needs to hold, and the law being just and reasonable is another. This is not ad hoc. There are

*always* background conditions that must hold in order for someone's consent to obligate them in some way. Similarly, in the case of PPC. The consent theorist can maintain that the rule a child breaks must be fair and reasonable, if it's to be morally permissible for a parent to punish them.

Another background condition that the consent theorist could insist on in the case of PPC, as in the case of legal punishment, is that there be no mitigating circumstances that would absolve the child or the offender. So even if an offender has broken the law and thus has, according to the consent theorist, consented to be liable to punishment, if there are mitigating circumstances, it may nevertheless not be permissible to punish the offender (or at least the punishment should be less severe).

The same can apply in the case of PPC. 15 year old Thomas knows there is a rule against pouring water onto the living room carpet. But one day when he is home without his parents, taking care of Mattie, his 6 year old brother, Thomas comes out of the bathroom to see that Mattie has started a fire on the living room carpet. Thomas was in the bathroom only briefly, but Mattie got into trouble quickly; Thomas was not negligent in his duty to take care of Mattie. Thinking quickly, Thomas gets his brother out of the way, smothers the fire and douses it with water. Of course, Thomas should not be punished for throwing water on the living room carpet! But the consent theorist can agree with this by simply maintaining that an absence of mitigating circumstances is necessary in order for punishment to be justified.

Importantly, as we've seen in multiple examples, consent is a relationship or transaction between specific persons (or groups or organizations of persons). In contrast, a restaurant's "open" sign, its menu on the table, and so on, constitute an offer or invitation to *anyone* who sees it. A taxi's lit sign, or its waiting in the taxi stand, means the driver is offering a service (subject to other background conditions) to *anyone* who might see it. An offer or invitation may not be

between specific parties; it can be an offer or invitation that is open to anyone (or to a wide range of people). Once a passenger gets into the taxi, or once a patron orders from the menu, the consent relationship is between those two specific parties — the particular taxi driver and the particular passenger; the particular restaurant (an organization of persons) and the particular patron (or group of patrons).

So, not only must someone have sufficient knowledge of the (likely) consequences of their action for it to count as morally transformative consent (or even consent at all), it must be a communicative transaction between persons, or organizations of persons. If I freely and knowingly choose to throw a piece of paper into the fire, it's not correct to say that I *consent* to the paper getting burnt (even though I know what happens to paper in fires). I do not consent to getting wet when I knowingly go out in the rain without an umbrella; I do not consent to getting burnt when I knowingly touch the hot stove. Consent is a communicative transaction that happens between persons (or organizations of persons). Someone gives consent to be treated in a certain way by another person; or someone gives consent to have certain demands made of them by another person; and so on.

We can see the importance of consent as communicative transaction between persons in the following examples. Someone who walks through a violent neighbourhood at night, with a wad of \$10 bills in their pocket (or even if they have only a dollar on them), knowing the high risk of being mugged, is not thereby consenting to having their money taken. Taking their money would be theft. Similarly, someone who goes to a dive bar, wearing sexually provocative clothing, and then drinks lots of alcohol, knowing the high risk of sexual assault is not thereby consenting to sexual activity. Having sex with them would be rape. (The point of the one dollar example is to show that the harm does not have to be serious for us to say that the person didn't



consent.) Even though the pedestrian walking through the violent neighbourhood knows there's a high risk of being mugged, even though they are not coerced into walking through the neighbourhood, even though they are cognitively competent, they are not consenting to have their money taken. For it to be the case that they consent to have their money taken (in which case it wouldn't be theft), there would have to be a consent transaction between specific persons. But there is no such relationship between the pedestrian and any other person, so there is no consent, and taking the pedestrian's money would be theft.

The relationship between a citizen and the state is sufficiently like the relationship between two persons for it to be possible for a consent transaction to occur between them. This is because the state is comprised of persons. When I send off my signed passport application, I am consenting to the state using the requested information on the form for a specific purpose — producing my passport. (I am not consenting for it to be used in any other way.) When my new passport is issued to me, the state is consenting to certain responsibilities towards me when I travel abroad. It's not a natural law that offending leads to punishment (as it is in the paper and rain cases); it's a relationship or transaction that is set up by, or arises between, persons.

There are requirements on *both* (or all) parties to a consent transaction in order for the consent to be morally transformative. For example, the consent-receiver has to take reasonable steps to ensure that the consent-giver has not been coerced, knows and understands the expected conventional consequences, and so on. What counts as "reasonable steps" will vary depending on the context and the severity of the consequences if someone is not actually consenting. If someone is consenting to risky surgery, the steps are more stringent and more strongly required than if someone is consenting to pay a taxi fare.

So, in the case of punishment, is it true that — if all the necessary background conditions are in place — consent can turn an otherwise impermissible action into a permissible one? That is, in the case of punishment, is consent morally transformative? The consent theorist maintains that punishment is permissible because of the criminal's consent (to be liable to punishment), but the same treatment would be wrong in the absence of the criminal's consent (to be liable to punishment). Can consent really make this moral difference?

Certainly there appear to some cases in which consent seems to be morally transformative. Suppose that I'm considering getting a haircut, and you would like to cut it for me (perhaps because you like cutting hair and you need the cash). Suppose that there is good reason to think that I would be happier with short hair, you are not coercing me, you would do a good job of cutting it and I know that to be the case, we agree on a reasonable fee, you've taken reasonable steps to ensure that I'd be happier with short hair, etc. Suppose that all the background conditions are in place that are necessary for cutting my hair to be permissible — *but* I haven't yet consented to you cutting it. In this case, it would not be morally permissible for you to cut my hair, even though the haircut is in my interests. It would be wrong of you to sneak up on me while I was sleeping and cut it without my permission. But once I give informed consent to you cutting my hair, then it's permissible for you to do so. If all the necessary background conditions are in place, consent has turned an otherwise impermissible act into a permissible one.<sup>190</sup> Consent also seems able to make the difference between impermissible and permissible in pairs such as theft-gift, rape-consensual sex, murder-medically assisted dying, assault-surgery, etc. As Bergelson (2010) colourfully puts it, consent

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<sup>190</sup>If my consent wasn't informed (perhaps you told me you were good at cutting hair, when in fact you're terrible) then it's not permissible for you to cut my hair. Same goes for any other background condition.

turns a rape into love-making, a kidnapping into a Sunday drive, a battery into a football tackle, a theft into a gift, and a trespass into a dinner party.<sup>191</sup>

Importantly, however, for consent to be morally transformative in this way, it seems it must be possible to withhold or withdraw consent.<sup>192</sup> Boonin puts this as an objection to the consent theorist and says that in standard cases of tacit consent it is possible to explicitly deny that one is granting consent to what is standardly expected. For example, a would-be passenger could get into a taxi and explicitly tell the driver that she isn't planning on paying at the end of the journey. If the taxi driver agrees to drive the passenger who has made such an explicit declaration, it is not the case that the passenger is obligated to pay the taxi driver at the end of the journey and the taxi driver has no right to any of the passenger's money.

Another example Boonin gives is of a doctor who is playing roulette and receives a page. The doctor explicitly announces that although he is putting his chips down on red, he is not betting on red. He is just putting the chips down in order to answer the page. Therefore, the doctor is withdrawing his consent to bet on red.

If consent can be given — whether explicitly or implicitly — it seems that it must also be possible to withhold or withdraw consent. But this appears to cause a problem for the consent theory of punishment. We don't want the justifiability of punishing an offender to depend on whether he chooses to announce that he is withholding or withdrawing his consent to being

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<sup>191</sup>Bergelson (2010), p. 164

<sup>192</sup>This would mean that if someone initially consents to sex, they are able to change their mind and withdraw consent. Having sex with someone who has changed their mind and withdrawn consent, would be rape, in most people's minds. North Carolina is unusual in that the law there says that consent to sex cannot be withdrawn after it is given. See *The Guardian* article at <https://tinyurl.com/NCrapelaw>.

punished for his crime. And if an offender is not able to withdraw her consent, it doesn't seem that it was legitimate consent in the first place.

However, there is a crucial difference between the taxi driver and roulette playing cases on the one hand, and the criminal case on the other. The taxi driver *agrees* to take the non-paying passenger and the roulette dealer *agrees* that the chips being placed on red does not amount to a bet on red. Of course their agreement itself might be tacit. The taxi driver needn't say, "Yes, I agree to take you where you want to go for free", but so long as the taxi driver heard the passenger say that she wasn't going to pay and so long as the passenger had good reason to think that the taxi driver heard her make her announcement, if the taxi driver nods assent (a kind of tacit consent) for her to get in the taxi, then they've agreed that the passenger is not obligated to pay. Imagine, however, that the passenger merely mumbled her intention not to pay and the taxi driver did not hear and the passenger had no reason to believe that the taxi driver heard, then there would be no agreement between them for a non-paying ride and the default convention would still be in place — and the passenger would owe the taxi driver money at the end of the journey. Similarly, if the dealer didn't hear the pager and the doctor mumbled his intention not to bet on red, then the default convention would still be in place — and the doctor would be liable to lose his chips if the wheel comes up black.

In the criminal case, the consent theorist could maintain that an offender just *saying* that they are not consenting to punishment isn't sufficient to imply that they are not. The offender (or would-be offender) would have to successfully *communicate* with and get *assent* from the appropriate authorities. For example, in the jurisdiction where I live, growing marijuana is illegal, but medical exemptions can be granted by the appropriate authorities. So if I want to grow marijuana, my just *saying* that I don't consent to be punished when I break the law, doesn't

mean that I have successfully withdrawn that consent. I have to successfully communicate and get assent from the appropriate authorities. Consent is a communicative transaction between persons — and so is withdrawing or withholding consent.

Imbrisevic (2010) attempts to defend the consent theory from the problem of criminals not being able to withdraw consent by arguing that there's a special third kind of consent, in addition to tacit/implicit and express/explicit consent. And it's this kind of consent that is at work when a criminal breaks the law. Crucially, it's a kind of consent that cannot be "uncoupled" from the act of breaking the law.

To illustrate this third kind of consent, Imbresevic provides an example of a pedestrian bridge that is damaged so badly that it is dangerous to cross on it. The city government where the bridge is located puts up a big, clear sign saying that the bridge is unsafe and that anyone who crosses it does so at their own risk — the city is not responsible for injury or other costs incurred by people ignoring the sign. We may even suppose that they put "do not enter" tape across each end of the bridge. The city has clearly discharged its responsibility to be liable for injuries incurred. Imbrisevic maintains that when you cross the bridge, you are thereby consenting to be liable to any costs incurred due to possible injury. Your consent, he says, is not separable from the act. You cannot declare, "I do not consent to liable for costs incurred due to crossing the bridge" and thereby "uncouple" your consent from the act of crossing the and so not be so liable.

But Imbrisevic is mistaken that there's a special kind of consent that it is not possible to "uncouple" from crossing the bridge. It's simply because you failed to successfully *communicate and get assent* from the city to change the default convention already in place. Contrary to Imbrisevic's assumption, there *is* a default convention at work; there are conventions surrounding of "At your own risk" signs and what they imply. And, as we noted before, a consent-convention

can arise accidentally and one can be bound by it, even if one neither chose it, nor consented to it. If the city put up a teeny-tiny sign or one in Swahili (in a predominantly English-speaking area) it would not have successfully communicated its intention to change the default assumption that the city is responsible for the safety of bridges under its jurisdiction nor could it reasonably believe that it had your tacit consent to changing the default assumption. And the pedestrian's mere declaration that they are not consenting to be responsible for the risk of injury from crossing the bridge does not suffice to withdraw their tacit consent to be responsible for that risk. The pedestrian would have to communicate with, and get assent from, the city in order not to be responsible for the risk they are taking when they cross the bridge.

So Boonin's objection can be responded to by Nino in a very simple way, simpler than Imbrisevic's route: the roulette-playing doctor and the non-paying taxi passenger succeed in withdrawing or withholding their consent *only if* they successfully communicate with their appropriate partner (roulette dealer, taxi driver) and get their consent to changing the default convention, which was already in place and enabled tacit consent. So the offender (or potential offender) cannot withdraw or withhold consent to liability to punishment just by announcing this. They need to successfully communicate and get assent from the appropriate partner (in the case of a crime, this might be the police or a judge or the head of state). Similarly, a child cannot simply announce that they do not consent to be punished for rule-breaking and thereby cease to be liable to punishment. They would have to successfully communicate with a parent and get the parent's assent. And of course that is possible — a parent could grant an exception to the rule for whatever reason. Just as in the criminal case, paramedics rushing to an emergency have an exception to the speed restriction laws, there are medical exemptions granted for growing marijuana and so on. (Even after the fact, exemptions can be granted by a judge for extenuating

circumstances.)

So, even if it's true that for consent to be genuine it must be possible to withdraw or withhold consent, that doesn't pose a problem for the consent theorist because, in both the criminal case and PPC, it's possible for an offender or a child to communicate and get assent for an exception to be made.

So the consent theory is, I think, much more plausible than it might first appear for both criminal punishment and parental punishment of children. However, I do think that, ultimately, it fails in both domains. That is because for consent to be morally transformative, two other background conditions have to hold, which do not hold in the case of punishment. First, the person who is consenting must not have their options impermissibly limited by the person (or organization of persons) receiving the consent. And, second, the unavailable option must not be the consentor's preferable option.

Consider the following example. Suppose someone lives in a small town and they have only one surgeon available who can perform a medical procedure they need. Suppose that this procedure can be safely performed with either general anesthetic or local anesthetic, all the risks are the same, the chances of the procedure being successful are the same, the costs are the same, and so on. It's simply a matter of patient preference between general or local anesthetic. But the surgeon — for no good reason — decides to withhold one of the options.<sup>193</sup> Let's say they with-

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<sup>193</sup>Some might think that the surgeon's limiting of (what turned out to be) the patient's preferable option means that the patient is, after all, *coerced* into consenting. I think it's a stretch to call it coercion. But it doesn't really matter if we consider impermissibly limiting someone's preferable option a form of coercion or not — either way, doing so means that acting on someone's informed consent is not permissible. The consent is not morally transformative. Wertheimer agrees that this kind of "coercion" is not really coercion "because A does not threaten to violate B's rights" as when A puts a gun to B's head, for example. But, he says, "I readily admit that there is a sense in which one is 'forced' to do that which there is no reasonable alternative to doing, but this is not the sort of 'force' or coercion that undermines moral transformation," Wertheimer (2010), p. 201. The example he has in mind is the "Lecherous Millionaire". B's child

hold the local anesthetic option. The surgeon has impermissibly limited the patient's options (and it's impermissible, regardless of the patient's preferences, or what is actually best for the patient). The patient consents to the surgery with general anesthetic, and their consent is fully informed (including knowing about the surgeon's withholding of local anesthetic).

Despite the impermissible limiting of options, is the patient's consent nevertheless morally transformative? It would be impermissible for the surgeon to perform surgery on the patient *without* consent; since the patient has consented, is it *now* permissible for the surgeon to perform surgery? We don't yet know enough. It also matters which option *would have been preferable* for the patient, had neither option been withheld. If the patient would have chosen general anesthetic anyway, then it seems that the consent is morally transformative: It's both permissible for the surgeon to perform surgery (rather than not perform surgery at all), and it's also permissible to perform surgery with general anesthetic (rather than local anesthetic). If, on the other hand, the patient would have preferred local anesthetic, then their consent is *not* morally transformative. Surgery (of either kind) is impermissible without the patient's consent, and while the patient's consent *does* mean that surgery (of some kind) is now permissible, it's *not* permissible for the surgeon to perform surgery with general anesthetic (rather than local anesthetic). Note that this result does not depend on a prior moral judgement regarding the different surgeries. The moral

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needs expensive medical treatment. A proposes to pay for the treatment if B will meet him for sex twice a week for a year. B consents to this arrangement, but I think it *is* wrong for A to have sex with B (assuming B doesn't want to have sex with A), despite B's consent. The millionaire, A, is immorally limiting B's options. While we might not think that A is obligated to pay for the child's medical care "for nothing in return", there are plenty of other ways in which A would be able to help, but A does not make any other offer of help. And so A is impermissibly limiting B's preferable options; and so B's consent is not morally transformative; and so A is acting impermissibly when he has sex with B.



status of the consented-to surgery depends on (1) the options being impermissibly limited and (2) what is preferable for the consentor.

There's one more relevant complication. I used the phrase "what is preferable" for the consentor. This is somewhat ambiguous between what the consentor *prefers* and what is *best* for the consentor. In the case of a competent adult, consent is morally transformative (despite impermissible limiting of options) if their choice matches their well-informed *preferences*. It's nobody else's place to decide what is best for the consentor. That's part of the value of consent — it grants competent adults the freedom and authority to choose whatever they prefer, even if it is not what is best for them.<sup>194</sup> In the case of a child, however, we are justifiably paternalistic. Children are *not* free to choose whatever they prefer (at least not always), if it is not what is best for them.

In the case of state criminal punishment, it's certainly arguable that the state impermissibly limits offenders' preferable options. And, if it is correct that the state impermissibly limits the offender's (or potential offender's) preferable options, it would be impermissible for the state to punish an offender *even if* the consent theorist is correct that the offender's breaking the law counts as consent to punishment.

If, for example, the state refused to offer an offender alternatives to punishment, such as effective rehabilitative treatment, or addictions counselling, or psychiatric care, or employment training, or academic education, (or whatever else might help her in future), it could still be impermissible to punish her. If the state (perhaps in the form of members of the judicial system?) does not put morally sufficient effort into considering alternatives to punishing the offender, it

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<sup>194</sup>Because, ultimately, what is best is always a judgement call based on the available evidence. We do not have direct access to the truth about what is objectively best for someone, so once a competent person has grasped the relevant evidence, it's up to them to make that judgement.

could still be impermissible to punish the offender. If the state failed to put at least as much effort into crime preventative measures as it does into punitive measures, it could still be impermissible to punish her. So we can see that in the case of criminal punishment, even if consent is necessary for the permissibility of punishment, and even if offenders do consent to punishment when they break the law, the question of the moral permissibility of punishment remains. This is because the question remains whether or not preferable alternatives to punishment have been impermissibly limited.

Note that such an argument would *not* depend on a premise that state punishment is wrong. The argument wouldn't go: Consent fails to be morally transformative in the case of punishment because punishment is wrong, even when it's consented to. That would beg the question against the consent theory. Instead, the argument would conclude that state punishment is wrong, even if it's consented to — on the grounds that the consenter's preferable options have been impermissibly limited. And such an argument would have to defend the view that the options have been *impermissibly* limited. If preferable options are impermissibly limited, consent fails to be morally transformative. If this is correct, state punishment would not be justified by the consent theory. (Of course, that would leave open that it may be justified in some other way.)

So: even if consent were necessary for the permissibility of criminal punishment, and even if offenders do give consent to be punished (by breaking the law), we would still need to ask whether punishment is permissible or not. If an offender's preferable options are being impermissibly limited by the state, then the offender's consent would not grant permissibility of punishment, even if the law they broke was a just one (and other necessary background conditions were in place). The question of whether criminal punishment is justified would remain.

In the case of parental punishment of children, my view is that punishing a child for breaking a rule is indeed impermissibly limiting the child's preferable options — so that even if a child consents to punishment, it is nevertheless impermissible to punish them. The child's consent is not morally transformative; it does not turn intentionally inflicting distress from a morally impermissible action into a permissible one. If it's the case that the parent ought to offer alternatives to punishment such as making amends, teaching the child, showing the child the effects of their action, encouraging the child to apologize, and so on, then punishment would be impermissible. So, even if a child's consent is necessary for the permissibility of parental punishment, and even if children do consent to punishment when they break a rule, that consent is not morally transformative because parents are impermissibly limiting the child's preferable options.<sup>195</sup> And what makes it the case that they are *impermissibly* limiting the child's options is not that punishment is wrong (although of course I do believe that is the case). Rather, it is that there are *preferable* options that there is no good reason not to offer, such as non-punitive discipline.

We can conclude that the type of consent theory of punishment championed by Nino has failed to justify PPC. *Even if* a child consents to being punished and *even if* that consent is informed and non-coerced (and other necessary background conditions hold), that consent doesn't imply that PPC is justified, so long as the parent is impermissibly limiting the child's options by, for example, not offering non-punitive alternatives.

### ***A note on Rawlsian social contract theory***

Instead of *actual* (albeit tacit) consent as in Nino's theory, we might think it's more plausible that

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<sup>195</sup>Of course, there are plenty of ordinary examples in which a parent permissibly limits a child's options, such as when they offer tacos or fish fingers but don't offer spaghetti (for some good reason or other).

the justification of state criminal punishment depends on *hypothetical* consent, as proposed by John Rawls in *A Theory of Justice*. On this view, criminal punishment is justified (if it is) by the political principles that *would* be consented to by reasonable citizens who know neither their own position in society nor various facts about themselves, but do know basic, general facts about human nature:

Among the essential features of this situation is that no one knows his place in society, his class position or social status, nor does anyone know his fortune in the distribution of natural assets and abilities, his intelligence, strength, and the like. I shall even assume that the parties do not know their conceptions of the good or their special psychological propensities.<sup>196</sup>

To extrapolate from this, these rational agents also don't know their race, gender, or sexuality; their education level; their birthplace; their religion or lack of it; whether they have any disabilities, diseases, or medical conditions; and so on. This "veil of ignorance" means they cannot be misled by self-interest (or the interests of their in-group) when deciding on the principles around which to structure society.

This "original position" is a hypothetical scenario in which reasonable parties would decide on the principles that would determine the structure of society. So even though there was no real, historical occasion on which citizens literally consented to be governed by the state, if society is based on such principles, then there is what we might call hypothetical consent to state governance — which would include use of state coercion, such as in the case of criminal punishment.<sup>197</sup>

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<sup>196</sup>Rawls (1971), p. 12

<sup>197</sup>Rawls himself doesn't go into detail and try to justify state punishment. Dolovich (2004) is a detailed investigation into how Rawls' technique of the original position and the veil of ignorance, and the basic principles he derives, could generate principles that justify state

However, even if this methodology is successful in the case of criminal punishment, it is not applicable in the case of parental punishment of children, and cannot be adapted to it (unlike the other theories we've looked at). The parties in the original position are assumed to be

rational and mutually disinterested. This does not mean that the parties are egoists, that is, individuals with only certain kinds of interests, say in wealth, prestige, and domination. But they are conceived as not taking an interest in one another's interests.<sup>198</sup>

This makes sense when the parties are considering the principles that should structure society and govern the behaviour of citizens, so that they can have the liberty to pursue their own ends, while at the same time minimizing the interference with others' pursuit of their ends:

A just social system defines the scope within which individuals must develop their aims, and it provides a framework of rights and opportunities and the means of satisfaction within and by the use of which these ends may be equitably pursued.<sup>199</sup>

Citizens might have reason to expect other citizens to have a general interest in justice, but they would not expect other citizens to consistently look out for one another's interests, just as they themselves don't consistently look out for others' interests. They can reasonably expect citizens to be generally interested in securing their own ends, and — given their general knowledge of

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punishment in a liberal democracy. She concludes that from behind the veil of ignorance, parties would agree on principles that are fundamentally variants of what she calls the 'parsimony principle': "the basic idea of which is that the punishment of convicted offenders must be no more severe than necessary to yield an appreciable deterrent effect on the commission of serious offenses." Dolovich (2004), p. 325-6.

<sup>198</sup>Rawls (1971), p. 13

<sup>199</sup>Rawls (1971), p. 31

human nature — they would expect that at least sometimes citizens would attempt to do this at others' expense:

Fearing crime at the hands of their fellows, the parties would look to the state to impose punishment as a way of providing them protection. At the same time, fearing the violation of their security and integrity that punishment represents, they would be wary of investing the state with the authority to exercise this kind of coercive power. The challenge the parties thus face is to identify principles of punishment that would answer both concerns, providing them the protection they will need in a partially compliant world both from fellow citizens and from the state.<sup>200</sup>

Of course, all of this stands in stark contrast to the family. Family members are paradigmatic examples of persons who are not "mutually disinterested". They are not fearful of one another, and they don't need to worry about unequal distribution of resources. There's typically no tendency towards competition for scarce resources (or whatever) between parents and their children. Typically, there is *trust* between family members, which there isn't between citizens (or wouldn't be in the absence of laws limiting citizens' behaviour). It's not unusual for parents to make sacrifices — sometimes very significant sacrifices — for the welfare of their children. This is not the case between citizens, of course. And it is not appropriate to abstract away from the relationships and features that define the very institution. So, as Rawls writes:

We wouldn't want political principles of justice — including principles of distributive justice — to apply directly to the internal life of the family.<sup>201</sup>

Along with the family, there are other institutions to which political principles don't directly

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<sup>200</sup>Dolovich (2004), p. 379

<sup>201</sup>Rawls (1997), p. 790

apply, such as

churches or universities, professional or scientific associations, business firms or labor unions. The family is not peculiar in this respect. To illustrate: it is clear that liberal principles of political justice do not require ecclesiastical governance to be democratic. Bishops and cardinals need not be elected; nor need the benefits attached to a church's hierarchy of offices satisfy a specified distributive principle, certainly not the difference principle. This shows how the principles of political justice do not apply to the internal life of a church, nor is it desirable, or consistent with liberty of conscience or freedom of association, that they should.<sup>202</sup>

So, it makes sense to abstract away from citizens' positions and relationships in society in order to decide on fair principles governing how society should be structured and on the limits on citizens' freedom to pursue their own ends. In contrast, the family consists of necessarily partial relationships; features such as trust, concern, self-sacrifice; and a non-democratic power structure. "[I]f we assume that the correct regulative principle for anything depends on the nature of that thing",<sup>203</sup> it doesn't make sense to abstract away from the relationships and features that make a family what it is. While it can definitely be instructive to try to put ourselves in the position of children and seriously consider what is best for them from their point of view, it's not useful to completely abstract away from the parent-child relationship.<sup>204</sup>

Furthermore, the decision-making principles themselves that result from Rawls' methodology are not applicable to the case of PPC. For example, Rawls argues that the parties in the original position would agree to the "maximin" decision-making procedure when deciding

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<sup>202</sup>Rawls (1997), p. 789

<sup>203</sup>Rawls (1971), p. 29

<sup>204</sup>I don't think it's necessarily a problem that a family involves *children*. The parties in the original position presumably have to take into consideration the lives of citizens over their whole life span.

which principles should determine the structure of society. This procedure says that the parties, when deciding between two alternative political principles, would prefer the one in which the worst-off person was better off than in the other. Even if we supposed that parties in the original position were not deciding on society level principles, but instead on principles governing the family, the maximin decision-making procedure doesn't even get off the ground. Whereas it is highly relevant to the morality of a societal structure how society addresses inequality and how it helps the worst-off, it's not relevant to the morality of PPC who is the overall worst-off over the course of their lifetime, a parent or a child. (One or the other could have a terrible life or a fantastic life overall, due to factors completely unrelated to PPC.) Concern for the worst-off is legitimate for a just society. It doesn't apply in the case of a family.



## CHAPTER SIX: The long term harms of parental punishment

At this point, it might be worth a reminder of my overall argument in this dissertation. I argue that there is a default rule of human behaviour, *Avoid intentionally causing others distress*, and because punishing children is a departure from this rule, it needs justification. If punishment is not justified, we should stick with the default and avoid punishing. To be justified, an instrumentalist theory (i.e. a theory that attempts to justify punishment by its usefulness in achieving some goal) must meet three requirements:

- (1) The distress inflicted (both intended and not intended) is not excessive, compared to the amount and/or type of benefit gained.
- (2) The distress inflicted will likely lead to the intended goal.
- (3) There is no comparably effective alternative that causes less distress.

In Chapters 2, 3 and 4, we have seen how various instrumentalist theories fail requirement (2).<sup>205</sup> That is, the evidence indicates that punishment is not effective for various goals that parents might have (such as moral education or behavioural training). That is sufficient to show that punishment is not justified by these theories. In this chapter, I will argue that these theories also fail

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<sup>205</sup>You may recall from Chapter 2 that obedience for a combination of reasoning + punishment was the only possible exception. Larzelere et al (1998) found that there was a delay in misbehaviour if a punishment "back-up" was more recent than if it was longer ago. However, I would argue that this small benefit (42 minutes) is not 'worth' punishing a child for, so the obedience theory of justification fails (1), even if we grant (2). In the present chapter, we will look at the unintended side effects of punishment, which lends further support to the view that reasoning + punishment fails (1). Furthermore, Larzelere et al (1998) didn't compare reasoning + punishment to any non-punitive alternatives other than reasoning alone (with 3 year olds!), so there would be no reason to think it passes (3).

requirement (1), because (together with the distress initially inflicted) there are important side effects of punishing children. This gives us further reason to reject instrumentalist theories of punishment of children, and to stick with the default of avoiding intentionally causing others distress.

In Chapter 5, we looked at a consent theory for justification of PPC. I argued that the consent theory of PPC fails because parents are impermissibly limiting their children's preferable options when they punish them. And this means that the child's consent is not morally transformative — that is, it cannot turn intentionally inflicting distress on a child into a morally permissible action. The evidence presented in the previous chapters (on the lack of benefits of punishment), together with the evidence in this chapter (on the long term harms of punishment) and in Chapter 9 (on the benefits of non-punitive discipline), supports the view that non-punitive options are preferable to punishing a child.

PPC inflicts distress immediately, but it also has various long term harms. In this chapter, I will be focusing specifically on the evidence regarding those long term harms. In Chapter 7, I will consider a more general consequentialist justification of punishment, and of course all the evidence regarding punishment's potential harms and its lack of benefits is relevant to what a consequentialist would say about punishment of children. In Chapter 8, I will consider retributivism. Although some retributivists seem to think that their views are immune to empirical evidence, I think that they are mistaken. I think it should matter to the retributivist what the evidence indicates about the benefits and harms of punishment. I agree with Rawls' view that, "All ethical doctrines worth our attention take consequences into account in judging rightness. One

which did not would simply be irrational, crazy."<sup>206</sup> If this is correct, the evidence in this chapter will be relevant to retributivism too.

Overall, the evidence seems to indicate numerous negative side effects of both physical and nonphysical punishment, both in childhood and extending into adulthood. The evidence is stronger for physical punishment because more work has been done on it. But there is also some evidence that non-physical punishments (such as time-outs) have long term harms too. And the evidence for the influence of spanking on externalizing behaviour (such as aggression) is stronger than for any other kind of side effect.

It is worth noting at the outset that although there's a near consensus among researchers who work in this area that corporal punishment (including spanking) has various long term negative effects, this conclusion is not without controversy. For example, Ferguson (2013) argues that although there do appear to be negative long term effects of spanking (on internalizing and externalizing behaviour, and cognitive performance) those effects have been exaggerated by anti-spanking researchers. This debate centres on complex issues regarding the correct statistical models to use and how to interpret those results, but note that even though Ferguson thinks anti-spanking researchers have exaggerated the harms of spanking, he nonetheless agrees that spanking is indeed correlated with those negative long term effects, as are some other types of punishment — in contrast with positive discipline:

[S]mall to moderate but non-trivial... correlational relationships were found between spanking/[corporal punishment] and negative outcomes including externalizing and internalizing symptoms and lower cognitive performance... Similar effects were found for harsh verbal punishment and arbitrary discipline, but not for positive dis-

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<sup>206</sup>Rawls (1971), p. 30

ciplinary strategies which were not significantly correlated with externalizing symptom outcomes, the only outcome with a sufficient number of studies.<sup>207</sup>

It is important to remember, however, that *even if* spanking caused *no* long term harms, there is evidence that it is not beneficial — and that is sufficient to make spanking impermissible. If I slap your face but you nevertheless recover and suffer no long term ill effects (physical or psychological) it was still wrong for me to slap you if there's no reason to think that doing so will be beneficial. (If I slap you to arouse you from unconsciousness, for example, then my doing so is likely justified.) The same goes for intentionally causing non-physical distress. If I yell upsetting insults at you but you get over it and suffer no long term ill effects (physical or psychological) it was still wrong for me to yell insults at you, if there's no reason to think that doing so will be beneficial.<sup>208</sup> Causing even short term distress needs to be justified, whether it is distress caused to an adult or to one's child, whether it is physical pain or psychological upset.

Despite this controversy over the *size* of the negative effects, keep in mind the near consensus among contemporary psychologists and social scientists who investigate parental punishment of children that spanking has harmful long term effects (far fewer researchers investigate other forms of punishment). Furthermore, bear in mind that the handful of prominent researchers who disagree with the anti-spanking consensus, such as Robert Larzelere and Diana Baumrind, also usually find negative effects of spanking and have failed to find any beneficial effects of spanking. Larzelere and Baumrind are pro-spanking not because they have found beneficial ef-

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<sup>207</sup>Ferguson (2013)

<sup>208</sup>Perhaps there are situations in which yelling upsetting insults at someone *might* be beneficial. After many calm, patient conversations, if someone is just not getting the message that their views are racist or sexist (or otherwise harmful), it might be that an emotional outburst from someone they respect causes them to reconsider their views.

fects of it (they haven't). It's just that they don't think that spanking is any worse than non-physical punishment, so they think parents should have it as an option. They admit that even if spanking is not harmful in the long term, neither is it beneficial. Usually, when they look for negative effects of spanking, they find them. But a study in which they failed to find negative effects of spanking was one that looked at spanking at preschool age, and effects in early adolescence (so over a long period of time):

Normative physical punishment (spanking) never predicted adverse (or beneficial) outcomes after controlling for preexisting differences at T1.<sup>209</sup>

And even though they are pro-spanking, they say:

Like any kind of punishment, spanking is intended to be aversive and is unpleasant to inflict as well as to receive, and like punishment of any kind, should be used only when its estimated benefits outweigh these costs. Singling out spanking for censure obscures the fact that all punishment causes pain and so must be justified by the ends it is expected to achieve.<sup>210</sup>

But given that they typically find no benefits of spanking,<sup>211</sup> it's hard to see how they could justify spanking by its benefits. In Baumrind et al (2010), they compare spanking to "psychological control and verbal hostility" and found them "to be more strongly associated than total physical punishment with adverse adolescent attributes."<sup>212</sup> And in their eyes, this is supportive of spank-

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<sup>209</sup>Baumrind et al (2010)

<sup>210</sup>Baumrind et al (2010)

<sup>211</sup> Larzelere et al (1998) did find an average addition of 42 minutes of delay until the next misbehaviour when punishment was combined "more recently" with reasoning with toddlers.

<sup>212</sup>Baumrind et al (2010)

ing — i.e. because spanking is not *as bad* as "psychological control and verbal hostility". But note this is comparing instances of spanking (which may be frequent or infrequent) with a very general, negative overall style of parenting. Although "psychological control and verbal hostility" can include using non-physical punishments (such ignoring a child until their behaviour improves, or insulting a child in order to correct misbehaviour) it's more about general parental attitudes and overall family environment. For example, a parent who is psychologically controlling engages in behaviour such as habitually interrupting a child, trying to tell them what to think or how to feel, giving them "guilt trips", belittling them, ridiculing their feelings, and so on.<sup>213</sup> This parenting style has been shown to have negative effects on child outcomes, particularly depression, but it's not directly related to punishment. (A parent could be psychologically controlling in this way and never punish, or they could be psychologically controlling and punish frequently.)

However, pro-spanking researchers such as Baumrind and Larzelere are correct that it's not legitimate to single out spanking for special censure, as if it is supposed to contrast unfavourably with all other forms of punishment. As we proceed through this chapter, we will see how both spanking *and* other forms of punishment have harmful long term effects (although, as I mentioned earlier, the evidence is stronger for spanking). In this chapter, in each section on a specific type of side effect, I will talk first about the evidence regarding spanking and then about the evidence regarding non-physical punishments.

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<sup>213</sup>See, for example, Barber (1996) and Barber et al (2005), which Baumrind refers to. Note that giving a child a "guilt trip" is very different from helping a child see the impact of their specific action on someone else, which might serve to induce guilt in that child. A child feeling appropriately guilty for a specific wrongful action that hurt someone else is quite different from a parent who habitually tries to make their child feel guilty by going on about how much they do for their child, how miserable their child makes them feel, how much better off the parent would be if the child was different (or absent), and so on.

### *Increased aggression and other behavioural problems*

There is strong evidence that spanking, in particular, causes increases in aggression and other behavioural problems. We will look first at this evidence and then turn to other forms of punishment, which have also been found to have similar effects.

MacKenzie et al (2013) found that

[A]ge 5 maternal spanking, at both low and high frequency, is a significant predictor of higher downstream age 9 externalizing behavior, even after an extensive set of child and family characteristics were controlled for...

Numerous studies find that the more spanking kids receive, the more aggressive they are later.<sup>214</sup> Children who are spanked more often have also been found to more strongly prefer aggressive problem solving with siblings and peers than children who are spanked less often.<sup>215</sup> Even when children's initial levels of misbehaviour are taken into account, the groups that used least corporal punishment, or that stopped using it, had better outcomes than those that used more and/or didn't stop using it.<sup>216</sup> A study in the early 1990s showed that when parents reduce their use of physical punishment, there are subsequent reductions in their children's aggressive behaviour.<sup>217</sup> This is, of course, evidence that parents' spanking is having an effect on their children's behav-

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<sup>214</sup>For example: Strassberg et al (1994), Straus et al (1997), Slade & Wissow (2004), Knox (2010), Taylor et al (2010 b), Afifi et al (2012), Lee et al (2013), MacKenzie et al (2012), Maguire-Jack et al (2012), Gershoff et al (2012), Altschul et al (2016), and Paterson et al (2013).

<sup>215</sup>Simons & Wurtele (2010)

<sup>216</sup>Straus et al (1997), Lansford et al (2009), Taylor et al (2010)

<sup>217</sup>Forgatch (1991)

our (rather than solely kids' behaviour having an effect on parents' discipline). This result was replicated in a 2012 study:

In a randomized controlled trial of an intervention designed to reduce difficult child behaviours, parents in more than 500 families were trained to decrease their use of physical punishment. The significant parallel decline seen in the difficult behaviours of children in the treatment group was largely explained by the parents' reduction in their use of physical punishment.<sup>218</sup>

Gershoff et al (2010) also found that spanking has negative effects on kids' aggressive behaviour. Researchers interviewed 292 mothers and their children, in six countries, and found that corporal punishment, (along with other parental behaviours: expressing disappointment, yelling, and scolding) was associated with increased child aggression. If more aggressive children elicit more parental discipline (rather than parental discipline causing children to become more aggressive), one would expect that more aggressive children would elicit more of *all* forms of discipline — including non-punitive discipline — but that appears not to be the case:

[W]e did not find that parents use more of all forms of discipline with aggressive children; rather, only four of the eleven forms of discipline were significantly associated with child aggression. If aggressive children were eliciting more parent discipline overall, we would have expected them to elicit more of the most frequently reported forms of discipline. However, although mothers reported they *teach about good and bad behavior* and *get child to apologize* most often, they were not using these techniques any more frequently for children they rated as high in aggression. These findings are not consistent with a “child effect” explanation.<sup>219</sup>

A 2012 article in the Canadian Medical Association Journal, summarizing 20 years of such research, states that "results consistently suggest that physical punishment has a

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<sup>218</sup>Durrant & Ensom (2012)

<sup>219</sup>Gershoff et al (2010)



direct causal effect on externalizing behaviour [i.e. various forms of antisocial behaviour]<sup>220</sup>:

One of the first large prospective studies (1997,  $n = 807$ ) controlled for initial levels of child antisocial behaviour and sex, family socioeconomic status and levels of emotional support and cognitive stimulation in the home. Even with these controls, physical punishment between the ages of six and nine years predicted higher levels of antisocial behaviour two years later. Subsequent prospective studies yielded similar results, whether they controlled for parental age, child age, race and family structure; poverty, child age, emotional support, cognitive stimulation, sex, race and the interactions among these variables; or other factors. These studies provide the strongest evidence available that physical punishment is a risk factor for child aggression and antisocial behaviour.<sup>221</sup>

In a 2013 study of more than 3000 preschoolers, increases in spanking between ages 1 and 3 years of age, predicted increases in children's aggression between ages 3 and 5, over and above the children's initial levels of aggression — and this effect is not counteracted by mothers' warmth towards their children.<sup>222</sup>

Another factor that doesn't help reduce the negative behavioural effects of corporal punishment is lax discipline (i.e. discipline that "is typified by permissiveness and inconsistency... [i.e.] the lack of follow-through in maintaining and adhering to rules for children's behavior... [and] of giving into coercive child behavior").<sup>223</sup> Indeed, on the contrary, combining lax parenting and harsh discipline (characterised as using corporal punishment) makes each worse than either by themselves:

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<sup>220</sup>Durrant & Ensom (2012)

<sup>221</sup>Durrant & Ensom (2012)

<sup>222</sup>Lee et al (2013)

<sup>223</sup>Parent et al (2016), p. 397

[G]iven average levels of harsh discipline..., higher levels of lax discipline were associated with higher levels of youth externalizing problems... [G]iven average levels of lax discipline, higher levels of harsh discipline were associated with higher levels of youth externalizing problems.<sup>224</sup>

Extending the research to consider the effects of corporal punishment beyond childhood, Gamez-Guadix et al (2010) investigated the link between corporal punishment at age 10, and antisocial traits and behavior in young adulthood. They found that positive parenting did not counteract the apparent negative effects of corporal punishment (and they also found that parents' psychological aggression didn't make a difference either):

CP [corporal punishment] was associated with an increased probability of ATB [anti-social traits and behavior] regardless of whether there was positive parenting and psychological aggression.<sup>225</sup>

In their meta-analysis, Larzelere and Kuhn (2005) point out that spanking isn't any worse than other forms of punishment, but their point can of course also be taken as saying that other forms of punishment are just as bad as spanking. Spanking was compared to time-out, love withdrawal, privilege removal, and scolding in numerous studies, and they conclude that:

[T]his meta-analysis found no evidence that physical punishment was more strongly associated with physical aggression than other disciplinary tactics.<sup>226</sup>

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<sup>224</sup>Parent et al (2016), p. 402

<sup>225</sup>Gamez-Guadix et al (2010)

<sup>226</sup>Larzelere & Kuhn (2005), p. 27.

[T]his meta-analysis failed to detect negative side effects *unique* to physical punishment.<sup>227</sup>

[I]f physical punishment increases aggression and antisocial behavior, it does so to the same degree or less than the disciplinary tactics to which it has been directly compared.<sup>228</sup>

Most of the previous evidence against physical punishment does not appear to be unique to physical punishment. Equivalent analyses produce similar evidence against a range of alternative disciplinary tactics as well.<sup>229</sup>

And, as we saw in Chapter 3, Larzelere et al (2010) found in a study with 785 children aged 6 to 9 years old:

More frequent use of all three types of nonphysical punishment [grounding, removing privileges, sending children to their room] was associated with higher subsequent antisocial behavior, with effect sizes similar to spanking.<sup>230</sup>

In short, spanking children is associated with increases in antisocial behaviour over time — as are other punishments. If spanking causes behavioural problems, then we have reason to think that non-physical punishments do too.<sup>231</sup>

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<sup>227</sup>Larzelere & Kuhn (2005), p. 27. Italics added.

<sup>228</sup>Larzelere & Kuhn (2005), p. 27.

<sup>229</sup>Larzelere & Kuhn (2005), p. 28.

<sup>230</sup>Larzelere et al (2010), p. 11

<sup>231</sup>See also Campbell et al (2000), which provides evidence that, for children with behavioural problems in toddlerhood, "negative parenting" is a risk factor for continuing behavioural problems at school age.

In addition to the non-physical punishments considered in Larzelere's research, another form of non-physical punishment that appears to have detrimental effects on child antisocial behaviour is what Wang and Kenny (2013) call "harsh verbal discipline". They define harsh verbal discipline as "the use of psychological force with the intention of causing a child to experience emotional pain or discomfort for the purposes of correction or control of misbehavior."<sup>232</sup> Calling a child a "lazy slob" in order to try to motivate them to tidy their room is an example of intentionally causing the child emotional discomfort, in response to unwanted behaviour, for the purposes of correcting that behaviour. The researchers collected survey data from 976 two-parent families. Both mothers and fathers answered questionnaires about their verbal discipline of their child, on a scale from *never* to *always* (i.e. In the past year, after your child has disobeyed you or done something wrong, how often have you: (a) shouted, yelled, or screamed at the child; (b) swore or cursed at the child; and (c) called the child dumb or lazy or some other name like that?). Children answered questionnaires about their conduct problems on a scale from *never* to *10 or more times* (i.e. in the past year, how often have you (a) been disobedient in school, (b) lied to your parents, (c) stolen from a store, (d) been involved in a gang fight, and (e) damaged public or private property for fun?).

The researchers administered the questionnaires when the children were 13 years old and then again a year later, and they investigated the relationship between parents' harsh verbal discipline at age 13, and their 13 and 14 year old children's misbehaviour ("conduct problems"). They found that as well as children's conduct problems causing parents to use harsh verbal discipline, harsh verbal discipline also increased children's conduct problems:

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<sup>232</sup>Wang and Kenny (2013)

[H]igher levels of mothers' and fathers' harsh verbal discipline at age 13 predicted increases in adolescents' conduct problems between ages 13 and 14... Higher levels of adolescents' conduct problems at age 13 also predicted increases in mothers' and fathers' harsh verbal discipline between ages 13 and 14.<sup>233</sup>

A 2014 study based on survey data and interviews with 475 girls found that harsh discipline (including yelling, as well as corporal punishment) during girls' childhood and early adolescence increases the risk of experiencing dating violence — both as perpetrator and victim — in late adolescence:

More severe initial HP [harsh punishment] at age 10 significantly predicted a greater likelihood of PDV [physical dating violence] at age 17... Furthermore, a more rapid increase in HP from ages 10 to 13 was associated with PDV at age 17.<sup>234</sup>

A study of 500 five year olds, who had been surveyed repeatedly during infancy and toddlerhood, found that, "The strongest predictors of externalising behaviour at 5 years of age were male sex, harsh discipline and maternal stress".<sup>235</sup> The harsh discipline is not only physical punishment, but also includes frequent use of non-physical punishments such as yelling, scolding, and time-out (i.e. defined as "sending a child to a room or corner in the house as punishment").<sup>236</sup>

To summarize, there is strong evidence that corporal punishment increases the risk of later behavioural problems (including, perhaps, into adulthood). In addition to this, there is moder-

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<sup>233</sup>Wang and Kenny (2013), p. 914

<sup>234</sup>Hipwell et al (2014)

<sup>235</sup>Bayer et al (2012)

<sup>236</sup>From the Parent Behavior Checklist: [http://www.duq.edu/Documents/education/\\_pdf/DCPSE/psychology/parent-behavior-checklist.pdf](http://www.duq.edu/Documents/education/_pdf/DCPSE/psychology/parent-behavior-checklist.pdf)

ate evidence that non-physical punishments (such as harsh verbal punishment, time-out, grounding, removing privileges, and so on) also increase the risk of behavioural problems.

### ***Impaired cognitive and moral development***

There is moderate evidence that spanking has detrimental effects on cognitive and moral development. And there is some evidence that other kinds of punishment have similar effects, but it is currently much weaker.

Various studies have found that spanking is associated with impaired cognitive development, even when controlling for a raft of other potential influencing factors. For example, in a sample of 2573 children, Berlin et al (2009) found that spanking at age 1 predicted lower mental development scores at age 3.<sup>237</sup> By itself, this result would be consistent with either spanking causing lower scores, *or* lower scores causing parents to spank. But the researchers also found that lower scores at age 1 did *not* predict spanking at age 3. That is, if a child was spanked at age 1, they are more likely to have lower mental development scores at age 3 than children who are not spanked. In contrast, children with lower mental development scores at age 1 were not more likely than children with higher scores to be spanked at age 3. So the explanation for spanked children having lower mental development scores is unlikely to be because parents spank kids more if they have lower mental development. (Child fussiness at age 1, on the other hand, *did* predict later spanking. That is, it's likely that fussiness causally contributes to parental spanking.) This is evidence that spanking is having a detrimental effect on young children's mental development.

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<sup>237</sup>As measured on the Bayley Scales of Infant Development. <http://www.psychometrics.cam.ac.uk/services/psychometric-tests/bayley-scales>

MacKenzie et al (2012) used data from the Fragile Families and Child Wellbeing Study and looked at the effects of spanking at age 3 on 1150 children. They found that spanking at age 3 had detrimental effects on 5 year olds' receptive vocabulary (i.e. words that a child can understand and respond to, even if they cannot produce them). This is after controlling for numerous factors that might influence children's cognitive abilities, such as "family structure/size, SES, education, work, parenting stress, caregiver mental health and emotionality, [parental] substance use, warmth, child temperament and earlier child behaviour."<sup>238</sup> Looking at similar effects over the longer term, using the same survey data, MacKenzie et al (2013) found, "evidence of [a detrimental] effect of paternal spanking at age 5 on the development of child verbal capacity at age 9."<sup>239</sup>

Straus and Paschall (2009) also found that kids who are spanked more often have slower cognitive development, compared to kids who are spanked less often. This was a study of two groups of kids. One cohort was 806 kids aged 2-4 years old at T1, and the second was 704 kids aged 5-9 years old at T1. The study was based on both questionnaire data and phone interviews of the parents during two one-week periods for each cohort. This study controlled for 10 different parenting and demographic factors (including maternal education, mother's emotional supportiveness, mother's cognitively stimulating activities with the child such as reading, child's birth weight, mother's age, and so on). The mean scores on the cognitive tests that were used at T1 and T2 were standardized to 100. The tests are age appropriate, so a child who gets a score of 100 at T1 and a score of 100 four years later at T2 has developed exactly at the average rate — it doesn't mean that their development has stalled.

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<sup>238</sup>MacKenzie et al (2012)

<sup>239</sup>MacKenzie et al (2013)

In both age groups, "The more CP experienced, the more they fell behind children who were not spanked."<sup>240</sup> The children who were 2-4 years old at T1 and who weren't spanked at all during the two week-long study periods gained, on average, 5.5 points between T1 and T2, compared to the mean. The standard deviation was only 14-15 points, so this is a moderate effect. The children who were spanked 3 or more times during the two week-long study periods stayed at the mean of 100 (which is what one would expect, since being spanked that frequently is standard for that age group).<sup>241</sup> For the 5-9 year old children, spanking frequency is much lower. 15% of this group were spanked three or more times. The majority (58%) were spanked at least once in the two week study period. Children in this age group who were spanked once stayed at about average over the 4 year period. And children who were spanked two or more times fell slightly behind the average over the 4 years.<sup>242</sup>

Children 2–4 years old who experienced no CP in either of the 2 sample weeks gained a mean of 5.5 cognitive ability points (on a scale with a mean of 100 and a standard deviation of 15) relative to children whose mothers used CP. Similarly, children 5–9 years old whose mothers did not use CP in either week gained a mean of about 2 points relative to children whose mothers used CP.<sup>243</sup>

Of course, with an association between spanking and lower cognitive ability at the same point in time (even repeated for many points in time, and for many subjects), one might wonder if it's the child's lower cognitive ability causing their parents to spank, rather than spanking causing the

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<sup>240</sup>Straus and Paschall (2009), p. 459

<sup>241</sup>48% of the 2-4 year olds were spanked three or more times in the two week study period. Straus and Paschall (2009), p. 472

<sup>242</sup>Straus and Paschall (2009), p. 473

<sup>243</sup>Straus and Paschall (2009), p. 476-477



lower cognitive ability. (Or they could be effects of a common cause.) As Straus and Paschall (2009) put it:

Low cognitive ability (i.e., a “slow” child) could lead parents to use more CP because of frustration in dealing with such children or out of disappointment and resentment. If so, the correlations showing that the CP is associated with lower cognitive ability leave unanswered the question of which is the cause and which is the effect. We believe there is a bidirectional relationship. On the one hand, parents could be more likely to hit cognitively “slow” children than children with average or higher ability. On the other hand, as pointed out earlier, children experience CP as highly stressful and stress is known to interfere with cognitive functioning and to result in changes in brain functioning.<sup>244</sup>

And this study helps to confirm that, whether or not there is a child effect on parents, there is an effect of spanking over time on children's cognitive development. Spanked kids and non-spanked kids start off all over the cognitive ability scale, but it's true that *on average* spanked kids' scores are lower than non-spanked kids' scores. This is consistent with either a child effect (lower cognitive ability causing frustrated parents to spank more) or a parent effect (spanking causing kids to have lower cognitive ability). But the *trajectory* of their average scores is different over time. Spanked kids' cognitive development is slower than non-spanked kids' cognitive development. The difference in the trajectories is small (an average of a few points on a test) and it's more likely that spanking has a small effect on the developmental trajectory than that parents' rate of spanking changes in response to these fairly subtle developmental differences. (Furthermore, another paper published in the same year, Berlin (2009), which we looked at earlier, found that lower mental development scores at age 1 did *not* predict spanking at age 3. That is, there is no evidence that the child's mental development influenced a parent's decision to spank.)

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<sup>244</sup>Straus and Paschall (2009), p. 470-471

Looking at the relationship between parental punishment in childhood and moral judgment in young adulthood, Lopez et al (2001) found that, "Minor use of physical discipline was significantly [negatively] related to Principled Morality."<sup>245</sup> This questionnaire-based study of 109 young adults, found that if someone experienced minor physical discipline during childhood, then they were more likely than those who were not spanked to score lower on tests designed to evaluate the sophistication of respondents' moral reasoning regarding various moral dilemmas. Another study with a similar format, Shen et al (2013), found detrimental effects of "punitive parenting" generally, which includes both physical and non-physical punishment. They found that parental punitiveness was correlated with less sophisticated moral reasoning in adulthood (e.g. basing moral judgements on others' approval, rather than on the needs of others).

There is other evidence that *suggests* that non-physical punishment is detrimental to children's cognitive development and moral internalization, but I would consider it inconclusive for present purposes, since it tends to look at parents' "power assertion" more generally, without differentiating punishment from other forms of power assertion.<sup>246</sup> Forcing a child to have a timeout as a punishment is power assertion. Putting a fragile item out of reach of a child is also power assertion; doing up a high chair strap so a child doesn't fall out, even if the child doesn't want it done up, is also power assertion — but these are not punishments. It is a well-tested hypothesis that "power assertion" is detrimental to children's moral internalization. And, indeed, this hypothesis does appear to be supported by the evidence, but we don't know how much of that effect is due to non-physical punishment, and how much (if any) is due to non-punitive power assertion.

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<sup>245</sup>Lopez et al (2001), p. 200

<sup>246</sup>See, for example, Grusec and Goodnow (1994), Kochanska and Thompson (1997), Kochanska et al (2003), Kochanska et al (2007), Grusec (2011), Barnett and Quackenbush (1996), Grolnick et al (1997) and Thompson (2014).

It would be helpful for future research to distinguish between non-physical punishment and non-punitive power assertion.

In sum, there is moderate evidence that corporal punishment hampers children's cognitive development and moral internalization. Punishment more generally *may* have detrimental effects on kids' (especially more fearful or anxious kids')<sup>247</sup> cognitive development and moral internalization, but given the current state of empirical research, I think we are forced to withhold judgement for the time being.

### ***Increased dishonesty***

Another important behaviour that parents value in their children is telling the truth. However, there is evidence that punishment encourages dishonesty. In particular, it appears that children who are punished more often are more likely to lie about their misbehaviour than children who are punished less often. This is difficult topic to study because researchers need to know when a child has lied (which can be hard in real life circumstances). However, an experimental situation has been devised in which children lie fairly reliably.

In one experiment, researchers studied 84 children, aged 3 and 4 years old, half from a "punitive" school and half from a "non-punitive" school. (The non-punitive school did use some punishments, including time-outs, but less often than the punitive school did, which used punishments much more routinely, including physical punishments for very minor transgressions such as forgetting a pencil. The schools and the families' demographics were otherwise very similar.)

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<sup>247</sup>Gershoff et al (2010)

Children were told not to peek at a toy when left alone in a room. Most children could not resist the temptation and peeked at the toy. When the experimenter asked them if they had peeked, the majority of the punitive school peekers lied about peeking at the toy while significantly fewer nonpunitive school children did so. The punitive school children were better able to maintain their deception than nonpunitive school children when answering follow-up questions. Thus, a punitive environment not only fosters increased dishonesty but also children's abilities to conceal their transgressions.<sup>248</sup>

About 80% of all the kids did what they were told not to do and peeked at the toy. "Children in both schools were equally likely to peek at the toy when left alone,"<sup>249</sup> so the punitive school hadn't managed to make kids more likely to do what they were told on this occasion. But about 94% of kids from the punitive school lied about peeking, compared to 56% at the "non-punitive" school. (One wonders what the percentage would have been from a completely non-punitive school.) The kids from the punitive school were also better liars (as judged by experimenters who didn't know which school the kids were from).<sup>250</sup>

Talwar et al (2015) pursued further the apparent detrimental effect of punishment on children's honesty. With their sample of 372 4-8 year olds, they used the same peeking experimental paradigm, and looked at the relationship between the threat of punishment and children's lying.<sup>251</sup> Most children peeked despite having been told not to do so (67.5% of the total sample peeked; 82.3% of the preschoolers and 52.7% of the older children). Of the children who peeked, 66.5% of them lied about having peeked, with older children lying more often than younger children

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<sup>248</sup>Talwar & Lee (2011), p. 1751. The parents' attitudes towards punishment did not differ significantly between the two schools and none of the parents cited the schools' discipline strategies as a reason to select either school, so the discipline the kids received at home is unlikely to have differed much.

<sup>249</sup>Talwar & Lee (2011), p. 1754

<sup>250</sup>Talwar & Lee (2011), p. 1753

<sup>251</sup>Talwar et al (2015)

(63.4% of preschoolers, 71.4% of older children). Children were more likely to lie if a punishment was implied for having peeked ("You'll be in trouble"). Children were less likely to lie if they were given reasons for telling the truth — either that they would feel better about themselves by doing so ("internal appeal"), or that the experimenter would be pleased with them if they did ("external appeal"). With the children in this sample, the external appeal was a more effective incentive to tell the truth than the internal appeal. (The authors speculate that perhaps an internal appeal would be more effective with older children, who have internalized moral rules better.) The biggest difference was between the children who were given internal appeals and a threat of punishment, and those who were given internal appeals and no threat of punishment. The children who were not threatened with punishment told the truth 55% of the time; those threatened with punishment told the truth only 14% of the time.<sup>252</sup> That is quite a big difference. So there is evidence that punishments make kids lie more often, and more convincingly.

### ***Mental health problems***<sup>253</sup>

Associations have been found between childhood punishment and mental health problems, both in childhood and, later, in adulthood. Some of the studies on mental health in adults are based on questionnaires that ask adults to recall the punishment they received as children. One might wonder how reliable such data is — perhaps, for example, adults who suffer from mental health problems are more likely to (mis)remember more childhood punishment, not because they experienced more, but as an effect of their current mental health problems. Depression, say, could

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<sup>252</sup>Talwar et al (2015)

<sup>253</sup>In addition to the studies I describe in detail in this section, see also Laurin et al (2015), Carneiro et al (2016) and Petts & Kysar-Moon (2012). Johan Vanderfaeillie et al (2013) finds similar effects for foster parents.

cause an adult to have an overly negative view of their childhood, rather than their childhood punishment making them more likely to become depressed in adulthood.

However, as we saw in Chapter 4, it turns out there's no reason to think that depressed adults who recall more childhood spanking have less reliable memories than non-depressed adults who recall less childhood spanking, because independent evidence has been collected regarding the reliability of subjects' childhood memories and

there is evidence that supports the validity of accurate recall of adverse childhood events and that psychopathology [i.e. the presence of mental or behavioural disorders] is not linked to less reliable or less valid self-reported data on adverse childhood experiences.<sup>254</sup>

Subjects are generally pretty reliable about their parents' overall discipline, even if they don't remember particular incidents well.<sup>255</sup>

Using recall data, MacMillan et al (1999) found that adults who were spanked during childhood "sometimes" or "often" (but who did not experience abuse), have significantly higher lifetime rates of anxiety disorders, alcohol abuse or dependence, and externalizing problems than those who recalled "never" having been spanked during childhood. The prevalence of alcohol abuse and externalizing problems among those who were spanked "sometimes/often" was double that of those who were "never" spanked.<sup>256</sup>

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<sup>254</sup>Afifi et al (2012), p. 5

<sup>255</sup>See, for example, Asselmann et al (2015) and Greenhoot et al (2005).

<sup>256</sup>5.8% of those who were "never" spanked or slapped experienced alcohol abuse or dependence; 13.2% of those who were spanked "sometimes/often" did. 7.5% of those who were "never" spanked or slapped suffered from one or more externalizing problem; 16.7% of those who were spanked "sometimes/often" did. Table 2, MacMillan et al (1999).

A 2014 study, based on a survey of 4609 people aged between 15-80 had similar results. Respondents who received more than average physical punishment as children were more likely to have psychological problems as adults such as schizotypal personality, alcohol abuse, depression, and other mental health problems.<sup>257</sup>

Respondents who had had suicidal thoughts during the previous 12 months, and those who had attempted suicide during the previous 12 months, had experienced significantly more physical punishment as children than those who had not had suicidal thoughts or attempted suicide.<sup>258</sup>

These associations are consistent with the childhood spanking and the adult mental health problems being effects of a common cause (although all the studies did control for numerous factors that could plausibly fill this role, such as parents' alcohol misuse). However, there is evidence that supports the view that there is causal influence from spanking to mental health issues. Researchers interviewed 292 mothers and, separately, their children in six different countries, asking them about the household use of different forms of discipline, and the kids' anxiety. As reported in Gershoff et al (2010), it was found that anxiety was associated with corporal punishment (along with time-outs, expressing disappointment, and shaming). Although one might suspect that aggression, say, would tend to cause parents to spank children more, it seems unlikely that parents would spank anxious children more:

[A]lthough it is not hard to imagine an aggressive child eliciting more discipline from a parent, it is less clear whether a child's symptoms of anxiety would elicit discipline, particularly potentially harsh techniques such as corporal punishment and yelling. Rather, longitudinal research has found that parents typically use less, not more, harsh

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<sup>257</sup>Osterman et al (2014), p. 576

<sup>258</sup>Osterman et al (2014), p. 577.

discipline with anxious and fearful children... Children's levels of depression and anxiety have also been found to predict less corporal punishment in particular... Clearly these analyses will need to be replicated with quasi-experimental and/or longitudinal data to definitively identify direction of effect, but our findings for both child aggression and child anxiety are more consistent with a parent effect rather than a child effect explanation.<sup>259</sup>

It is unlikely that parents would spank anxious or depressed kids more often; it's more likely that the spanking is causing the anxiety and depression, rather than the other way around. Indeed, there is independent evidence that children's depression and anxiety predicts *less* corporal punishment.<sup>260</sup> And in Gershoff et al (2010), seven discipline techniques were not correlated with anxiety at all, which, if greater anxiety provoked greater levels of discipline, one would expect that to apply to all of them (or to apply to the least harsh ones more than the harsher ones because even if parents discipline anxious kids more often, perhaps they tend to choose less harsh discipline when they do so). Those seven discipline techniques are: (1) teach child about good/bad behaviour, (2) get child to apologize, (3) remove privileges, (4) yelling and scolding, (5) telling child that parent won't love them any more if they act that way again, (6) threaten child with punishment, and (7) promise child a treat or privilege for good behaviour. So this supports the conclusion that corporal punishment has negative effects on children's anxiety.

Lax parenting is characterized by permissiveness, and by inconsistency in following through on rules and consequences, and researchers believe it increases the risk of internalizing problems. Parent et al (2016) found that use of corporal punishment (which is the type of punish-

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<sup>259</sup>Gershoff et al (2010), p. 499

<sup>260</sup>Grogan-Kaylor & Otis (2007)



ment they take to characterize "harsh punishment") made the effects of lax parenting worse for children between the ages of 3 and 12:

[G]iven average levels of lax discipline,... higher levels of harsh discipline were associated with higher levels of child, but not adolescent, internalizing problems.<sup>261</sup>

There's also evidence that *nonphysical* punishments cause mental health problems too. Along with spanking, time-outs, for example, are positively associated with anxiety in children, according to the Gershoff et al (2010) study we looked at above. A 2014 study with 295 children found that punitive parenting (which includes removing privileges, yelling when a child misbehaves, as well as physical punishment) when children were 3 years of age predicted certain changes in their brains at 6 years of age; and it's already known that these particular changes (ERN, or error-related negativity) are in turn a predictor of various mental health problems in children, such as clinical anxiety and non-clinical anxiety, and clinical OCD and non-clinical OCD symptoms.<sup>262</sup>

Bayer et al (2012) found, in a follow-up study of 500 5 year olds who had been surveyed multiple times during infancy and toddlerhood that, for internalizing behaviours at age 5, "The most consistent and cumulative predictors of externalising behaviours were harsh discipline and maternal stress."<sup>263</sup> Again, "harsh discipline" is not just corporal punishment. It also includes

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<sup>261</sup>Parent et al (2016), p. 400. In this study, the child age groups were 3-7 and 8-12 years old. The adolescent group was 13-17 years old.

<sup>262</sup>Meyer et al (2014)

<sup>263</sup>Bayer et al (2012)

yelling, scolding, and time-out (i.e. sending a child to their room or a corner in the house as a punishment).

The same kind of relationship was found in van der Sluis et al (2015). This study measured child anxiety in 211 kids, 4-12 years old, and also assessed parents' behaviour using the Child Development Questionnaire:

The CDQ consists of vignettes in which a child is showing anxious behavior and parents are asked how they would respond to the behavior of the child. They indicate how often they would use certain behaviors representing punishment, positive reinforcement [i.e. reward], reinforcement of dependency, force, and modeling/reassurance on a scale of 1 to 5.<sup>264</sup>

In this study, punishment is understood broadly, including more than just spanking: "Punishment as assessed within the CDQ involved behaviors by the parents such as giving negative consequences to the child (e.g. mild spanking), decline of something positive (e.g. not permitted to see friends), belittling the child and making threats."<sup>265</sup> The researchers did indeed find a positive correlation between punishment and anxiety, albeit small. (This could reflect the fact that anxiety is influenced by many factors, including genetics,<sup>266</sup> but that parental punishment contributes to it too.) This is a cross-sectional study (i.e the factor being studied — anxiety — is measured at the same time as the variables, e.g. child age, punishment, positive reinforcement etc.). This means that it cannot demonstrate a causal relationship between punishment and anxiety. That is, it's *possible* that punishment has a causal effect on anxiety (the more a child is punished, the more

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<sup>264</sup>Van der Sluis et al (2015), p. 3656

<sup>265</sup>Van der Sluis et al (2015), p. 3657

<sup>266</sup>On the genetic influence on anxiety in children see, for example, Trzaskowski et al (2012).

symptoms of anxiety they experienced), but it's also *possible* that a causal relationship goes the other way around (the more symptoms of anxiety a child experiences, the more a child is punished).

But, presumably, (as with corporal punishments) parents are not likely to use nonphysical punishments on anxious children more than on less anxious children, so the causal direction is likely from punishment to anxiety, rather than from anxiety to punishment.

Harsh verbal discipline also has detrimental effects on mental health. We've already looked at Wang and Kenny (2013) on the relationship between harsh verbal discipline and behavioural problems. They also used the data from 976 two-parent families to investigate the relationship between parents' harsh verbal discipline and their 13 and 14 year old children's depressive symptoms. In addition, they investigated whether parental warmth could mitigate any damaging effects of harsh verbal discipline. Here are some of their conclusions:

[W]e found that harsh parental verbal discipline did not lessen or eliminate the manifestation of adolescent conduct problems, but rather increased conduct problems and depressive symptoms over time.

Harsh verbal discipline was associated with increased conduct problems and depressive symptoms regardless of whether parenting style was characterized by low, moderate, or high levels of maternal and paternal warmth.

[H]arsh verbal discipline is ineffective at reducing conduct problems and, in fact, leads to increased adolescent conduct problems and depressive symptoms.

Children's conduct problems both predict and are predicted by parents' harsh verbal discipline, which is an indicator of a bidirectional causal relationship: children's misconduct causes parents to use more harsh verbal discipline, and parents' harsh verbal discipline also causes children's be-

haviour to worsen. However, children's depressive symptoms do not predict parents' harsh verbal discipline, but parents' harsh verbal discipline does predict children's depressive symptoms, which is evidence that harsh verbal discipline causes the depressive symptoms, but not the other way around. The correlations are only moderate,<sup>267</sup> but given the evidence that these punishments are also not beneficial for children, there is good reason for parents to refrain from punishment.

### ***One final risk***

Kids who are physically punished are at greater risk of physical abuse at the hands of their parents:

Although research began to accumulate in the 1970s that showed that most physical abuse is physical punishment (in intent, form and effect), studies of child maltreatment have since clarified this finding. For example, the first cycle of the Canadian Incidence Study of Reported Child Abuse and Neglect (CIS 1998) showed that 75% of substantiated physical abuse of children occurred during episodes of physical punishment. This finding was replicated in the second cycle of the study (CIS 2003). Another large Canadian study found that children who were spanked by their parents were seven times more likely to be severely assaulted by their parents (e.g., punched or kicked) than children who were not spanked. In an American study, infants in their first year of life who had been spanked by their parents in the previous month were 2.3 times more likely to suffer an injury requiring medical attention than infants who had not been spanked.<sup>268</sup>

This is similar to the findings of Zolotor et al (2008), which performed anonymous telephone surveys of 1435 mothers in North and South Carolina. Parenting behaviour by the mothers and their partners, if there was one in the household, was assessed and 45% of mothers reported that

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<sup>267</sup>E.g. 0.25 correlation between maternal harsh verbal discipline at age 13 and depression at age 14.

<sup>268</sup>Durrant & Ensom (2012)

the child was spanked (i.e. with an open hand on the buttocks) in the last year, and 25% reported that the child was spanked with an object on the buttocks in the past year. For the purposes of this study, child physical abuse was defined as follows:

[B]eating, burning, kicking, hitting with an object somewhere other than the buttocks, or shaking a child aged <2 years.<sup>269</sup>

As defined, 4% of mothers reported physical abuse in the past year. (This means that about 60 kids in the sample of 1435 had experienced abuse during the past year.) The researchers found associations between spanking and child abuse:

Spanking was significantly associated with child physical abuse... Spanking with an object is strongly associated with abuse.<sup>270</sup>

For every 1-event increase in spanking frequency, parents have a 3% higher odds of reporting abuse as defined.<sup>271</sup>

Two percent of mothers who report that neither they nor their partner has spanked the child report child abuse. Six percent of mothers who report spanking also report physical abuse. Twelve percent of mothers who report spanking with an object report physical abuse.<sup>272</sup>

Mothers who report that they or their partner hit the index child with an object on the buttocks are nearly nine times more likely to report potentially abusive behaviors.<sup>273</sup>

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<sup>269</sup>Zolotor et al (2008), p. 364

<sup>270</sup>Zolotor et al (2008), p. 366

<sup>271</sup>Zolotor et al (2008), p. 367

<sup>272</sup>Zolotor et al (2008), p. 367

<sup>273</sup>Zolotor et al (2008), p. 368

The study was very careful to assure respondents that their responses would be anonymous (although, slightly reassuringly given the prevalence of abuse, they provided everyone with phone numbers for parenting resources at the end). But there is always the possibility of underreporting socially undesirable behaviour. In this case, however, it appears that underreporting is unlikely because "physical abuse as defined was more than 40 times more prevalent than protective services-substantiated cases of physical abuse in the Carolinas during the same year."<sup>274</sup>

So, a child who experiences physical punishment is at greater risk of child abuse than children who don't experience physical punishment. (And more physical punishment is a greater risk.) Of course, child abuse is a terrible outcome, even if it had no further detrimental effects. But, unsurprisingly, physical abuse is a risk factor for further harms.

For example, Dube et al (2002) found that child physical abuse increased the risk of later alcohol misuse in adulthood. This risk was present even if the child's parents did not misuse alcohol, although having parents who *also* misused alcohol increased the children's risk even more.

The prospective longitudinal study, Lansford et al (2002), used data collected annually from a community-based (not clinic based) sample of 585 children. They found that child physical maltreatment (abuse) during the first five years of life had detrimental effects into adolescence (grade 11), "above and beyond other risk factors related to maltreatment" including child characteristics. So, even if child characteristics have a causal influence on both child physical maltreatment and negative outcomes in adolescence, this study provides evidence that the maltreatment adds its own causal influence. (The child characteristics they assessed were "resistance to control, unadaptability, and difficult temperament".)

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<sup>274</sup>Zolotor et al (2008), p. 368

Kids who experience *nonphysical* punishment are at greater risk of nonphysical abuse by their parents. Calling a child a lazy slob in order to punish them for having an untidy bedroom is a form of verbal or emotional aggression. Not all verbal or emotional aggression is punishment, of course. Sometimes a parent will insult a child when it's not in response to the child's misbehaviour, or it's not with an intention to improve their behaviour — in either case it would not be a punishment. Frequent or extreme verbal aggression is a form of verbal or emotional abuse, whether the intention behind it is punishment or not:

As in the case of physical aggression, we believe that contemporary social norms tolerate a certain amount of verbal aggression by parents. If this is correct, then just as an occasional spanking does not constitute physical abuse, occasional verbal aggression does not constitute verbal abuse. That leaves open the question of how frequent verbal aggression needs to be before it is considered abuse.<sup>275</sup>

So these researchers considered different thresholds for verbal abuse and calculated the rates at those thresholds. For example, if we consider 25+ instances of verbal aggression towards a child in a year to be verbal abuse, then the rate of verbal abuse is 113 per 1000 children.<sup>276</sup> The average was 12.6 times per year. But wherever we draw the line between verbal abuse and non-abusive verbal aggression, using verbal aggression as a means to punish children makes it more likely that a parent will cross that threshold and end up verbally abusing their child. And subsequent evidence indicates that as the verbal or emotional aggression children receives increases, so too

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<sup>275</sup>Vissing & Straus (1991), p. 230

<sup>276</sup>Vissing & Straus (1991), p. 231

does their risk of poor child adjustment;<sup>277</sup> personality disorders;<sup>278</sup> teenage physical aggression;<sup>279</sup> depression, anxiety and anger-hostility;<sup>280</sup> adult obesity;<sup>281</sup> and adult physical health.<sup>282</sup>

Once again, in such studies, there is a *correlation* between increased parental verbal/emotional aggression and increased risk for the various harms mentioned. As with physical abuse, it is consistent with such evidence that, for example, a child's innate temperament, or a parent's alcohol misuse,<sup>283</sup> causes both the parental verbal/emotional aggression and the later harms. However, a 2012 meta-analysis that looked at 124 articles on the available evidence concluded that:

This overview of the evidence suggests a causal relationship between non-sexual child maltreatment [including emotional abuse] and a range of mental disorders, drug use, suicide attempts, sexually transmitted infections, and risky sexual behaviour.<sup>284</sup>

To move beyond a suggestion of a causal relationship, evidence for such a relationship is stronger when other factors that could explain the correlation are controlled for. For example, Dube et al (2002) (which was mentioned earlier in connection with child physical abuse) also found that child *verbal* abuse increased the risk of later alcohol misuse in adulthood, even if the

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<sup>277</sup>Moore and Peplar (2006)

<sup>278</sup>Johnson et al (2001)

<sup>279</sup>Spillane-Grieco (2000)

<sup>280</sup>Teicher et al (2006)

<sup>281</sup>Williamson et al (2002)

<sup>282</sup>Moeller et al (1993)

<sup>283</sup>For example, Widom et al (2007) found that parental alcohol use appears to causally influence both child abuse and the abused child's adult alcohol use.

<sup>284</sup>Norman et al (2012)



child's parents did not misuse alcohol. (The children's risk of developing alcohol problems in adulthood was increased if they also had parents who misused alcohol.) This lends support to the view that even if parents' alcohol misuse causally influences their children's later alcohol misuse, child abuse adds its own causal influence.

So, the more often a parent is verbally aggressive towards their child, the closer they are to verbally/emotionally abusing their child, just as the more often a parent is physically aggressive towards their child, the closer they are to physically abusing their child. This means any kind of punishment — whether physical or non-physical — is a risk factor for abuse. And abuse is a risk factor for all kinds of further harms.

## CHAPTER SEVEN: Consequentialist justifications

In this chapter, I will be considering the views of consequentialists who think that *all* consequences need to be taken into consideration when deciding whether or not a punishment is justified. Recall that although we might loosely refer to "consequentialist" theories of punishment that try to justify punishment by reference to particular kinds of consequence, such as moral education or behavioural training or obedience, I prefer to call these latter kinds of theories "instrumentalist", in order to distinguish them from consequentialist theories.<sup>285</sup> Instrumentalist theories maintain that punishment is justified by its instrumental value, that is, by specific outcomes it can contribute to achieving such as compliance, moral education, behavioural training, and so on. I have discussed these kinds of theory separately in previous chapters. Theories of punishment that are, strictly speaking, "consequentialist", try to justify punishment by taking *all* its consequences into consideration.

There are of course many different varieties of consequentialism,<sup>286</sup> and different varieties can be sub-divided more and more finely, and combined in different ways, depending on exactly how a theorist understands the nature and role of values, reasons, agents, and subjects of concern, and so on. I will focus on the two broad categories — act consequentialism and rule consequentialism.

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<sup>285</sup>Thanks to Gerald Postema for raising the need for this clarification.

<sup>286</sup>See, for example, Brink (2007).

A *classical act consequentialist* could try to justify PPC by saying that it is justified on all and only those occasions when the consequences of PPC are better than the consequences of the available alternatives (including non-punitive options). They think that at least sometimes a child ought to be punished: whenever the consequences of doing so are better than the alternative courses of action. Different sub-categories of classical act consequentialism will involve different understandings of what counts as better or worse consequences, depending on how they understand value.

*Hedonistic act utilitarianism* is one type of classical act consequentialism, and this distinction will become important later. Hedonistic act utilitarianism maintains that, fundamentally, the only positive value is pleasure and the only negative value is pain — and the positive or negative value of anything else (truth, love, freedom, inequality, ignorance, etc) is reducible to pleasure and pain. Other versions of classical act consequentialism needn't accept this restricted understanding of value.

I will mostly refer to the broader category of classical act consequentialism (abbreviated to *classical consequentialism*) including hedonistic act utilitarianism under this umbrella. But, as we shall see later, Boonin's objections to the latter as a theory of punishment can be parried by other versions of classical act consequentialism that include a broader conception of value. A variation or evolution of classical act consequentialism is *rational choice* or "*expected utility consequentialism*" which holds that it's the reasonably expected consequences that determine whether or not an action is morally right or permissible.<sup>287</sup>

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<sup>287</sup>This type of theory is also sometimes referred to as "subjective consequentialism" (the right action depends on the evidence, or evidence available to the agent, or what is expected). This contrasts with "objective consequentialism" (the right action depends on its actual consequences). See Feldman (2006) for an argument that a consequentialist theory based on maximizing expected utility is no more practical for action guidance than a consequentialist

A *rule consequentialist* could try to justify PPC by saying that it is better for humanity overall if we accept a rule that permits (or requires) punishment of children when they do wrong. They think that children ought to be punished if, and only if, it is true that accepting a rule that allows punishment when children have misbehaved has overall better consequences for humanity than accepting alternative rules. (Act consequentialists might accept a rule consequentialist decision-making procedure. On such view, what determines the rightness of a particular action are the consequences it actually has, compared to the consequences of alternative actions. But since agents are not in an epistemic position to evaluate all the potential consequences of all the possible actions they could perform, agents should instead decide what to do on the basis of rules that, if they were accepted, would have the best overall consequences.)

One question that is relevant to all types of consequentialism: When comparing alternative courses of action, which ones do we include in the comparison? Instead of punishing my child, I could decide to skip the punishment, sell all our but our absolutely essential belongings and donate the proceeds to a charity that vaccinates children in the developing world. There will always be *something* a parent could do that has better consequences than a punishment (and always something they could do that would be worse). The interesting question is really to compare the *close* alternatives. In this case, this means comparing punishing a child to things like ignoring the child's behaviour, showing the child the results of their behaviour, explaining to the child why their behaviour is unacceptable, distracting the child, bribing the child, encouraging the child to apologize, and so on.

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theory based on maximizing actual utility.

### ***Rule consequentialism***

We will first consider rule consequentialism as a theory of justification of PPC. Given that we know that punishment always inflicts immediate distress, and the evidence we have reviewed shows that it does not tend to produce benefits, and it also incurs the risk of various long term harms, every indication is that if there is a consequentialist rule regarding PPC, it would be along the lines of instructing parents to refrain from punishing their children — rather than one that justifies them doing so. Taken together, the evidence regarding the harms caused by PPC and the evidence regarding its lack of benefits means that there's no reason to think that PPC, as a general practice, could be justified by its consequences, compared to non-punitive discipline. Indeed, there's reason to think that it is not justified. If this is correct, then the rule consequentialist cannot justify punishing children.

However, perhaps it's the case that there would be significant side effects of the acceptance of a rule against punishing children. Perhaps if parents accept a non-punishment rule, the consequences of doing so would somehow be worse than if they did not accept such a rule. So even if we allow that the evidence we have reviewed indicates that a rule allowing punishment of children was not particularly *good*, the alternatives could be *worse*. So a rule allowing punishment might, after all, be one of the correct moral rules and punishment of children might, after all, be justified (according to some version or other of rule consequentialism). Under what circumstances could this be the case? If parents don't know *how* to discipline their kids non-punitively, and if they accepted a rule against punishment, perhaps instead of punishment, they would turn away from discipline altogether and end up *neglecting* their children. Or perhaps, because their attempts at non-punitive discipline fail, they become so frustrated and eventually end up *abusing* their misbehaving children. These would indeed be worse options than parents accepting

a rule that allows PPC. But do we have any reason to think that those results are more likely than that parents' attempts at non-punitive discipline would be reasonably successful? How do we go about even evaluating the issue?

One thing we can do is look at the effects of educational programs that try to train parents to reduce their use of punishment in favour of positive discipline — do such programs work? Do they have any of the unwanted side effects I mentioned? And another thing we can do is look at the effects of corporal punishment bans in countries that have instituted them. (As January 2017, there are 52 countries that ban all forms of corporal punishment of children, including in the home by parents.)<sup>288</sup> Of course, this is not the same as a country adopting a law against punitive discipline more generally, but it will perhaps give us some idea what might happen if punishment generally was ruled out.

The evidence indicates that such bans "are associated with declining support and practice of corporal punishment."<sup>289</sup> Furthermore, a study that addressed the question of whether parents increased their use of other forms of punishment once corporal punishment was banned in Germany found that "the decreasing use of violent forms of punishment has not been compensated by a significant increase in other sanctions (psychological forms of punishment or prohibitions)."<sup>290</sup> Romania prohibited corporal punishment of children in 2004, and researchers found that a decline in the use of corporal punishment was accompanied by "a decrease in parents' use

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<sup>288</sup><http://www.endcorporalpunishment.org/progress/prohibiting-states/>

<sup>289</sup>Zolotor and Puzia (2010)

<sup>290</sup>Bussman (2004)

of verbal abuse: 22% of children reported experiencing this in 2001, compared to 16% in 2012".<sup>291</sup>

Sweden was the first country to ban corporal punishment of children, and the ban has been in place since 1979. There is no evidence to suggest that the ban has had any detrimental effects, and there appear to be positive effects:

[T]he prevalence, frequency and harshness of physical punishment have declined dramatically in Sweden over two generations. Substantial proportions of women who became mothers in the 1950s struck their children at least weekly (e.g., 55% of mothers of 4-year-old daughters; 20% of mothers of 8-year-old sons)... Among 3- to 5-year-old children of that generation, implements were used by 13% of mothers... In contrast, the majority of young people born in the 1980s report never having been physically punished... Of those who were, the vast majority experienced it no more than once or twice in their childhood. Virtually no children are hit with implements in Sweden today.<sup>292</sup>

All of the studies [examining the relationship between milder and more severe forms of parental aggression against children] have found that the more often parents use mild physical punishment, the more likely they are to inflict severe violence on a child... Data from a range of sources indicate that Swedish parents are unlikely to use even minor forms of physical punishment with their children, and they are even less likely to use more severe forms.<sup>293</sup>

So there is no empirical evidence that suggests any harmful effects of introducing a country-wide ban on corporal punishment.

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<sup>291</sup>See Alexandrescu et al (2013). Quote from research summary by the Global Initiative to End All Corporal Punishment of Children: <http://www.endcorporalpunishment.org/assets/pdfs/research-summaries/Summary-of-research-impact-of-prohibition.pdf>

<sup>292</sup>Durrant and Janson (2005), p. 149

<sup>293</sup>Durrant and Janson (2005), p. 150-151

What about the empirical evidence regarding educational programs that attempt to train parents to reject punitive discipline in favour of non-punitive discipline? Do these indicate any detrimental effects of parents "adopting a rule" against PPC?

Winter et al (2012) looked at the effects on 91 parents who were enrolled in a parenting program (Triple P) designed, in part, to reduce parental use of punitive discipline. Compared to before the program, parents showed greater knowledge of child development, greater parenting confidence, and less dysfunctional parenting. (The questionnaire the parents filled out 4 weeks after the program included items like: "I spank, grab, slap, or hit my child", "I insult my child, say mean things, or call my child names". It also asked about lax parenting, such as, "When I say my child can't do something, I let my child do it anyway.") The parents also reported that their children misbehaved less after the parents had completed the program and "The reduction in externalised child behavior reported by parents at post-intervention was accounted to the greatest extent by reductions in dysfunction."<sup>294</sup> It's important that parents had greater confidence in their parenting because one of the worries we might have about parents adopting a rule against PPC is that they feel so inept or frustrated that it has negative effects on their parenting. But that worry appears not to be borne out by this research. Parents who had completed the program were less dysfunctional (including using less harsh discipline and less lax parenting) and they felt more confident in their ability to handle child behavioural issues. This study looked at relatively short term effects, however.<sup>295</sup>

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<sup>294</sup>Winter et al (2012), p. 888

<sup>295</sup>And it's also possible, of course, that the parents responded to the post-training in ways that "justified" (to themselves) the time invested in the training. Looking at differences over a longer period of time would reduce the influence of such post hoc rationalizations.



Similar findings were made by Reedtz et al (2011), which used a different parent educational program (Incredible Years) and, importantly, looked at the difference between parents enrolled in the program and a non-enrolled control group one year later. Their sample was 189 families, with children aged between 2 and 8 years old. Even after a year, compared to a control group who did not participate in the educational program, parents who had completed the program used less harsh discipline, more positive parenting, and expressed greater parenting satisfaction and efficacy.

In a meta-analysis looking specifically at educational parenting programs developed and implemented in Portugal,

significant and positive intervention effects were found for parental stress, effective parenting attitudes (i.e., empathic responding, use of punitive discipline, and endorsement of parental roles), perception of the informal social support network and child behavioural and emotional difficulties.<sup>296</sup>

Even when parenting programs don't include any elements specifically to do with discipline, they can help parents feel more effective, and help reduce children's misbehaviour. So a rule against punishment could be complemented by such programs.<sup>297</sup>

Given the evidence reviewed in previous chapters regarding the harms and lack of benefits of punishment, and the evidence regarding the positive effects (and, even more confidently, the lack of negative effects) of parent education programs, and the evidence in countries that

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<sup>296</sup>Almeida et al (2012), p. 135

<sup>297</sup>See, for example, Landy and Menna (2006).

have adopted bans on corporal punishment, it's reasonable to conclude that adopting a rule against punishment of children would be justified.<sup>298</sup>

### ***Classical consequentialism***

Now let's turn to classical consequentialism. Strictly speaking, classical consequentialism cannot *begin* to justify punishment simply because it cannot begin to justify any *type* of action at all (including non-punitive discipline, including helping little old ladies to cross the road, including feeding starving children). But this isn't enough to rule it out as a candidate theory for justifying punishment because perhaps it could justify individual instances of punishment — perhaps even very many instances.

Classical consequentialism would say that PPC is justified on all and only those occasions when the consequences of punishment turn out better (all things considered) than alternative courses of action (including non-punitive discipline). Of course, this is consistent with the possibility that PPC is never in fact justified. But we can assume that anyone who suggested such a justification would maintain that, at least sometimes, PPC is indeed justified. In this section, we are considering whether classical consequentialism could be successful in justifying individual instances of PPC (even though it can't justify it as a type of behaviour).

A standard objection to a proposed consequentialist justification of criminal punishment, which can apply also to a consequentialist justification of PPC is that since consequentialist theories are concerned solely with consequences, it is entirely irrelevant to the consequentialist

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<sup>298</sup>Practically speaking, such a rule wouldn't be adopted over night. It would be something to work towards. Anti-spanking laws are preceded by changing attitudes and they appear to be more successful (i.e. they help to continue, or accelerate, the decrease in approval of, and use of, corporal punishment more) in countries that engage in significant educational programs to inform parents of the law once it has passed.

whether or not someone is in fact guilty of committing a crime — or in the present case, whether or not a child has done anything wrong. So, just as a consequentialist justification of criminal punishment might say that, in a particular circumstance, the right thing to do is to imprison an innocent person, a consequentialist justification of PPC might say that, in a particular circumstance, the right thing to do is to give a time-out or a spanking to a child who has done nothing wrong. This is the "punishing the innocent" objection, which tries to demonstrate that a classical consequentialist theory of punishment (or, more usually, an instrumentalist theory) must be false because it has implications that we intuitively judge to be false.

A quick matter of clarification: So long as an agent *believes* that the recipient of their punishment is *guilty*, then I think it is strictly correct to call their action a punishment, even if the recipient is in fact innocent. If, on the other hand, an agent *believes* the recipient to be *innocent*, and the recipient is indeed innocent, then their action is not, strictly speaking, a punishment.<sup>299</sup> It is an instance of intentionally harming the innocent (which Rawls named "telishment").<sup>300</sup> However, the problem at hand is usually called "*punishing* the innocent" despite, strictly speaking, not involving punishment (but instead punishment-like instances of intentionally harming an innocent person). The problem is that theory appears to imply that it can be justified to, for example, scapegoat an innocent person. These are the kinds of case that many people find problematic. Af-

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<sup>299</sup>There is also the situation in which an agent believes that the recipient of a punishment is innocent, but they are in fact guilty (so the agent might be attempting to scapegoat a person they believe to be innocent, who actually turns out to be guilty). This is also a case of "punishing the innocent" in the relevant sense (i.e. intentionally inflicting distress on someone who is *believed* to be innocent). And the moral problem for the consequentialist is that the theory appears to imply that it's justified to punish (i.e. intentionally inflict distress on) those who are believed to be innocent — whenever doing so would lead to better consequences than the alternatives. Thanks to Geoffrey Sayre-McCord for raising this kind of case.

<sup>300</sup>Rawls (1955), p. 9

ter all, presumably most people's intuitions would be in line with the view that a punishment is morally justified when, on the basis of excellent, beyond-a-reasonable-doubt evidence, an agent believes someone is guilty even though as a matter of unknown fact, they are innocent. Because there is no clash of theoretical result and intuition in this latter kind of "punishing the innocent" case, it's not thought to be a problem for the consequentialist if their theory implies that it can be justified to punish the innocent when the agent reasonably believes them to be guilty. So the problem of "punishing the innocent" is really the problem of agents intentionally inflicting punishment-like suffering on innocent people whom they also believe to be innocent.

In addition to justifying the punishment of the innocent, the consequentialist would also be committed to *not* punishing those who have done wrong, if refraining from punishment would produce the best consequences of all the available options. While many will be loath to accept refraining from punishing vicious murderers, not punishing the guilty seems to be less of a problem in the case of PPC. If it could be established that it is not overall beneficial to punish a child, even if they have done wrong, I assume that most people could accept the idea of refraining from punishing them. Punishing the innocent, however, is an unwelcome theoretical upshot for both criminal punishment and PPC. I assume that most people would balk at the idea of punishing a child — whether by spanking them or withdrawing privileges or putting them into a time-out — when the child has done nothing wrong.

One response the classical consequentialist might make to the "punishing the innocent" objection is to deny that it is a consequence of their theory in the first place. A second possibility is for them to bite the bullet and accept the consequence, but attempt to make it more intuitively palatable.

How might a classical consequentialist deny that their theory has the consequence of "punishing the innocent"? One way of taking this route in the case of state punishment is to maintain that "The fundamental aim of government is not to maximize the aggregate happiness in the community."<sup>301</sup> In which case, the pleasure or happiness of everyone in a society is not simply added to together so it can then "outweigh" the harm done to an innocent individual who is punished. According to Gerald Postema, contrary to the generally received view of his theory, Bentham held such a position:

[I]t would be a mistake to attribute to Bentham a view of the welfare of the community that simply submerges the interests and well-being of individuals into an undifferentiated sum of interests of the whole.<sup>302</sup>

Bentham thought it fundamentally important that the welfare of each individual be considered one-by-one. He did not accept the view, often attributed to him, that the good or welfare of an individual could be entirely subordinated to the welfare of the community as a whole.<sup>303</sup>

So, while it is a legitimate concern of the government that each person's overall welfare or happiness is higher rather than lower, society's happiness "as a whole" is not its primary concern (to the extent that it even makes sense to talk of a society's happiness as a whole, since societies aren't the kind of things that can be happy or not; people are). Instead of adding together John's happiness and Aisha's happiness and Omar's happiness and Maria's happiness and so on to form the "community's happiness", each person's happiness or pleasure or welfare is necessarily at-

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<sup>301</sup>Postema (2006), p. 130

<sup>302</sup>Postema (2006), p. 126

<sup>303</sup>Postema (2006 b), p. 41

tached to that particular individual. And the legitimate role of the government is *not* to focus on increasing the happiness of the society as a whole — which would seem to allow sacrificing individuals for an increase in the abstract total happiness of the community.

Instead, (if I understand correctly, and I don't feel at all confident that I do), the legitimate role of government is to increase the happiness of *each and every* individual in a society, by maximizing the equal share of the basic interests that they have in common. Basic interests are things like security, on which their other interests (and, ultimately, their pleasure or happiness) depend. Each person's happiness is dependent on that person having a sufficient share in the basic interests. Without security, for example, it's much harder for people to find pleasure and happiness in their pursuits. (Indeed, if the situation is bad enough, it's hard for them to *have* pursuits at all.) And so long as they each have an equal share in the basic interests, then they each have equal *opportunity* to increase their own happiness, in their own idiosyncratic ways — whether it be bungee jumping or stamp collecting; a quiet home life or world travel. It's not the government's job to ensure "the equal happiness of all"<sup>304</sup> — which would be impossible given the largely incomparable, idiosyncratic pleasures people have, varying inclinations to seek pleasurable activities, and differing propensities to find pleasure in them. Instead, it is the government's job to ensure that everyone has an *equal* share in the *basic interests* and to maximize those. (So the government's role is to increase security, for example, while also ensuring that it is equal for everyone. The government is not morally permitted to increase security for some at the expense of others, which scapegoating might do.)

So, let's suppose that scapegoating Omar (who is innocent of any crime) would make John happier, and Aisha happier, and Maria happier, and so on. Why shouldn't a government that

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<sup>304</sup>Postema (2006), p. 130

acts according to Bentham's version of classical consequentialism do this? The reason is that the government's morally legitimate role is to maximize every person's equal share in the basic interests. And, of course, sacrificing Omar is not maximizing *every* person's equal share in the basic interests. It is singling out Omar and sacrificing his interests (including his basic interests) in order to benefit everyone else.

However, even if this response is helpful to the classical consequentialist in the case of state punishment of the innocent, it doesn't seem to apply in the case of parental punishment of children. The fundamental reason not to punish the innocent in the case of state punishment is that the government ought to respect and promote *every* individual's welfare (rather than sacrificing the one for the many). But this doesn't apply in the case of PPC. Punishing a child who hasn't done anything wrong wouldn't (typically) be a case of scapegoating for the benefit of others. If punishing a child who has done nothing wrong were beneficial for that child (and perhaps their immediate family), it's not clear how the Benthamite approach just described could be helpful. (This is similar to the conclusion we reached after discussing Rawls on punishment. It's hard to adapt some more broadly *political* theories of punishment so they can apply to the personal moral issue of PPC.)

Alternatively, instead of denying that their theory implies that punishing the innocent can be justified, what if the classical consequentialist instead bites the bullet and *accepts* that implication? First, let's consider the standard "appeal to reality" that the classical consequentialist might make at this point. They might say that scapegoating the innocent is indeed an implication of their theory, but this is not really a problem since it'll be a rare occurrence in real life; it will rarely turn out to be the case that scapegoating will turn out to have the best overall conse-

quences (because the state is limited in its ability to keep such an act secret, because the public would find out the truth, and so on). Boonin says that this kind of response misses the point.

The point of the objection is not to prove that the theory does, in fact, direct you to do a deeply immoral act. Rather, the point is to demonstrate that you should not accept the theory because it entails a judgment that you do not accept.<sup>305</sup>

As long as you are unwilling to accept this implication [that the state ought to punish innocent people, whenever this would increase overall social utility], you must refuse to accept the theory that logically entails it. And so, the claim that punishing the innocent always turns out to be impractical is irrelevant to assessing the merits of the punishing the innocent objection.... What matters is that the act-utilitarian is committed to the conclusion that it would be the right thing to do if it were practical.<sup>306</sup>

But I don't think it's beside the point for the classical consequentialist to point out that it would be rare for scapegoating to be justified (according to their standards). This is because if you know and understand why it would be rare, you might be happier to accept the implication, and thus more inclined to accept the theory that implies it. In the case of PPC, classical consequentialism has the unintuitive implication that, sometimes, children who have done nothing wrong ought to be punished. But if the classical consequentialist is persuasive that this would be the right thing to do only very rarely, that would make the implication more palatable, and thus make the theory as a whole more attractive.

But Boonin thinks there's a further "punishing the innocent" problem for the classical consequentialist. The problem is more fundamental than the theory simply having unintuitive consequences (which, after all, we may learn to live with). The problem is that failing to distin-

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<sup>305</sup>Boonin (2008), p. 49-50

<sup>306</sup>Boonin (2008), p. 50



guish between the innocent and the guilty means that hedonistic act utilitarian necessarily fails to justify punishment at all; it's not even in the right ballpark. I think that Boonin's objection fails to show that hedonistic act utilitarianism — and other forms of classical consequentialism — necessarily cannot justify punishment. (Since I think his objection applies to the broader category of classical consequentialism, and not just to hedonistic act utilitarian, and since I think that it fails against both the broader category and the more specific theory, I will simply refer to "classical consequentialism" in the following discussion.) Boonin says:

If "the reason [the classical consequentialist] has given for deliberately harming guilty people... is also a reason for sometimes deliberately harming innocent people... then her position does not justify punishment in the first place, even of those who are guilty."<sup>307</sup>

Punishment "involves not simply harming an offender, but harming an offender *because* she has committed an offense."<sup>308</sup>

Boonin's view is that if the same reason is given to justify punishment as is given to justify inflicting other suffering (e.g. on the innocent), then punishment has not really been justified at all. In Boonin's view, a punishment is the infliction of suffering that is necessarily performed for a *reason* (i.e. the offender's guilt). And if an offender's guilt or innocence makes absolutely no difference to the justification of punishment, then it's not the case that punishment has been justified.

Some may feel that Boonin's objection to a general consequentialist justification of punishment is a cheap shot. But I think that the objection does need to be addressed: given that con-

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<sup>307</sup>Boonin (2008), p. 50-51

<sup>308</sup>Boonin (2008), p. 51

sequentialism is necessarily entirely forward-looking, whilst punishments are essentially backward-looking, how *could* a consequentialist justify punishment? For a consequentialist, the past has no moral significance and can play no role in justifying a present action, so it seems to Boonin that a consequentialist has no way to justify an action that *must* take the past into consideration. (Of course, agents' *beliefs* about the past can have effects in the future, and past events can have effects that stretch into the future. But to the extent that the past is over and done with, it is not morally relevant to the consequentialist.<sup>309</sup> Only the future matters morally.) Relatedly, given that consequentialism is concerned entirely with the consequences of actions (and not with morally evaluating agents' psychology), whilst punishments essentially involve agents having certain kinds of reasons or motives in mind, how *could* a consequentialist justify punishment? For a consequentialist, agents' reasons and motives have no moral significance independently of their consequences. (I.e. the consequentialist is not concerned to defend some moral motives or reasons as good/right, or bad/wrong, independent of their consequences. Motives of jealousy or greed or vindictiveness, for example, are not morally wrong "in themselves"; motives of kindness or helpfulness or generosity are not morally right "in themselves". All that matters is whether or not acting on such motives has better or worse consequences than the alternatives.) Given that punishment is a type of action that necessarily depends on an agent having a certain type of reason or motive in mind, it seems to Boonin that a consequentialist has no way to justify an action that *must* take reasons or motives into consideration.

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<sup>309</sup>"What we may call the utilitarian view holds... the principle that bygones are bygones and only future consequences are material to present decisions", Rawls (1955). However, it's possible that it's rare for bygones really to be bygones — think about how lasting damage to the ozone layer results from seemingly trivial actions, some in the distant past. See Elgin (2015).

I think Boonin is mistaken. If I give the same reason for justifying punishing my children as I give for justifying rewarding them — that it improves their behaviour, say — does that mean I haven't *really* given a justification of punishment at all? If I give the same reason to justify donating to charity as I do for walking my dog (e.g. that it makes me feel good or that it is kind to other sentient beings to do so) does that mean I have failed to give a justification for either? It seems not. So why would giving the same reason for justifying punishing the guilty as for justifying intentionally harming the innocent — namely, promotion of the best possible consequences — mean that a justification of punishment hasn't *really* been given at all?

Boonin thinks it's problematic to rely on the same reason to justify inflicting suffering on both the guilty and the innocent because, "Punishment, after all, is a practice in which the fact that one person is guilty and another is innocent is treated as a reason to harm the former but not the latter."<sup>310</sup> Boonin's version of the "punishing the innocent" objection is that classical consequentialism cannot begin to justify punishment because it relies on the *very same reason* (i.e. promotion of good consequences) to justify punishing the guilty as it does to justify punishing the innocent. But, according to Boonin, that means that it fails to justify punishment at all — because a necessary element of a successful justification of punishment is treating guilt (in contrast to innocence) as a reason to punish.

Although Boonin is correct that punishment is a type of action that is necessarily performed for a certain kind of reason, he is mistaken that this is a problem for the classical consequentialist, such that it means that they necessarily fail to justify punishments. This is because one of the features of classical consequentialism is that the moral justification for an action needn't be (indeed, usually won't be) the same as the reasons that an agent has in mind when they

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<sup>310</sup>Boonin (2008), p. 52

perform that action.<sup>311</sup> So, for an agent's action actually to be a punishment, it's true that the agent's reasons for punishing person A must include the belief that person A is guilty of wrongdoing — but that reason is irrelevant to the classical consequentialist's justification of the action of punishing person A. If an agent's reason for intentionally inflicting distress on person A has nothing to do with the fact that A is guilty of a crime then Boonin is right to point out that the agent's action is, therefore, not a punishment. And, similarly, if a parent's reason for inflicting distress on their child has nothing to do with the child's wrongdoing, then the parent's action is not a punishment. But what justifies an agent's action, according to the classical consequentialist has absolutely nothing to do with the agent's reasons, motives, goals or any other psychological fact about them (except in so far as those reasons, motives etc result in actions that have better or worse consequences). The moral status of an action depends entirely on the consequences of that action (not on the "intrinsic nature" of the reasons or motives that prompted it). If the action results in the best consequences, compared to alternatives, then it is the morally right thing to do. If it doesn't, it isn't.

The classical consequentialist does not maintain that agents ought to be judging which action will have the best possible consequences, and that only if agents act with the intention of producing the best possible consequences are their actions justified. No, the classical consequentialist simply doesn't care, morally speaking, what reasons prompt an agent to act. All that matters morally are the consequences of the agent's action, no matter what their reasons for action are. And, in principle, there is no problem with the classical consequentialist disregarding an agent's reasons when it comes to assessing whether or not their action is justified. An agent's ac-

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<sup>311</sup>A variation on the familiar point that classical consequentialism is not action-guiding, as both Bentham and Mill recognized.

tion can be a punishment (i.e. the agent performs the action in part *because* the agent believes the recipient to be guilty) but the agent's reasons for performing that action may play no role in the moral justification of it (i.e. all that matters is the action's consequences).

As a matter of empirical fact, humans *do* sometimes issue punishments. That is, they perform actions that intentionally cause distress to (those believed to be) wrongdoers, after (believed) wrongdoing, and *because* of that (believed) wrongdoing. They intentionally cause distress to other people with quite specific motives and reasons in mind. We can ask of that class of actions (punishments): Under what circumstances, if any, are they justified? The classical consequentialist will say: When and only when they in fact produce the best consequences, compared to the alternatives.

So, although Boonin's version of the punishing the innocent objection is unsuccessful in showing that, in principle, the classical consequentialist cannot justify punishment, they are still left with the original version of the problem. Classical consequentialism appears to have the implication that it is morally permissible for parents to punish children they know have done nothing wrong, if doing so leads to the best overall consequences, compared to the available alternatives. Is there a way for the classical consequentialist to make it more palatable to accept this conclusion? When a theory has unintuitive implications, we can't expect the theorist to convince everyone to change their intuitions. However, we can ask them to demonstrate that it's at least reasonable — not completely ridiculous — to accept the unintuitive implications. I think that in this case, even if we don't come to change our intuitions about the theory's implications, it can be shown that it is at least reasonable to accept them, despite their (initial) unintuitiveness.

Suppose one describes a case where punishment of an innocent man would yield a balance of good, and insures that this is so simply by stipulating certain striking benefits which will derive from it, and explicitly eliminating all the harms one can think

of. If one finds oneself still half-inclined to call such punishment wrong, it may well be because one does not really succeed in envisaging the situation just as described, but surrounds it with the circumstances of real life which would in fact create a greater probability of unhappiness in its consequences than happiness.<sup>312</sup>

And I think it's likely easier for the classical consequentialist to succeed in sufficiently nudging our intuitions in the case of PPC where the situation is more "manageable", and relevant harms and benefits are relatively small (compared to the grave injustice of punishing an innocent person for a crime they did not commit). Classical consequentialists can reasonably claim that misgivings about intentionally causing innocent children to suffer are misguided — because if spanking a child was *genuinely all things considered the best thing to do* (regardless of wrongdoing) then we should just swallow our misgivings and accept that fact, whether we like it or not. After all, we might have misgivings about having our babies poked with sharp needles that deliver (weakened or dead) viruses into their bodies, but nonetheless if doing so is genuinely all things considered the best thing to do (regardless of wrongdoing) then we should just swallow our misgivings and accept that fact, whether we like it or not. It's not unfair, unjust, or cruel to cause our children distress — whether by spanking or by vaccinating — *if* doing so is overall more beneficial than the alternatives. The classical consequentialist might well ask: If a treatment is genuinely beneficial, why should we stick to giving it only those who have done wrong? It would be wrong to withhold such a beneficial treatment! If Jenny breaks a rule and it is morally right to punish her because doing so is more beneficial than the alternatives, it could also be right to punish her brother Robbie who has done nothing wrong. If punishing Robbie leads the best overall consequences, compared to the alternatives, then punishing Robbie — spanking him or

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<sup>312</sup>Sprigge (1965) in Ezorsky (1977), p. 68-69

giving him a time-out or whatever — is the right thing to do, despite the fact that Robbie has done nothing wrong. To refrain from punishing the innocent Robbie when it would be beneficial to do so would be no different from refraining from vaccinating Robbie when it would be beneficial to do so. We shouldn't let our emotional aversions get in the way of doing what is actually best for our children.

And, the consequentialist might argue, although punishing the innocent *seems* unfair, once we genuinely appreciate that it is beneficial (in the circumstances that it is), then we should be able to "get over" (at least to a certain extent) our intuitions that punishing the innocent is unfair.<sup>313</sup>

I think this is at least a plausible line of response. But Boonin wouldn't think that it is enough. The problem is *not* that there is a moral blanket ban on ever intentionally causing other people distress. After all, as Boonin says:

Commonsense morality might permit the state to deliberately harm an innocent person as a means of avoiding a catastrophe, but the act-utilitarian solution will insist that the state must deliberately harm an innocent person every time this will produce at least a little more utility overall than not doing so.<sup>314</sup>

Rather, the problem is that:

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<sup>313</sup>In the case of state punishment, such a response to the problem of punishing the innocent may not be satisfactory because it doesn't seem to address a crucial aspect of punishment: As well as intentionally inflicting distress, it also communicates *disapproval* of the action the punishment recipient performed. Part of the harm of punishing the innocent is the damage to the recipient's reputation. But this is obviously much less of a concern in the case of PPC.

<sup>314</sup>Boonin (2008), p. 48

[Hedonistic act utilitarianism] gives absolutely no independent weight to the fact that the person being harmed is innocent [or guilty].<sup>315</sup>

But a successful defense of punishment *must* give weight to this crucial difference, according to Boonin. So, even if the consequentialist is able to massage our moral intuitions sufficiently to get us to countenance the idea of punishing the innocent when the benefits are significant (such as "avoiding a catastrophe"), they are still left with the problem, according to Boonin, that they will recommend punishing the innocent even when the difference in benefit is very slight, compared to alternatives. So even if a poke with a needle is justified because it causes a very brief, minor pain and its benefits are huge, this does little to help persuade us that it's morally acceptable to punish a child who has done nothing wrong. (Because even optimists about the effects of punishment do not claim that the effects of one punishment will be hugely beneficial.)

Let's deal with the general complaint that classical consequentialism justifies intentionally harming an innocent person even when there is just a tiny bit of additional overall "utility" compared to alternative actions that don't harm an innocent person. This is where it becomes important that Boonin is discussing hedonistic act-utilitarianism, and I am discussing the broader category of classical consequentialism, because there is a solution to this problem that is open to some versions of classical consequentialism, but not to hedonistic utilitarianism. A non-utilitarian consequentialist can accept that there are values other than pleasure and pain, and this makes the theory much more plausible — and enables it to respond to this objection. The classical consequentialist can accept that even if the guilty offender and the innocent offender *suffer* equally from the same punishment, it is nevertheless *worse* to punish someone who is innocent.<sup>316</sup> As

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<sup>315</sup>Boonin (2008), p. 48

<sup>316</sup>It also might be possible to defend the claim that even if the punishment is the same, an



well as the offender's suffering that has to be taken into account, we also have to take into account the badness of harming the innocent. We value innocence, freedom, equality, truth etc — and these values are not reducible to pleasure and pain/suffering. (We can well accept the idea that a slave would prefer to be free than to be enslaved, even if their life would, overall, involve more suffering if they were free. We can well accept the idea that a spouse would prefer to know the truth about their partner's unfaithfulness, even if their life would, overall, involve more suffering if they knew the truth.)

So, imagine the following scenario in which harming an innocent person is compared to not doing so:

(A) Punish innocent person [-10 harm]	---> 1,000,000 benefit	= 999,990 overall
(B) Not punish innocent person [0 harm]	---> 999,989 benefit	= 999,989 overall

In this scenario, taking option (A) and punishing an innocent person would cause -10 units of harm and 1,000,000 units of benefit, resulting in 999,990 units of benefit overall. Taking option (B) and not punishing an innocent person would avoid any harm, and cause slightly less benefit: 999,989 units, with a net result of 999,989 units of benefit overall, slightly less than option (A). So the problem is that the classical consequentialist is committed to recommending (A), on the grounds that it produces the overall better result — but that's intuitively wrong because (A) involves punishing an innocent person and (B) does not. In Boonin's terms, (A) is not "avoiding a

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innocent person suffers more than a guilty person *because* they are innocent. See, for example, Sprigge (1965) in Ezorsky (1977), p. 73.

catastrophe", and the very slight difference in resulting overall benefit compared to (B) doesn't seem sufficient to justify punishing an innocent person.

Note that to get the overall balance of harms/benefits to come out very close in the end (999,989 vs 999,990), the difference in the benefit caused by each action (999,989 vs 1,000,000) has to be only slightly bigger (+11) than the initial harm caused by punishing the innocent person (-10). If we judge that the difference in benefit between option (A) and option (B) — in this case +11 in favour of option (A) — is not sufficient to justify punishing an innocent person then that tells us is that we need to *re-think the value we assigned to innocence*. So in this example, I assigned a value of -10 to punishing an innocent person. That is, taking into consideration the suffering of that person as well as the disvalue of an innocent person being punished, I assigned a value of -10 (and perhaps punishing a guilty person, which takes into consideration only the suffering of the offender would be something like -5). But if we think that the end result favouring option (A) is mistaken, then that's an indication that we have misassigned the values. Perhaps punishing an innocent person in option (A) should be assigned a negative value of -50, say:

(A) Punish innocent person [-50 harm]	---> 1,000,000 benefit	= 999,950 overall
(B) Not punish innocent person [0 harm]	---> 999,989 benefit	= 999,989 overall

In this case, it becomes preferable to take option (B) because the overall balance of harms/benefits ends up being better in that case. So it turns out that punishing an innocent person is not justified by classical consequentialism — so long as the theory accepts the value of innocence. (And perhaps the negative value of punishing an innocent person should be even greater, in which case the difference between the end results would be even greater.) Of course we could argue about

whether or not, ultimately, the classical consequentialist is able to sustain the idea of values such as innocence, truth etc independently of pleasure and pain or suffering. But for present purposes, it is enough to have shown that the non-hedonistic classical consequentialist has resources with which to respond to the punishing the innocent objection.<sup>317</sup> It's still in the running as a theory of justification of punishment.

Scapegoating an innocent person and punishing them for a crime they didn't commit is a terrible thing to do, so for it to be justified by classical consequentialist standards, it would have to result in a significant benefit over alternatives that do not involve punishing an innocent person. A parent punishing a child who hasn't misbehaved is not nearly as bad, so for it to be justified, it won't have to result in such a large benefit over the alternatives. But, nevertheless, there would still have to be a *significant* difference in benefit, in order to justify punishing an innocent child.

This response to the punishing the innocent objection claimed that the way to make that implication of classical consequentialism more palatable depended on understanding the consequentialist's theory of value in a certain way. Specifically, it depended on accepting that there is something worse about punishing an innocent person than about punishing a guilty person (even if everything else is held constant). So long as a classical consequentialist accepts innocence as a value, I think it can adequately respond to the punishing the innocent objection.

There's a further benefit of taking this route: *Any* time that we judge that the difference in resulting benefit is not great enough to justify the initial harm, the classical consequentialist can take that as a sign that we have not assigned the correct value to the initial harm. This same point enables the classical consequentialist to respond to another of Boonin's objections. He says that

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<sup>317</sup>See Sprigge (1965) for other responses to this objection.

hedonistic act utilitarianism wrongly justifies disproportionate punishments. That is, "it cannot render permissible an intuitively appropriate amount of punishment."<sup>318</sup>

[M]ost people strongly believe that the severity of punishment should be at least roughly proportional to the offense: that trivial offenses should mandate minor punishments, while serious offenses should require severe punishments. The disproportionate punishment objection maintains that the act-utilitarian solution cannot account for these central judgments. In some cases the solution will justify unacceptably severe punishment, and in others it will justify an unacceptably mild one.<sup>319</sup>

Since this is an objection that applies equally to other forms of act consequentialism, I will again speak generally about classical consequentialism. No doubt Boonin is correct that many would have this intuition, which may be grounded in retributivist intuitions. It is open to the classical consequentialist to simply embrace the theory's unintuitive results, but is there a way for them to make it more palatable, at least in the case of PPC (if not in the case of criminal punishment)? I think the classical consequentialist can spell out the details of a kind of situation in which inflicting a disproportionate punishment would be the right thing to do, and thus make the consequence intuitively less objectionable.

Suppose that a 12 year old child is home 10 minutes late from their friend's house down the street and they had been warned that if they were late, they would be punished. One might think that a proportionate punishment is that the child is not allowed to go to their friend's house the next day, for example. A disproportionate punishment could be that the child is banned from going to their friend's house for a year. Intuitively, this does seem unduly harsh. But, the classical consequentialist reminds us, remember that for a much harsher punishment to be justified, it

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<sup>318</sup>Boonin (2008), p. 54

<sup>319</sup>Boonin (2008), p. 54

must have significantly better consequences than the alternative options. So banning the child for a year must have much better consequences than banning the child for one day, even *taking into consideration the distress caused by the bans*. Perhaps during the year long ban the friend down the street becomes a teenage drug dealer and banning the child from going to their house for year prevents the child from getting caught up in criminal activity. Or perhaps the house of the friend down the street catches on fire one day and because your child is banned from visiting, the friend is out at the park and so nobody is harmed in the fire when they otherwise would have been.

The harshly punishing parent didn't intend or predict any of these purely *lucky* consequences, but that doesn't matter to the consequentialist. The harsh punishment turned out to be the right action because it led to the best consequences, regardless of the parent's intentions. Of course, we can think of endless scenarios of this kind. The classical consequentialist can turn the tables and ask rhetorically: So you'd prefer to issue a one day ban and have your child get involved in drug dealing, rather than issue a one year ban and keep them out of crime?! Or: You'd prefer to issue a one day ban and have your child and their friend be killed in a house fire, rather than issue a one year ban and keep them safe?! This is, I think, a promising line of response.

However, what about when there is only a *slight* difference in resulting benefits, but a large difference in distress from the punishments? For example, a very distressing, severe spanking could turn out to have only very *slightly* more beneficial effects than a 3 minute time-out that the child doesn't find particularly distressing. In which case, it appears that classical consequentialism implies that the disproportionately harsh punishment (severe spanking) is justified. But it seems wrong to say that a severe spanking is justified for minor misbehaviour (and it seems that the 3 minute time-out would be much more fair), even if the severe spanking results in slightly more benefit. However, the classical consequentialist could reasonably maintain that the signifi-

cant difference in distress between a severe spanking and a 3 minute time-out would dwarf a "slight" difference between the consequences, and so classical consequentialism would not, after all, recommend the disproportionately harsh punishment in that case.<sup>320</sup>

Given that all the suffering and all the benefits caused by the punishments need to be taken into consideration in order to determine justification, then it can never be the case that a justified punishment causes a lot of distress but very little additional benefit compared to an alternative that causes very little distress. Only when a harsh punishment results in *much* greater benefits than a milder punishment would classical consequentialism justify the harsher punishment. (And this brings us back to the example of grounding the child for a year who would otherwise have gotten mixed up in drug dealing.)

### ***Classical consequential and the justification of punishment***

So, supposing the classical consequentialist has the resources to respond to the various versions of the problem of punishing the innocent, and the problem of disproportionate punishments, can it justify punishment?

In previous chapters regarding instrumentalist theories (which might loosely be described as "consequentialist") we've asked (for example): *Could* moral education (or behavioural training etc) justify punishment? *Does* it succeed in doing so? The first is a theoretical question and the second is an empirical question. My goal is to persuade the reader — no matter what instrumentalist theory of punishment they hold — that parental punishment of children is unjustified. I'm less concerned to argue that any particular theory of punishment is false. Since classical conse-

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<sup>320</sup>There could be intermediate effects, or influences from other actions/events, in addition to the original punishments that contribute to making the end consequences have only a slight difference. But then it's not correct that we're comparing the effects of only the punishments.

quentialism is a general moral theory (not a theory only of punishment), I do not hope at all to argue that it is false (or defend it as true). Instead, I do hope to make a persuasive case for the conclusion that *if* classical consequentialism is true, it fails to justify PPC. I've defended it from various theoretical objections, now let's turn to the more empirical issues.

Let's suppose that classical consequentialism is the true moral theory, and it's therefore theoretically possible for PPC to be morally justified by it. We can ask: (1) Is PPC ever in fact justified? And we can ask about a specific instance of PPC: (2) Tomorrow, if I discover that my teenage son has broken a household rule and sneaked his iPod into his bedroom last night, should I punish him? To take the second question first, the classical consequentialist says that I should punish him if doing so will lead to the best overall consequences, compared to alternative courses of action. Otherwise, I shouldn't. All the evidence that we have reviewed in previous chapters indicates that I should not punish my son, that it would be morally wrong (by the classical consequentialist's standards) for me to do so.

For any instance of PPC, we know from the evidence we have reviewed, that it is *unlikely* to turn out to have the best consequences compared to alternative methods of discipline.<sup>321</sup> So, for any instance of PPC, it's likely to be morally unjustified, by the classical consequentialist's standards.

It's possible (indeed, presumably it's likely) that in the whole history of humanity there are some instances of parental punishment of children that have turned out to have better consequences than alternative courses of action that the parents could have taken.<sup>322</sup> Of course, this

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<sup>321</sup>Let alone alternatives such as selling all one's non-essential property and donating the proceeds to charity. But of course that applies to non-punitive discipline methods too. We will be sticking with comparing *close* alternatives.

<sup>322</sup>Well, cutting the classical consequentialist some slack and ignoring possible courses of action such as that mentioned in the previous footnote. It's very likely impossible for the classical

doesn't mean that punishment as a *type* of action is justified (as the rule consequentialist would wish to have it), and it would provide no action guidance whatsoever. It also may have nothing to do with those actions being punishments that resulted in the consequences that were better than the alternatives. For example, perhaps a time-out once resulted in a child being removed from a room just before the roof collapsed, which would have caused them to be seriously injured and to suffer terribly for the rest of their life. Any action will fall into many categories: a punishment; a time-out; a disciplinary action; a removal from a room; an injury-prevention; an upsetting incident; something that happened on a Tuesday. If it is true for the classical consequentialist to say that some punishments are justified because their consequences are better than their alternatives, it's also true for them to say that some actions that happen on a Tuesday are justified because their consequences are better than the alternatives. Justifying an action that happened on a Tuesday isn't the same thing as justifying an action *because* it happened on a Tuesday; similarly, justifying an action that is a punishment isn't the same thing as justifying an action *because* it is a punishment. It's true that some Tuesday-actions are justified, and some Tuesday-actions are not justified (by the classical consequentialist's standards). And the classical consequentialist can't say much more than that. They cannot generalize across any type of action, so it provides no action guidance. But given that the classical consequentialist must want to maximize overall positive effects, their *pragmatic* guidance must be, given the empirical evidence: Parents ought not to punish their kids. Following that advice will more often lead to better consequences than any other usable advice. ("Parents ought to punish whenever the consequences of doing so will turn

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consequentialist to maintain that punishment is literally the absolute best option in a given scenario when there are also generous acts of charity we could perform instead. However, of course this would sidestep the more interesting question of whether a classical consequentialist can support punishment over its *close* alternatives (such as non-punitive discipline, ignoring the child, bribing the child with a doughnut, and so on).



out to be better than any alternative" is not usable advice.) Parents *definitely* pragmatically-ought not to punish their kids and, on any particular occasion, they highly *probably* morally-ought not to do so. This is because of the evidence we have reviewed in earlier chapters: We know that a punishment has immediate negative effects on the child — pain, emotional upset, etc. It also carries the risk of various long term harms, as reviewed in Chapter 6. Parents also often experience distress when they punish their children, as do some siblings; these are all negative consequences that a consequentialist would need to take into consideration.<sup>323</sup> We've also seen that we have no reason to think that PPC tends to have beneficial effects such as moral education or behavioural training. It may sometimes result in short term compliance, and even that is minimal and we have no reason to think it's *better* than all non-punitive alternatives. (And it also seems to lead to *less* compliance in future.) It's not clear what other beneficial effects of PPC we might reasonably look for.

So, even if classical consequentialism is the correct moral theory, we have no reason to think that any real future instance of PPC would be justified. If classical consequentialism is true, we are led by the empirical evidence to conclude that PPC is, generally speaking, morally wrong. When facing any real life decision about whether to punish or not, it's reasonable to think that a parent would be unjustified in punishing their child.

Of course, according to classical consequentialism, it's possible that parents would on rare occasions do the wrong thing by following the evidence. But what else can they do? We don't increase our chances of doing what is right (by the standards of classical consequentialism) by acting contrary to the evidence. And, surely, the classical consequentialist prefers agents to act

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<sup>323</sup>On the other hand, they would also have to take into consideration the *satisfaction* that some parents experience when they punish their children.

in ways that are *more likely*, rather than less, to produce better consequences.<sup>324</sup> So even the classical consequentialist should recommend that parents not punish their children, despite the fact that on some occasions, this will mean that parents will act morally wrongly by the classical consequentialist's standards. In other words, the classical consequentialist should say that parents ought not to punish their children — because this strategy will minimize the number of wrong actions they will perform. The "ought" is pragmatic — given a goal of minimizing morally wrong actions, the pragmatic thing to do is to avoid PPC. On rare occasions, and contrary to the evidence, PPC might turn out to have the best consequences compared to the alternatives, and on those occasions, parents who do not punish will act wrongly according to the classical consequentialist. But, nevertheless, it's still correct for the classical consequentialist to recommend acting according to evidence and claim that parents ought not to punish their children.

Of course, there are always outlandish *hypothetical* situations in which a punishment turns out to have the best consequences of all the options. For example, one in which evil aliens will destroy the planet unless a parent punishes their child. However, even in these cases, it's not actually obvious that the evidence would lean in favour of punishment. One might have better reason to think that one is hallucinating, than that evil aliens are making such a threat! However, I am happy to concede that there may be outlandish philosophical thought experiment situations in which the right thing to do (from a classical consequentialist perspective or not) is to punish one's child. But an outlandish hypothetical alternative is not a real alternative, and so it doesn't

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<sup>324</sup>It's not even clear that it's reasonable to talk about whether an overall positive or overall negative outcome is more or less likely, when we're talking about sets of open ended future possibilities (in contrast with, say, coin flips or dice throws). See Elgin (2015) on this. But, for the time being, let's grant the classical consequentialist that they can at least make sense of the idea of one set of overall consequences being more likely than another.

tell us much about the morality of ordinary, everyday PPC, which is what I'm concerned with in this dissertation.<sup>325</sup>

What about in a non-outlandish, but flukey, situation such as the when punishing a child "accidentally" leads to the best overall consequences (like grounding a child prevents them from being injured in an accident)? In such a situation, the classical consequentialist will maintain that the morally right thing to do turned out to be punishing the child. But ahead of time, there was no reason to believe that the right thing to do would be to punish the child; the evidence indicates that, in addition to the initial distress it intentionally inflicts, punishment is unlikely to be beneficial and is likely to have long term negative effects. However, even for this kind of situation, it wasn't *because* the action was a punishment that it turned out to be beneficial; it wasn't *because* of the distress that the action intentionally inflicted that it turned out to be beneficial. It was beneficial because it happened to keep a child at home when a drunk driver otherwise would have hit them (or whatever), so even if we grant that there are these kinds of cases in which an action that is a punishment turns out to have the best consequences of the available options, it is not because it is a punishment. And so the consequentialist should rank the option of "Keeping your child at home, non-punitively" higher than "Keeping your child at home as a punishment". (Even though, of course, the parent would have no idea about the reasons favouring the non-punitive "grounding".) The punitive aspect of the action did not contribute to its good effects.

Are there examples in which a punishment has the best options *because* it is a punishment? This would mean that a punishment, on a specific occasion, has beneficial effects *because* it intentionally inflicts distress in response to wrongdoing. So if a punishment actually does con-

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<sup>325</sup>Furthermore, in such a case, a parent's intentions wouldn't only be to punish, but also to protect the planet. My view is that this intention makes a difference to the moral status of the action (even if the action manages to still count as being a punishment).

tribute to a child being obedient (regarding some important matter), or to learning an important moral rule or behaviour, then could it be justified, according to the classical consequentialist? It would have to be the case that giving the child a punitive time-out, say, on that occasion was overall better than all the (close) alternatives. We haven't yet looked at the evidence regarding non-punitive discipline in any detail, so we can't know how well it compares to punishment. But, given the evidence we have reviewed so far regarding punishment's lack of benefits and its risk of long term harms (in addition to the immediate distress it inflicts), we currently have no reason to think, in any real life circumstance, that a punishment will have the best consequences of all the (close) alternatives. (And we will have even more evidence to support this judgement in Chapter 9, regarding non-punitive discipline.) And that's the best we can say. We can never be *sure* that any particular action will turn out to have better consequences than all the (close) alternatives. We can look at the evidence and make a judgement about the probabilities. Given that classical consequentialism can't support any moral claims about *types* of action, the best we can do is: The available evidence indicates that, on any particular occasion, punishing a child will likely not have the best consequences of all the options and so, punishing a child is likely morally wrong (by the standards of classical consequentialism).

As we've seen, the pragmatic advice of a classical consequentialist must be that parents ought to refrain from punishing their children (because it's more likely that doing so will lead to better consequences than punishing). Their moral advice must also be that parents ought not to punish their children because this means that that they will do the morally right thing more often — even though this means that, sometimes, parents will end up doing the wrong thing. (I.e. sometimes they will end up performing actions that have less good consequences than an alternative.) The rational choice (or "expected utility") consequentialist believes that the morally right

action is the one that the evidence recommends (even though, occasionally, it'll turn out not to have better consequences than all the alternatives). This means that rational choice consequentialism will recommend refraining from punishing children on every (realistic) occasion — because the evidence indicates that punishment is unlikely to have the best consequences (compared to close alternatives).

## CHAPTER EIGHT: Retributivism

Generally speaking, I suspect that most parents tend to think that PPC is ultimately, overall, beneficial to their children; that is why they think they are justified in punishing them. I suspect that far fewer parents would be attracted to a retributivist justification for PPC, which would maintain that punishment can be justified despite not being beneficial — on the grounds that children deserve punishment for wrongdoing. But presumably there are some parents who do think it is their *duty* to punish their children for wrongdoing, even if it's not in the child's interests, just as a parent might reasonably believe it's their duty to report their own child to the police if they were guilty of a serious crime, even if it's not in the child's interests.<sup>326</sup> Some philosophers will also likely be inclined towards such a position. For the retributivist, punishment is justified by the wrongdoer's past behaviour.<sup>327</sup> (This is what is meant by retributivism being a "backward-looking" theory.) No future benefits, such as moral education or improved behaviour, are necessary in order to justify punishing a wrongdoer, according to the retributivist.

In this chapter, I will discuss retributivism and consider whether it could justify PPC. I will explain what I think are the most plausible elements of retributivism for PPC. Then I will

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<sup>326</sup>Thanks to Geoffrey Sayre-McCord for this point.

<sup>327</sup>Retributivists would maintain that certain other conditions need to hold too, such that desert is necessary for the justification of punishment, but not sufficient. They might believe that a criminal wrongdoer deserves punishment, but nevertheless think we ought to "leave the retribution to God" or to an organization, such as the state, which has appropriate *authority* to issue punishments. But, presumably, a retributivist defender of PPC would accept that, at least sometimes, parents ought to punish their children for their wrongdoing.

explain what I think retributivism gets importantly right, and show where I think it goes wrong, concluding that a non-punitive alternative can capture what retributivism gets correct, while avoiding its mistakes.

First, let's distinguish negative and positive retributivism. Negative retributivism isn't a theory that attempts to justify punishment.<sup>328</sup> All it says is that any punishment that is administered *must not be more than someone deserves* — which, when applied to PPC instead of criminal punishment, would rule out punishing kids who haven't done anything wrong, rule out punishing kids more harshly than they deserve, and rule out punishing kids who aren't yet (sufficiently) responsible moral agents. It is consistent with negative retributivism that punishment may be justified by other theories, with the negative retributivism requirement added on as a constraint. This would mean that even if a severe spanking would have the best overall results, according to a particular instrumentalist theory (e.g. for a behavioural training theory, this would mean that it contributes the most to promoting future good behaviour), the negative retributivist constraint would imply that this is not permissible if the child deserved only something less harsh than a severe spanking, such as a 10 minute time-out. However, as we've seen in previous chapters, the various instrumentalist justifications of PPC fail on empirical grounds. And in the absence of a positive justification for PPC, negative retributivism cannot justify it by itself.

Similarly, a consent theorist also might attempt to combine their view with negative retributivism. On such a view, a child consents to punishment when they break a rule. And how harsh should their punishment be? No more than the child deserves, given the seriousness of their wrongdoing and their culpability. But consent theory fails as a justification of PPC because

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<sup>328</sup>See, for example, Duff (2011), p. 66. Mackie (1982) is the classic source of "negative retributivism".

parents impermissibly limit the child's preferable options when they fail to grant alternative responses to wrongdoing, such as non-punitive discipline. And negative retributivism can't do the work of justifying punishment by itself.

Positive retributivism is a theory (or class of theories) that purports to justify punishing wrongdoers on the basis of wrongdoers' desert, rather than by its instrumental value in producing benefits. If an agent meets certain standards of rationality when they commit a crime (and there are no mitigating factors sufficient to excuse them), then they deserve punishment for that wrongdoing. Within this class of theory, as with consequentialism, there are many subtle (and not so subtle) variations. Michael S. Moore, for example, is a "traditional" retributivist, and the notion of desert is central and dominates his theory:

Retributivism is the view that we ought to punish offenders *because and only because* they deserve to be punished. Punishment is justified, for a retributivist, *solely* by the fact that those receiving it deserve it.<sup>329</sup>

A slightly weaker version of retributivism is that of Jeffrie Murphy, who says that a retributivist "believes that the *primary* justification for punishing a criminal is that the criminal deserves it."<sup>330</sup> And Andrew von Hirsch is a retributivist who thinks that desert *together with* deterrence considerations fully justifies criminal punishment. On this "two-pronged"<sup>331</sup> view, criminal punishment is justified (when it is) because it *both* censures offenders (to the extent that they deserve) *and* because punishment has a deterrent effect. A two-pronged theory in the case of

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<sup>329</sup>Moore (1993), p. 15. Italics added.

<sup>330</sup>Murphy (2007). Italics added.

<sup>331</sup>Von Hirsch (1990), p. 278. Of course, because von Hirsch's retributivism is mixed with an instrumentalist element, some wouldn't classify him as a retributivist.



parental punishment of children would mean that retributivism and certain benefits (such as obedience or moral education or better behaviour) are combined to fully justify punishment. So retributivism would mean that a child gets punished to the extent that they deserve (dependent on the seriousness of their wrongdoing and their degree of culpability), and perhaps the choice of the specific type of punishment could depend on which was most morally educational or most conducive to obedience or better behaviour. Even if some kind of mixed theory could work in the case of criminal punishment, as we've seen in previous chapters, the various instrumentalist justifications of PPC fail on empirical grounds — which would leave only the retributivist element. Von Hirsch says, with respect to criminal punishment, that his "two-pronged rationale would permit the abolition of legal punishment were it found to have too little preventive effect."<sup>332</sup> If state punishment didn't have a sufficient deterrence effect, then punishment should be abolished, although society should maintain a (non-punitive) official mechanism for communicating censure. I would argue that in the case of PPC, punishment does not have any instrumental benefit that could successfully be added to a retributive element and so a "two-pronged" approach will not work. If retributivism is going to justify PPC, it's going to have to do it alone.

### ***Moral agents***

As mentioned earlier, positive retributivism is a theory (or class of theories) that purports to justify punishing wrongdoers, so long as they meet certain standards of rationality etc. and thus deserve to be punished. If people do not meet those standards of rationality, then they are not re-

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<sup>332</sup>Von Hirsch (1990), p. 278. He's not questioning the empirical claim that punishment is an effective deterrent in our own society. Instead, he's imagining a society that has improved in certain ways so that crime is rare. In which case, the deterrent effect of punishment wouldn't be worth the hardship it would inflict.

sponsible moral agents and so cannot be said to have committed any wrongdoing, and so cannot deserve any punishment.

Babies and very young children are unlikely to meet the necessary standards of rationality — they are not yet moral agents — and so they cannot be said to *deserve* punishment. According to Thomas Hill, Kant believed that

in order to do something morally wrong one must be a person who satisfies at least minimum conditions of rationality and freedom. Some capacity for memory, foresight, reflection, and self-control is necessary....Moral agents see themselves as having alternatives, and they choose to act as they do for reasons, good or bad.<sup>333</sup>

However, Kant did think that younger (not yet rational) children could be punished for training purposes (rather like dogs and horses). In that respect, most parents would likely agree with Kant, as they tend to punish younger kids more than older kids. So, in as far as Kant was a retributivist, he thought that rational beings who do wrong *deserve* punishment, but non-rational beings (who don't *deserve* punishment) may be punished for training purposes. So, in that case, Kant was not a pure retributivist about childhood punishment. So let us imagine a retributivist system of PPC that justifies punishment on the grounds of *desert* for children who are sufficiently rational, and allows punishment for the purposes of *behavioural training* for children who are not rational enough to be said to deserve punishment. (So we can focus on retributivism, let's grant that using punishment in order to train children to behave better is effective, ignoring the evidence that we looked at in Chapter 3.)

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<sup>333</sup>Hill (1999), p. 415

Man may be either broken in, trained, and mechanically taught, or he may be really enlightened. Horses and dogs are broken in; and man, too, may be broken in.

It is, however, not enough that children should be merely broken in; for it is of greater importance that they shall learn to *think*.<sup>334</sup>

In the first period of childhood the child must learn submission and positive obedience. In the next stage he should be allowed to think for himself, and to enjoy a certain amount of freedom, although still obliged to follow certain rules. In the first period there is a mechanical, in the second a moral constraint.<sup>335</sup>

This mixed program of behavioural training and morally required punishment also accommodates the fact that parents sometimes punish their kids when they think they have made a *mistake*, not only when they think their kids have behaved *morally wrongly*. They might punish a child by withholding their allowance, with the goal of "reminding" the child not to forget their homework in future. The parent doesn't think that forgetting homework is a moral wrong that deserves retribution — they think it's a mistake or a bad habit that needs correction through the experience of punishment.

So the first consequence of retributivism, as applied to PPC, is that it is justified to punish older kids, who have attained a sufficient degree of rationality, on the grounds that they *deserve* punishment. If they are sufficiently rational to deserve punishment, they ought to be punished, without aiming for some further goal that is supposed to result from punishment — and so the evidence for how ineffective punishment is for reaching further goals (moral education, improved behaviour etc) is irrelevant to the retributivist. On this picture, no benefit beyond the punishment itself is necessary. A typically developing 10 year old child understands that it's

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<sup>334</sup>Kant, tr. Churton (1899/2003), p. 20

<sup>335</sup>Kant, tr. Churton (1899/2003), p. 26

wrong to hit people. 10 year old Max, who hits his little sister because she accidentally spilt some of her juice on Max's favourite pants, knows that he has done something wrong. He was angry and, when he thought his parents weren't looking, he snuck up on his sister and hit her. This is the kind of situation in which a retributivist with respect to PPC would likely think it's justified to punish a child. Max is (let us suppose) at least a *sufficiently* rational moral agent, who did something that he knew was morally wrong, and something he could have chosen not to do, and he deserves punishment for it. The retributivist might hold that to fail to punish Max is to fail to treat him as a rational moral agent (to the extent that he is). Becoming liable to punishment for one's immoral actions could even be considered a kind of rite of passage.<sup>336</sup> Unlike Max, a 4 month old baby who hurts its mother by pulling her hair does not know what it is doing, is not *at all* responsible for its actions. A 4 month old baby's hair-pulling is more like a "natural catastrophe" than a wrongdoing:

Were one, as a general practice, merely to lament the occurrence of a wrongful act and not confront the actor, that would be tantamount to treating actors as though they

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<sup>336</sup>If parents were conscientious retributivists, perhaps children would feel that when they became mature enough to be punished, it would be akin to the honour that Hegel mentions: "To justify punishment [by threatening it as a deterrent] is like raising one's stick at a dog; it means treating a human being like a dog instead of respecting his honour and freedom." Section 99, reprinted in Tonry (2011 b), p. 45. This is not so far fetched when one considers the hardships that children have looked forward to because it meant that they were entering the adult world, for example: "The twenty-second of June, 1911, was Billy's thirteenth birthday. He was woken by his father... Momentarily he felt angry; but then he remembered that he had to get up, he even wanted to get up, and he opened his eyes and sat upright with a jerk... Today Billy would begin his working life by becoming an apprentice collier, as most of the men in town had done at his age. He wished he felt more like a miner. But he was determined not to make a fool of himself... [H]e did have a new pair of trousers, his first long ones, made of the thick water-repellent cotton called moleskin. They were the symbol of entry into the world of men, and he pulled them on proudly, enjoying the heavy masculine feel of the fabric." Follett (2012), p. 3-5.

were not responsible; it would be akin to treating wrongdoing like a natural catastrophe, where no one is really to blame.<sup>337</sup>

Max's three year old sister, however, may or may not count as a rational moral agent at all (and certainly doesn't to the extent that Max does). So, when she lashes out and hits her father because he won't let her have ketchup and cookies for dinner, she is not responsible for her own actions in the same way, or to the same extent, that Max is responsible, and thus — like the 4 month old baby — may not deserve punishment. Alternatively, perhaps the retributivist could say that she does deserve punishment — if she understood well enough that she did something morally wrong — but that there are other considerations that rule out punishing a child that young. Perhaps, for example, a young child's need for positive attachment to a caregiver outweighs a requirement to punish, even when it's genuinely deserved. As Moore (2010) puts it:

The retributivist like anyone else can admit that there are other intrinsic goods [not only just deserts], such as the goods protected by the rights to life, liberty, and bodily integrity. The retributivist can also admit that sometimes some of these rights will trump the achieving of retributivist justice...<sup>338</sup>

So, let's grant that the retributivist distinguishes between children who are (sufficiently) rational moral agents and those who aren't, with only the former being (to some extent) responsible for their actions, and thus (to some extent) capable of moral wrongdoing, and thus (to some extent) deserving of punishment. And let's grant that the retributivist can also have good reasons for parents sometimes (perhaps frequently) refraining from punishing children to the extent that

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<sup>337</sup>Von Hirsch (1990), p. 272

<sup>338</sup>Moore (2010), p. 172

they deserve. A retributivist justification for PPC doesn't imply that parents must punish every single instance of their children's wrongdoing.

### ***Proportionality***

As well as offenders being rational moral agents, another requirement for a punishment to be justified, according to the retributivist, is that the punishment is proportionate to the wrongdoing. As detailed by Andrew von Hirsch, who holds an expressivist version of retributivism (which we will be looking at in more detail), there are two factors in determining proportionality of punishments: ordinality and cardinality. The first is an *ordering* of matching punishment and crimes, according to their severity:

In punishment, deprivation or hard treatment is the vehicle for expressing condemnation. Therefore, when punishments are graded in severity, the gradations express the intensity of disapproval. Punishing the perpetrators of crime A more severely than the perpetrators of crime B conveys the greater disapprobation of those guilty of crime A... If the gradations in punishment express degrees of disapproval, then punishment should be allocated in proportion to the degree of disapproval warranted by different kinds of criminal conduct. To punish the perpetrators of crime A more than those of crime B, given the difference in disapprobation thereby expressed, is appropriate only if crime A is, indeed, more reprehensible--that is, more serious. When penalties are ranked in severity inconsistently with the comparative seriousness of crimes, then less reprehensible conduct will, inappropriately, receive the greater reprobation.<sup>339</sup>

But, without "anchoring points" for the scale, ordinality doesn't tell us how severe a punishment should be inflicted for crime A — just that it should be *more* severe than the punishment for crime B only if A was a more serious crime than B:

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<sup>339</sup>Von Hirsch (1990), p. 279

Whether X months, Y years, or somewhere in between is the appropriate penalty for robbery depends on how the scale has been anchored and what punishments have been prescribed for other crimes. Once the anchoring points have been fixed, however, the more restrictive requirements of ordinal proportionality apply.<sup>340</sup>

So how to come up with some anchoring points? Once one crime-punishment pair has been fixed, then it might be possible to come up with the others:

If the state has set the penalties for certain crimes, then it can fix the penalty for armed robbery by comparing the typical seriousness of this crime with the seriousness of those other crimes. But this process requires a starting point, and no quantum of punishment suggests itself as the uniquely appropriate penalty for the crime or crimes with which the scale begins. Why not? Expressive theory again provides the explanation: The amount of disapproval conveyed by penal sanctions is a convention; when a penalty scale has been devised to reflect the comparative gravity of crimes, altering the scale's magnitude and anchoring points by making pro rata increases or decreases would represent a change in that convention.<sup>341</sup>

But, of course, not just any old convention is acceptable. Von Hirsch says that cardinal proportionality depends on other moral assumptions, such as the extent to which a society values liberty, for example, or how a society rates the harm caused by a particular type of crime.<sup>342</sup> Our society tends to value liberty very highly, so a long prison sentence is a severe punishment; we also tend to value bodily integrity very highly, so rape is a very serious crime. Other societies might have different values, and thus have different judgements of the seriousness of particular types of crime and the severity of particular types of punishment.

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<sup>340</sup>Von Hirsch (1990), p. 283

<sup>341</sup>Von Hirsch (1990), p. 282-3

<sup>342</sup>Von Hirsch (1990), p. 283

We can see how the analogue of this would work in the case of PPC. If one family values tidiness, say, and another family doesn't value it at all, it could be the case that a child in the first family deserves a punishment for, say, failing to tidy their room after playtime; whereas a child in the second family would not deserve such a punishment — because tidiness is not valued in that family. Presumably, however, there will be plenty of values in common between families in the same society such as nonviolence, consideration for others, honesty, and so on. If punishment is a communicative or expressive act, as most contemporary retributivists tend to maintain,<sup>343</sup> then a punishment in each family would express the parent's values, which they wish to pass along to their offspring. It would also be important to a retributivist about PPC that instances of wrongdoing that are of similar seriousness receive punishments of similar severity, and so on. A punishment serves the purpose of forcefully expressing a parent's disapproval or censure of a child's action, so it stands to reason that more severe punishments express more serious censure, and similar degrees of wrongdoing should receive similar degrees of censure.

### ***Punishment as communication of censure***

Many contemporary retributivists believe that punishment is essentially a *communicative* or *expressive* act. Punishment is a way of forcefully communicating censure of the wrongdoing performed and re-affirming the value of the victim, whom the offender has attempted to degrade through the commission of their crime.

On the face of it, for punishment to be justified as a method of communication, it seems that it would have to do a *better* job at achieving its goals than non-punitive methods of commu-

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<sup>343</sup>In addition to von Hirsch (1990), Duff (2001), and Duff (2011), see also Feinberg (2011) and Markel (2001).



nication (which do not intentionally cause distress). Duff avoids this conclusion (in the case of state punishment) by denying that his version of retributivism implies that the connection between punishment and its goals is "contingent".<sup>344</sup> As James Lynch, a sociologist at American University, tartly puts the point: "Unlike deterrence and rehabilitation, retribution has the advantage that you don't have to prove it works."<sup>345</sup>

As with other versions of retributivism, Duff's version seeks to avoid empirical vulnerability. It wouldn't matter to this version of retributivism if the empirical evidence indicated that a non-punitive response was *less harmful and/or more successful* at communicating censure than a punishment. Of course, we might wonder *why* must censure be conveyed through hard treatment/intentionally inflicting distress, if it's not to be judged by its success in doing so. Duff's answer is that it gets the offender's attention and enables them to focus on their wrongdoing. And he hopes that such hard treatment will result in them feeling remorse.

As we've seen, Von Hirsch has a different answer to the question of why censure must be expressed by punishment. His view is that punishment serves a dual purpose of communicating censure and also deterring crime. So censure is conveyed through punishment, and punishment also deters. Desert determines how much censure should be conveyed and thus determines the severity of the punishment; and censure should be conveyed by hard treatment (rather than just verbally, say) because punishment also deters. However, whatever we think about the purported deterrent effect of criminal punishment, we've already seen that there is no instrumental purpose that can work alongside retributivism in order to justify PPC, and so we shall stick with considering Duff's proposed justifications for punishment being the vehicle of censure.

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<sup>344</sup>Duff (2001), p. 30

<sup>345</sup>Quoted in Wingert (1995).

Another reason Duff emphasizes in support of censure being conveyed by punishment is that punishment plays the role of "burdensome apology". Duff makes the crucial point that when someone is a victim of a crime, they have been harmed *by someone* — they have been *wronged*, unlike if they had been harmed by a natural occurrence such as a tornado. This is why mere compensation is not enough to "right the wrong" they have endured. Returning stolen property is not enough. An apology from the offender is also required (as is the communication of censure by the state). Of course, even if an offender *says* they're sorry, we can't know if they are genuinely sorry. "Words are cheap," as Duff puts it.<sup>346</sup> For an apology to be more than mere words, the offender must undertake something burdensome: "some task that he undertakes for the benefit of the victim or the wider community".<sup>347</sup>

Of course, we know that many offenders who undergo punishment are not truly apologetic; in undergoing punishment they are not expressing a genuinely repentant recognition of the wrong they have done. Criminal punishment is, on this account, a species of required apology: the offender is required to go through the motions of apology, even if he does not mean it.

It might now be objected that such required apologies lack real value, and that to require people to apologize is inconsistent with a due respect for them as responsible moral agents. But we can still see value even in required apologies whose sincerity is unknown or doubtful: they make clear to the offender what he ought to do (apologize sincerely) and to the victim that the community recognizes and takes seriously the wrong he has suffered. As to respect, what punishment requires of the offender is not actual repentance, but that he undergo the ritual of apology and moral reparation. It is still up to him to make, or refuse to make, that apology a genuine one.<sup>348</sup>

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<sup>346</sup>Duff (2011), p. 79

<sup>347</sup>Duff (2011), p. 79

<sup>348</sup>Duff (2011), p. 79

Since we can't be sure that an offender's apology is genuine, we can nevertheless make him undergo the ritual of a required apology, in the form of a punishment. And, even if we *do* think that an offender's apology is genuine, we can still make him go through the same ritual anyway. According to Duff, this is appropriate because of the public nature of crime. Private reconciliation between friends and family members might require genuine, heartfelt apologies. But "in the civic life of a liberal polity that takes privacy seriously, what matters is that the ritual is undertaken."<sup>349</sup>

So, in the case of criminal punishment, Duff believes that punishment isn't *simply a means* by which certain goals are pursued (which would make it an instrumental theory, vulnerable to empirical evidence). Rather, independently of its effectiveness, punishment is an "intrinsically appropriate" response to criminal wrongdoing. It doesn't matter to Duff how effective punishment is at eliciting remorse, because there is not a "contingent connection" between punishment and remorse. Instead, the connection between punishment and its goal is supposed to be "internal" or "intrinsically appropriate". Duff says that even though punishment has goals, such as remorse or repentance,

This is not to say, however, that my account is a partly consequentialist one — that it seeks to marry a retributivist concern for desert with a consequentialist concern for future benefits: for the relation between punishment and its aim is not, as it is for consequentialists, contingent and instrumental... but internal. The very aim of persuading responsible agents to repent the wrongs they have done makes punishment the appropriate method of pursuing it.<sup>350</sup>

We can justify punishment... as a communicative enterprise focused on the past crime, as that for which the censure that punishment communicates is deserved; but also looking to a future aim to which it is related, not merely contingently as an instrumental technique, but internally as an intrinsically appropriate means... But these

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<sup>349</sup>Duff (2011), p. 80

<sup>350</sup>Duff (2001), p. 30

two perspectives will not be separate and potentially conflicting, as they are on familiar kinds of 'mixed' theory..., since the claim will be that the punishment that is deserved for the past crime is itself the intrinsically appropriate way of pursuing the forward-looking goals that punishment should serve.<sup>351</sup>

Just as in the private sphere an apology may not do as well at making a victim feel better as, say, an expensive gift would, an apology is nevertheless an "intrinsically appropriate" response to wrongdoing. (The retributivist needn't object to an expensive gift in addition to the apology; but the apology itself is morally necessary, while the gift is not.) In the private sphere, we value (genuine) apologies, and consider them right and appropriate, even if they turn out to be less effective at certain goals we might have — such as repairing relationships, making a victim feel better, and so on. There's no reason that a retributivist can't allow non-punitive responses in addition to a punitive response. So a criminal offender can receive a retributive punishment and *also* anger management classes, or a retributive punishment and *also* non-punitive community service (or whatever else non-punitive option might work best in the particular situation). So a retributivist can maintain that while it's perfectly fine for a parent to engage in non-punitive responses when their children do wrong, this should be in addition to a punishment.

Since Duff claims that the relationship between punishment and its goals is not "contingent", it seems that Duff's version of retributivism is best understood as maintaining that the connection between punishment and its goals not a causal one. (Because if A causes B, there is a contingent relationship between A and B — and something else might do a better job of causing B than A does.) Instead, perhaps the relationship is best understood as one of *instantiation*. In which case, censure is not something that is supposed to be *caused* by retributive punishment;

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<sup>351</sup>Duff (2001), p. 89

punishment *is* a form of censure. The offender's repentance or apology is not something that is supposed to be *caused* by retributive punishment; punishment *is* a form of repentance or apology — albeit an enforced, ritualized form of repentance or apology. As far as the retributivist is concerned, the state can use other methods to reach other goals, or to contribute further to the same goals (censure, repentance, apology, etc), but punishment is appropriate, regardless of its effectiveness and no matter what other methods are used in addition to it. It's also important, as Duff puts it, that the ritualized apology be "burdensome" — for the retributivist it's appropriate that an offender undergo some kind of unpleasant experience; it's appropriate for an offender to be made to "feel bad" to some degree when they have done something wrong. If an offender is not bothered at all by the state imposed consequences of what they have done (they're rich enough that a fine doesn't impact them, or they positively *enjoy* community service, etc), then by the retributivist's standards, the state would have failed in its duty to impose a burdensome apology. It's necessary for a retributivist that the consequences of criminal wrongdoing cause the offender to "feel bad", i.e. causes them distress, and that's why a punishment is morally required. In other words, the retributivist maintains that intentionally inflicting distress, pain, suffering etc is justified in order to *instantiate* censure, repentance, apology etc — where instantiation contrasts with a causal relationship.

We can see how this could apply in the case of PPC. A child does something wrong, and a parent believes it's appropriate for the child to experience distress as a result — a punishment that expresses the parent's censure of the child's action, and also serves the function of being a ritualized form of repentance or burdensome apology (preferably in the form of a task that benefits the victim of the wrongdoing, if there is one). A parent might reasonably believe that if a child isn't made to feel bad as a result of their wrongdoing — if the child is completely noncha-

lant and content afterwards — then they have failed to fulfil a moral duty that they have as parents. To allow their child to fail to have appropriate moral emotions is to fail in a parenting duty.

To flesh this out a little, imagine that Matthew has been bullied by his next door neighbour, Steven, over a significant period of time. (And Steven is old enough to "know better"; he is old enough to count as a sufficiently rational moral agent for present purposes.) It wouldn't be enough for Steven's parents to take Matthew out for ice cream and a movie and buy him a present in order to "compensate" him for the bullying he's experienced, even if the bullying stopped for some reason (perhaps Steven's family moves house and leaves the neighbourhood). So even if Matthew is protected from Steven in future, we tend to feel that it's not enough. Matthew is the victim of a *wrong*, unlike the victim of an accident in which nobody is to blame — and because of that, Steven ought to be made to *feel bad*, to be made to *experience some distress* as a result of his wrongdoing. There's something *wrong* if Steven just gets left to his own devices, happily continuing on, quite content to ignore his past bullying. Preventing further harm to Matthew, and compensating him for his past harm, is not sufficient — because it does not address the fact that the harm to Matthew was caused by Steven's wrongdoing. Steven is a *moral agent*, responsible (at least to a certain degree) for his actions; and his wrongdoing is not akin to an animal biting someone or a tree branch falling on someone (or even to a baby pulling its mother's hair). The retributivist maintains that Steven's parents, at the very least, ought to punish Steven. (Of course, this doesn't preclude providing him help that he may also need.) Failing to punish Steven is failing to recognize that he is a moral agent, instead of an object to be manipulated or an animal to be trained.

There is something important here that I believe retributivism gets right. When an agent does something wrong, many people feel that the agent *ought* to feel bad about what they've

done. It's important and "appropriate" for the wrongdoer to feel bad and appreciate the harm that they have caused by their wrongful action. Indeed, they might go so far as to believe that it's integral to being a moral agent to feel bad when you recognize that you've done something morally wrong.<sup>352</sup> It's not that the retributivist wants to get revenge, or to inflict suffering for its own sake. They want the wrongdoer to really *appreciate* the wrongness of what they've done, and that's the purpose of any distress they are made to experience. Even though a wrongdoer's guilt and apologies do not "fix" anything, in a narrow sense, they are *appropriate* responses to wrongdoing — and, if it is genuine, feelings of guilt (in contrast to feelings of shame)<sup>353</sup> would likely motivate the wrongdoer to take steps to actually fix things, to make amends, and a genuine apology would make a victim of wrongdoing more likely to be willing to accept amends and overtures to restore the relationship.

I agree with the retributivist that it is appropriate for an agent to *feel bad* when they have done something wrong.<sup>354</sup> It's appropriate for a moral agent to feel guilt or remorse when they have done something wrong and to feel sympathy towards the victim of their action. Parents ought to try to help their children to understand which of their actions are morally wrong and why, and to feel sympathy when other people suffer — even though feeling guilt and sympathy is distressing to a certain extent.

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<sup>352</sup>Some of the defining characteristics of a psychopath are that they don't feel guilt, remorse, or empathy. See, for example, Hare et al (2013), p. 234. Also, Aharoni et al (2011) found that, in their sample of 222 prison inmates, the moral judgements of psychopaths differ from non-psychopaths. Psychopathic prison inmates are less inclined to support "harm prevention" and "fairness" as moral beliefs than non-psychopathic prison inmates.

<sup>353</sup>See, for example, Merkin (2017).

<sup>354</sup>See, for example, Clarke (2016).

Where I think the retributivist makes a mistake is in thinking that the correct thing to do, therefore, is intentionally to *make* the wrongdoer feel bad (intentionally inflict distress on them), in the form of a punishment. We want wrongdoers to feel bad, but that "feeling bad" should not be inflicted on them by a punishment. The appropriate kind of "feeling bad" is feeling guilty — that is, empathic concern for one's victim, and recognizing that it was one's own wrongdoing that caused the harm to that victim. We will explore this further, but first I'd like to clarify briefly the distinction between guilt and shame.

### ***Guilt and shame***

I will explain my understanding of the contrast between guilt and shame sufficiently for present purposes. Guilt is based on recognition of one's own wrongdoing, especially if one caused harm to someone else.<sup>355</sup> Guilt is focused on an agent's *action* and the harm that it caused to *another* (if it did). Shame, on the other hand, is focused on the *self*. One feels disappointed in oneself (perhaps because of one's wrongful behaviour, but not necessarily); one feels lesser, diminished as a person. A similar understanding of the distinction has been expressed by, for example, Rawls and Morris:

In the [case of guilt] we focus on the infringement of the just claims of others and the injury we have done to them, and on their probable resentment or indignation should they discover our deed. Whereas [in the case of shame] we are struck by the loss to our self-esteem and our inability to carry out our aims: we sense the diminishment of self from our anxiety about the lesser respect that others may have for us and from our disappointment with ourselves for failing to live up to our ideals.<sup>356</sup>

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<sup>355</sup>There are nontypical instances of guilt such as "survivor guilt" or guilt when one has not done anything wrong (and one has not even been neglectful). I will put these kinds of guilt aside.

<sup>356</sup>Rawls (1971), p. 446. This conception of the difference between shame and guilt is of course not without controversy. (See, for example, Morris (1987) and Deigh (1983).) But I think it is



[F]eeling shame because of what we have done, we naturally see ourselves as shameful persons and the steps that are appropriate to relieve shame are becoming a person that is not shameful. Shame leads to creativity; guilt to restoration... With shame there is an inevitable derogation in one's status as a person; with guilt one's status is intact but one's relationship to others is affected.<sup>357</sup>

What is valued in a [guilt morality] is... a relationship with others... With guilt we have a conceptual scheme of obligations and entitlements [leading to] the idea of owing something to others... With guilt one's status is intact but one's relationship to others is affected. [Guilt thus leads to attempts at] restoration.<sup>358</sup>

Of course, some theorists see a connection between feelings of guilt and a justification of punishment:

The shameful is not worthy of association; the guilty is still worthy but a price must be paid. Abandonment by others is the spontaneous result that follows upon knowledge of a contemptible nature; punishment is not a spontaneous response but a price paid for restoration. A shame morality leads to casting outside the community, exile; a guilt morality, to suffering in order to be accepted back within. We only trouble to punish those we still care about and respect.<sup>359</sup>

There is surely *something* to the idea that one who has committed a serious wrong should not be able to live a life of "freedom and contentment"... He should not be able to carry on his life as if he had done no wrong. He should, we may think, suffer. But what should he suffer? One obvious answer is that he should suffer guilt: for guilt or remorse is a proper response to one's wrongdoing and is (when sincere) painful. Guilt, however, is a kind of suffering that is essentially self-induced, flowing from one's own recognition that one did wrong. How can it ground a justification for punishment — the infliction of suffering by others? Another obvious answer is that he de-

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along the right lines and close enough for our purposes.

<sup>357</sup>Morris (1976), p. 62

<sup>358</sup>Morris (1976), p. 62

<sup>359</sup>Morris (1976), p. 62

serves to suffer the angry or indignant condemnation of others But why should that involve punishing him?<sup>360</sup>

But the appropriateness of feelings of guilt does not, by itself, serve to justify punishment. An argument would still be needed to move from the appropriateness of feelings of guilt to the appropriateness of punishment:

A feeling of guilt is distinct from any action taken by any person — the guilty party or anyone else — to punish or inflict suffering on the blameworthy individual. Hence the desert of a feeling of guilt is not the desert of being treated in any such way.

If it is in some way good that someone who is blameworthy feel guilty, then an act, such as reproach, that brings it about that such a person feels guilty might be to some degree instrumentally good. Still, it would be a further claim to say that the blameworthy person deserves this treatment. Moreover, even if reproach is deserved, that falls short of the desert of punishment, for reproach need not aim at inflicting suffering.<sup>361</sup>

And why is the distinction between shame and guilt important for present purposes? I don't deny that, sometimes, shame is an appropriate response to one's own wrongdoing. I think it's appropriate for murderers and rapists to feel shame for what they did. However, I don't think it's appropriate or helpful for children to feel shame for normal childhood wrongdoings. So punishments that succeed in causing children to feel shame are not justified by that "success" — because shame is not an appropriate or helpful emotion for children to feel in response to normal childhood wrongdoings. There is empirical evidence to support the view that shame is not generally a helpful emotion if we're hoping for empathy, apologies, and making amends:

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<sup>360</sup>Duff (2001), p. 25

<sup>361</sup>Clarke (2016)

Proneness to shame is generally inversely correlated with empathy, whereas proneness to "shame-free" guilt is positively correlated with empathic responsiveness... Guilt serves a range of relationship-enhancing functions, perhaps most notably fostering reparative behavior in response to interpersonal harm... There are numerous indications that shame may promote less helpful behavior in many instances (e.g. withdrawal, anger, externalization of blame), at least among adults...<sup>362</sup>

Why might shame, but not guilt, interfere with other-oriented empathy? Shame's inherently egocentric focus on the 'bad self' (as opposed to the bad behavior) derails the empathic process. Individuals in the throes of shame turn tightly inward, and are thus less able to focus cognitive and emotional resources on the harmed other... In contrast, people experiencing guilt are specifically focused on the bad behavior, which in turn highlights the negative consequences experienced by others, thereby fostering an empathic response and motivating people to 'right the wrong'.<sup>363</sup>

Unlike shame, I think that children feeling guilty is an appropriate response to their own wrongdoing. (At least for their more serious wrongdoings.) And parents may actually *interfere* with feelings of guilt when they punish. Instead of feeling empathic concern for the person she hurt, a child who is punished feels sorry for herself. While both feelings of guilt and punishment are distressing to a child, punishment intentionally inflicts distress that is typically of a *self-oriented* kind, whereas the distress that it is appropriate for a wrongdoer to experience is *other-oriented*:

Punishments — non-physical as well as physical — teach children to focus on their *own* pains and pleasures in deciding how to act. If parents and teachers were to substitute non-physical punishments for physical ones, they might avoid teaching children to hit, punch, and kick; yet, they would nevertheless perpetuate the idea that giving pain is a legitimate way to exercise power. If the substitute for physical punishment

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<sup>362</sup>Tangney et al (1996), p. 1267

<sup>363</sup>Tangney et al (2007). Shame as also been associated with various psychological problems such as anxiety disorders, depression, eating disorders, alcohol and drug abuse, and so on. Guilt, on the other hand, appears to be linked with psychological problems "when this emotion is experienced in a ruminative way or merged with feelings of shame". Meesters et al (2017).

were to be non-physical punishments, the consequences could be no less *undermining of compassion* and social interests.<sup>364</sup>

It's appropriate for a wrongdoer to feel sympathy for their victim, and guilt for their wrongdoing which caused the harm to another. In such a circumstance, the distress a child feels is *other-oriented*. Punishment, however, naturally makes those who experience it focus on their *own* distress or suffering. You cannot punish someone into feeling sympathy and guilt — although, importantly, *censure* might help them in that direction.

### ***Why censure and guilt are appropriate reactions to wrongdoing***

Guilt is a normal human emotion that typically (but not necessarily) arises when (1) an agent recognizes the harm they have caused someone else and (2) the agent realizes that their own wrongful action caused that harm and (3) the wrongfulness of the action was at least partly due to the agent failing to properly value the victim.<sup>365</sup> (In the moment, the agent did not treat the victim as someone with equal worth, with rights and needs as important as the agent's own.) Someone who *understands* that they've caused harm to another through their own wrongful action but does not *care*, does not *feel* guilty, does not *feel* bad, is quite possibly psychopathic. We feel bad about harm to other people because we can empathize with them — and empathic feelings can occur whether we are responsible for the harm or not. But when we ourselves are responsible for the harm due to wrongdoing, we feel the the distinct emotion of guilt. That person is harmed because

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<sup>364</sup>McCord (1991), p. 175-6. Italics added.

<sup>365</sup>In cases in which someone is not harmed, an agent can feel bad about the *risk* of harm their wrongful action caused. Someone can feel intense — and wholly appropriate — guilt for reckless driving even though, luckily, they did not harm anyone. They failed to properly value the people they could have harmed by their wrongful actions.

of something I did, something that I shouldn't have done, something I could have chosen not to do. I feel bad because at the moment when I performed my action I was not thinking of the possible effects on others or I did not feel their importance or I was overly influenced by my own self-interest. That is why guilt is an appropriate emotion to experience after wrongdoing — because it indicates empathic concern for one's victim and the recognition that one's own wrongful action is responsible for the harm to that victim (by, in some way, discounting the rights or needs of the victim in comparison to one's own desires).

These reasons are indeed reflected in the reasons that make censure appropriate. Why should the state censure someone who has committed a crime? Or an employer censure an employee? Or a parent censure a child? (1) So that the agent recognizes the harm they have caused someone else and (2) so that the agent realizes that it's their wrongful action that caused the harm and (3) to reaffirm the value of the victim as a person<sup>366</sup> with rights, which the agent wrongly disregarded in some way. This reaffirmation is directed at the agent, the victim and, to the extent that is appropriate, to a wider audience. (So in the case of a serious crime, the wider audience would be society generally; in the case of a spat between siblings it might be all members of the family.) So, the same reasons that make guilt appropriate do indeed make censure appropriate.<sup>367</sup> This is something that contemporary retributivism captures, in contrast to instrumentalist theo-

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<sup>366</sup>I am focusing on wrongdoing and harm between persons, but of course other sentient animals can also be victims of wrongdoing.

<sup>367</sup>Note that when I say that guilt is an appropriate reaction to wrongdoing, I'm talking about a child's feelings based on their recognition of harm to someone else due to their own wrongdoing. The emotion is tied to a specific action. This contrasts with *guilt trips*, which are when a parent habitually tries to make a child feel guilty, not necessarily in response to wrongdoing. For example, a parent might try to make a child feel guilty for how hard the parent works to earn money so the child can play hockey. Guilt trips are not helpful. See Barber (1996).

ries. However, those reasons do not support punishment either in addition to censure or as a method of censure.

While I agree with the retributivist that censure is an important and appropriate social function, I see no reason why censure has to be punitive. As we saw earlier, while championing the communicative function of punishment, von Hirsch nevertheless recognizes that censure needn't be punitive and acknowledges that if punishment lacked a sufficient deterrent effect (as a result of social improvements, say) then there would be no justification for censure being punitive.<sup>368</sup>

Duff, on the other hand, thinks that censure *must* be punitive in order to "claim the actor's attention".<sup>369</sup> While it's of course true that "merely verbal censure"<sup>370</sup> can indeed be ignored, and a punishment is hard to ignore, there is no reason to think that a punishment makes the agent attend to the *message* of censure, rather than to the distress or suffering inherent in the punishment.

As I shall illustrate, punishment does not help an agent recognize the harm they have caused, does not help them realize that their wrongful action caused that harm, does not help them recognize how they (temporarily) disregarded or devalued someone else's rights or needs. Given the "meaning" that criminal punishment currently has in our society, it does indeed communicate censure of the offender's crime both to the offender and to other members of society.<sup>371</sup> But words and other actions also can carry that meaning, and meanings can also change over

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<sup>368</sup>Von Hirsch (1990), p. 278

<sup>369</sup>Duff (1990), p. 275

<sup>370</sup>Duff (2011), p. 78

<sup>371</sup> But I don't think punishment does a particularly good job of communicating the value of the victim. Victims are often largely left out of criminal justice proceedings.

time. And while I see good reasons for the state to *censure* criminal acts, and to encourage offenders to feel *guilt* regarding their criminal actions, these reasons do not imply that we should use punishment as the vehicle of censure, rather than a non-punitive alternative. Similarly for children. While I see good reasons for parents to censure their children's wrongdoings, and to encourage (or enable, or allow) them to feel guilt regarding their actions,<sup>372</sup> these reasons do not imply that parents should use punishment as the vehicle of censure, rather than a non-punitive alternative.

Let's think about criminal offenders first. Imagine a teenager who sprays graffiti on a storefront just for a lark in the middle of the night. Perhaps they are dared by a friend and, in the excitement of the moment, they spray the most shocking thing that comes to mind: a swastika, say. For them, it was just a moment of thoughtless tomfoolery. But if they witnessed (or were otherwise made vividly aware of) the store owner's distress at discovering the offensive graffiti and the effort and expense (perhaps causing its own additional hardship) necessary to remove it, the teenager might well come to feel sorry for what they had done; they might feel guilty because their wrongful action had caused such harm to someone else. Of course, on some level, they already knew that their action was wrong — it was only (or largely) because it was wrong that it was exciting to do it. But because they did not pause to empathize with the store owner, they did not appreciate the harm of what they were doing. In such a circumstance, state censure could be useful. It could have the power of inducing guilt, and a desire to apologize and make amends to the victim.

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<sup>372</sup>Of course, parents also need to be watchful that a child doesn't feel too much guilt for their wrongdoing.

I suspect that many crimes fall into this category — essentially a lack of thoughtfulness and imagination in the moment. Opportunistic criminals, in particular, are thinking of the benefit to themselves in the moment, without fully appreciating the harm they are causing someone else. If an offender could come to feel guilty — to truly appreciate the harm they've caused — then they should be given the opportunity to make amends. To scrub off the graffiti, to give back the stolen bicycle, to return the embezzled funds, and so on. They should have the opportunity to apologize and to admit to their victim(s) that they have done something wrong and that they are sorry for it. They should have the opportunity to demonstrate that they do in fact respect their victim's rights and don't consider themselves as more important than their victim. Such offenders are perhaps more similar to ourselves than we usually care to admit. They are not bad people; they are people who made a mistake, perhaps a very bad one. Censure — and the opportunity to make amends, to apologize etc — in these cases can help such offenders, bring them back into the fold, as it were. In such cases, I see no reason to intentionally cause any distress, in addition to that caused by recognizing one's own wrongdoing, apologizing for it, and making amends for it. I see no reason to punish. (But my purpose here is not to provide a fully worked out argument against criminal punishment.)

Of course, however, there are more serious criminals who cannot be brought back into the fold so easily (or maybe they were never in the fold to begin with). Gang members, for example, engage in more violent and serious offending than other young delinquents. And it has been found that



gang membership systematically reduces anticipated guilt among adolescents, which suggests that the gang may provide situational contexts and/or normative standards that diminish or neutralize anticipated guilt.<sup>373</sup>

A gang member who kneecapped a fellow gang member who had been discovered to be a snitch is unlikely to come to feel guilty about what they've done just because the state verbally censures their action. Indeed, some gangs (and also non-gang members engaged in street crime) operate with their own moral code of loyalty, rules of territory and hierarchy, and harsh punishment.<sup>374</sup> If the state censures the assault, this is quite likely to be seen by the offender as a simple disagreement by "mainstream" society which doesn't understand or appreciate gang life. And I suspect there's a good chance that punishment by the state will be seen as either unjust (because the kneecapping was itself a justified punishment for a breach of loyalty) or else just (because it's another use of power in order to punish, just as the gangs use on the streets). Punishment itself is unlikely to change such a criminal's moral beliefs, even if it does sometimes change behaviour, due to the criminal's recognition of their own self-interest.<sup>375</sup> But retributivists care about treating the offender as a moral agent, not just as a creature to be manipulated by self-interest; they care about the offender coming to believe that their action was morally wrong — not just that the state will cause the offender to suffer if they perform such actions.

Education or treatment helps. Legal employment opportunities also help. Researchers who have studied the reasons that youths leave gangs and move away from crime found that the

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<sup>373</sup>Matsuda et al (2013), p. 445

<sup>374</sup>See, for example, Matsuda (2013).

<sup>375</sup>Although recidivism rates are typically high for violent criminals. It's clearly difficult for many offenders to stay on the straight and narrow, even if they recognize it's in their self-interest to do so. (And, of course, sometimes it's not in their self-interest to refrain from crime.)

most common reasons were: tiring of the violent lifestyle and the 'trouble' resulting from it, employment opportunities, and family commitments (such as to a girlfriend, boyfriend, spouse, or children).<sup>376</sup>

Rarely, however, are law enforcement motives or criminal justice sanctions reported as reasons for desisting from gangs, suggesting a mismatch between traditional gang control strategies and the reality of gang membership.<sup>377</sup>

Part of the problem might be that those who are more fully embedded in a gang culture more fully accept a different ethic than "mainstream" society. There is evidence that instead of accepting a "guilt-ethic", based on concern for others and the idea that certain behaviours should be avoided because of their harmful effects on others, they tend to accept a "shame-ethic" which is concerned with the idea of "respect" — that one must be perceived positively by one's peers and that toughness and violence are necessary in order to maintain this respect. If a gang member loses the respect of their peers, they feel shame and a violent response is necessary in order to "save face" and regain respect.<sup>378</sup>

It appears that we all have a tendency to make our moral beliefs fit our actions, so that we don't feel bad about what we've done (stealing stationary from the office, inflating claimed expenses, and so on). Or we interpret ambiguous moral rules or norms in our favour. Or we make excuses for ourselves in order to justify our own behaviour while condemning the same behav-

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<sup>376</sup>See Pyrooz and Decker (2011).

<sup>377</sup>O'Brien et al (2013), p. 422

<sup>378</sup>See, for example, Matsuda et al (2013), pp. 459-460.

our in others.<sup>379</sup> And those involved in serious crime have more moral rationalization to do than most and it's not difficult to see how a "street code" that differs from "mainstream" morality in its condoning of violence would assist in that process.

On the other hand, it *is* difficult to see how the state intentionally inflicting distress (suffering, pain, deprivation) on offenders is in any way likely to communicate to such offenders that a mainstream "guilt-ethic" is preferable to the code of the street. Indeed, punishment seems *more* compatible with the idea that "might makes right".

If intentionally inflicting distress on offenders doesn't help them to see the error of their ways, what does? Offenders who succeed in spontaneously leaving gangs and coming to avoid crime tend to be those who were lower ranking in the gang and less inclined towards violence in the first place.<sup>380</sup> However, there is evidence that even higher risk, 'hardened' offenders respond well to *treatment* in prison. Di Placido et al (2006) found that educational programs based on a cognitive-behavioural approach helped reduce recidivism, with the greatest difference between incarcerated gang members who received the treatment and those who didn't. (The programs also included other interventions where appropriate such as education upgrading, life skills training, medication for mental illness, anger management, and so on.):

Treatment of gang members reduced their risk to recidivate compared to untreated gang members. The reduction in violent recidivism using a 2-year follow-up was 20% between the [treated gang member] and [untreated gang member] groups, and 6% between the [treated non-gang member] and the [untreated non-gang member] groups. For nonviolent recidivism, the corresponding reductions were 11 and 17%.<sup>381</sup>

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<sup>379</sup>See, for example, the fascinating Barkan et al (2012), Shalvi et al (2015), and Gino (2015).

<sup>380</sup>Di Placido et al (2006), p. 94

<sup>381</sup>Di Placido et al (2006), p. 108

I hope that I've shown, in the criminal case, the importance and usefulness of state *censure*, as recognized by many contemporary retributivists. I also hope to have shown that non-punitive censure together with non-punitive treatment/education is at least a reasonable response to criminal wrongdoing if, like the retributivist, we care about offenders as moral agents, and not only about manipulating their behaviour. (Of course, much more argument and evidence would be required to conclude that criminal punishment is not justified, and I am not attempting that here.)

So now let's turn to censure and guilt in the case of PPC. Suppose that Jane — who is old enough to know better — takes little Adam's toy, and Adam starts to cry. Jane's parent could punish her because of her wrongdoing, and the retributivist may approve of such an action, assuming that the punishment was of the appropriate severity. (The parent might also verbally emphasize to Jane what she has done wrong and the harm she has caused Adam. The retributivist has no objection to that, in addition to punishment.) Jane now feels bad, as an indirect result of her wrongdoing — via her parent intentionally causing her distress in response to her wrongdoing. However, in contrast to the retributivist, I maintain that it's not the right kind of "feeling bad" and it doesn't have the right cause. Jane's distress is self-oriented; she felt pain because she was spanked, or she feels upset or scared because she is forced to stay in her room by herself, or she is miserable because she knows she won't get to watch her favourite TV show later. In whatever manner she is punished, she feels *sorry for herself*. (She may well completely forget Adam, since she's wrapped up in her own distress.) As well as her distress being self-oriented, it was intentionally caused by a parent — it was caused neither by her recognition that she did something wrong (guilt), nor by her sympathy for Adam — and we consider these to be important sources of distress for moral agents. (She might even make herself feel better by attributing *blame* to her

parent who caused her to feel bad, or even to Adam for crying and getting her into trouble — instead of blaming herself for what she did.)

The retributivist is correct to point out that we do tend to think that's appropriate for Jane to feel bad because of what she did. But it needs to be the right kind of "feeling bad", and to have the right cause (and to be of the right degree; we don't want Jane to be frantically distraught over a minor misdemeanour). Suppose now that, instead of punishing Jane, her parent gently turns her to face Adam and draws her attention to Adam's upset. Assuming Jane is a typically developing child, if she really is old enough "to know better", then she is old enough to feel empathy for Adam so long as she is not overwhelmed by personal distress. She is old enough to understand that her action caused Adam's upset. Jane's parent might intend her to feel (slightly) bad about what she did — and thus be motivated to fix the situation. Jane's parent might help her by suggesting ways to improve things, "Taking the toy made Adam feel sad. You should return the toy to Adam, and maybe ask him if you could play with it when he's finished," or "Ask Adam if he'd like the toy back, or if you and he could play with it together," or "Do you feel you could apologize to Adam? Give the toy back to him and maybe you could ask him if he'd like a hug," and so on. (The exact response, of course, depends on many factors, including the details of the event and the ages and relationship of the children involved.) But the parent in this scenario is not punishing Jane, even if they anticipate or even intend Jane to experience a degree of distress in feeling guilt and sympathy for Adam. In this scenario any distress that Jane experiences is not self-oriented — she does not feel bad because of her *own* pain, isolation, or deprivation. Her distress is *other-oriented* — she feels bad because of Adam's upset, and because her action caused Adam's upset. If Jane does not feel empathy for Adam, if she does not recognize that she has done something wrong, punishing her is *not* going to help her do so.

Punishment doesn't help Jane focus on what she's done wrong; it doesn't help her to hear her parent's message. Recall the evidence from Chapter 4, on the moral education theory, that punishment has not been shown to help with children's moral internalization. Indeed, corporal punishment in particular has actually been shown to hinder moral internalization,<sup>382</sup> and only reasoning with children has been shown to be helpful in this regard.<sup>383</sup> Punishment will likely make Jane focus on her own suffering and self-interest, contrary to Duff's hopes:

One function of burdensome punishment... is to make it harder for the offender to ignore the message that punishment communicates. It is a way of helping to keep his attention focused on his wrongdoing and its implications, with a view to inducing and strengthening a properly repentant understanding of what he has done.<sup>384</sup>

In addition to punishment getting the offender's attention, another reason that Duff thinks that censure should be in the form of punishment is that punishment serves the role of a ritualistic, burdensome apology.

However, if Jane gives a genuine apology to Adam, there is no reason to make her undergo a "ritualized apology" in the form of a punishment (even if we concede that there might be in the criminal case). A parent is in much better position to gauge whether or not a child's apology is genuine than the judicial system is with a criminal offender. And a required, ritualized apology may preclude a genuine one, which would be a loss, especially if there's a valuable relationship between Jane and Adam. And if a child's apology is not genuine, a parent is in a position to try to understand *why* the child is not sorry for what they have done and address those issues, with

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<sup>382</sup>Straus and Paschall (2009)

<sup>383</sup>Larzelere and Kuhn (2005)

<sup>384</sup>Duff (2011) p. 78

hope that the child will come to feel apologetic, if indeed they have done something wrong and properly ought to feel apologetic. A private, genuine apology may well contribute to making amends. (In the criminal case, we might be able to ensure that an offender takes steps to make amends. The fraudulent banker can be required to return the fortune they embezzled; the vandal can be required to repair the damage they caused. But we cannot be sure that their apology is genuine. And Duff thinks that, given the public nature of crime, and the liberal ideal of a minimally intrusive state, it's not even the state's place to enquire as to the genuineness of an offender's apology. Clearly, that doesn't apply in the case of PPC.)

It can feel very uncomfortable to apologize — whether it's a genuine or a forced apology. The discomfort of a genuine apology is appropriate — acknowledging that you acted wrongly, that you are responsible for some harm to the victim of your action, and so on. The discomfort of a forced apology, which isn't genuine, is resentment and blame of whoever forced you to make it, perhaps even blame towards the victim, a feeling of being victimized oneself (whether justly or not), and so on. These are *not* appropriate responses to one's own wrongdoing. If a child has the appropriate, desired response of guilt, sympathy, etc, that is likely *despite* a punishment, not *because* of it.

In the case I described earlier, we agree with the retributivist that the bully, Steven, ought to feel bad *because* he recognizes the wrongness of what he's done and *because* he's come to sympathize with his victim, Matthew. Although punishing Steven will indeed make him feel bad (it intentionally inflicts distress on him) it won't achieve the specific type of "bad feelings" that are actually appropriate. Talking with Steven might help. Perhaps Steven didn't recognize his actions as actually being wrong and hurtful to Matthew. Perhaps Steven is taking out his own frustration and feelings of powerlessness on Matthew. Perhaps Steven has problems controlling his

anger. Perhaps we can help Steven to find better ways to deal with such emotions. Helping Steven to recognize and control his own emotions will better enable him to appreciate Matthew's feelings — and hopefully approach feelings of sympathy for Matthew and remorse for what he caused Matthew to suffer. Even if we can't help Steven to come to recognize his wrongdoing and to sympathize with Matthew, punishing him isn't going to help him. And, in fact, we have reason to think that it will be detrimental. (If Steven cannot see that his behaviour is wrong, and he cannot sympathize with Matthew, he quite likely needs some serious intervention, not punishment.)

And whether we can help Steven or not, we can at least verbally censure Steven's actions, and act compassionately towards Matthew. Intentionally causing distress to Steven is not necessary in order to censure his actions; refraining from intentionally causing distress to Steven does not carry the "meaning" that his actions are not censured. *Ignoring* Steven's actions would carry that meaning, but our options are not only *ignore* or *punish*.

Similarly, in a criminal case, even if an offender cannot be helped in any way, society can at least censure an offender's action, act compassionately towards victims, and in some cases, compel the offender to take steps to make amends. (Eg They can be made to repair the damage the caused, not as a punishment, but because this is *owed* to the victim.) Making amends is not a punishment because, although it might cause distress, that distress is not *intended* (or it shouldn't be). The offender's distress does not form part of the reason for insisting that the offender make amends.

Duff makes this mistake and thinks that reparations are punishment because they are burdensome or distressing etc. But they are not punishments because the distress is not intended (even if it's foreseen). The *point* of reparations is not to cause the offender distress, it's to give the victim what they are owed. Reparations should happen whether the offender minds or not. They



don't fail if the offender is happy to return the property. Suppose an offender steals someone's valuable pedigree dog. They should be compelled to return the dog in order to make amends, to take steps towards reparation. Even if the offender is *delighted* to return the dog (maybe it turned out to be a bigger pain in the butt to take care of than they anticipated) that doesn't mean that reparation has failed. But if a punishment is something that the offender enjoys, then a punishment has failed.

### ***Making amends***

Although officially Hampton is a moral education theorist, she hints at another value she has — that of the importance of actually *repairing* the damage done. She speaks approvingly of punishments that "force the offender to compensate the victim, and thus help to heal more effectively the "moral wound" which the offense has caused."<sup>385</sup> If Hampton is correct that it is important for the offender to take steps to compensate the victim, then we need a reason to prefer punishment over non-punitive methods of helping an offender appreciate the harm they've caused and having them make amends. Is sending an offender to prison better than having an offender *literally* make amends (e.g. by apologizing, returning stolen property, helping to install a burglar alarm, paying the victim's medical bills, painting over the graffiti, performing community service, or whatever)? Furthermore, like Sayre-McCord (2001), we might even be inclined to hold that it's an injustice "if a person who commits a crime is denied an opportunity to make amends".<sup>386</sup> And it may be an injustice to both offender and victim. By incapacitating offenders in prison, we

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<sup>385</sup>Hampton (1984), p. 228

<sup>386</sup>Sayre-McCord (2001), p. 512

might enforce a metaphorical "making amends", but in many cases, we simultaneously make it impossible for them to make literal amends.

This point perhaps has even more force with respect to children. They are learning how to navigate both the physical world and the social world, and they will inevitably make mistakes. It seems plausible that children should be encouraged and enabled to make amends to anyone negatively affected by their actions. So, we would need a reason to punish a child, rather than (or in addition to) having them make amends in some way. Why is punishing a child preferable to having them make amends (eg by apologizing, returning the toy to their playmate, cleaning up the mess they made, paying to replace the broken vase, being especially nice to their sibling, or whatever)? Intuitively, it also seems that making amends will help a child to understand the impact her actions can have on other people and, importantly, help her understand that she can (for most of the kinds of mistake a child makes) make things better; she is not helpless. She can recover from her mistakes.

It's important to note that making amends is not necessarily *easier* (or less distressing) than a punishment. A child might even *prefer* to have a time-out or a spanking for purposefully breaking their sibling's toy rather than, say, having a parent insist that they use their allowance pay for the toy to be repaired or replaced. The time-out or spanking doesn't actually fix or improve anything, so if a parent's goal is for the child to make amends, then it's not justified to inflict a time-out or a spanking that doesn't contribute to that goal. Only if there is reason to think that the distress will actually succeed in its goal of "making amends" or "repairing the damage done", could it be justified to inflict it as a means to that goal. A child using their allowance to replace or repair the toy might (or it might not) cause distress, but even if it does cause distress it

may well be justified because it really does serve to "make amends" or to "repair the damage done".

### ***Empathic concern and personal distress***

At this point, I would like to refer back to the psychologist's notion of "personal distress" that came up in Chapter 3, on behavioural training/deterrence theories of punishment.

In psychological research, "personal distress" is a technical term that contrasts with "empathic concern". However, both "empathic concern" and "personal distress" count as distress in the broad sense that I have been using the term. Feeling guilt and sympathy are also both ways of experiencing distress. Personal distress is more specific than distress — it is an *intense* form of distress (including feelings of shame) that results from witnessing distress in others.

Unlike sympathy (i.e. empathy for someone experiencing negative emotions) and guilt, personal distress does not motivate wrongdoers to make amends. Indeed, excessive personal distress tends to make us *avoid* the source of our distress, which might make us avoid our victim, rather than be motivated to help them. There is evidence that for an agent to be motivated to make amends, they need to feel *empathic concern* for the person who was negatively affected by their action.<sup>387</sup>

As Lamm et al (2007) says, "the observation of pain in others may... instigate an altruistic motivation to help the other, which is quite different from the egoistic motivation to reduce personal distress."<sup>388</sup> And personal distress — or, at least, excessive personal distress — is detrimental to such altruistic behaviour. Excessive personal distress can lead an agent to *withdraw* from

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<sup>387</sup>"Empathic concern" is "an important instigator for helping behavior." Lamm et al (2007), p. 42

<sup>388</sup>Lamm et al (2007), p. 42

the source of the distress (i.e. the person who was affected by their action), rather than attending to and helping that person.

So while we do want to encourage (or allow, or enable) kids to feel sympathy and guilt (even though these are somewhat distressing emotions) — we should not want children to feel excessive personal distress when they've harmed another person. So if a child is very distressed about the harm they've caused someone else, the best thing to do may be to calm and comfort that child — with the aim that, over time, the child will come to be able to calm themselves in such a situation. Once the child is more calm, less emotional, they are better able to respond empathically and positively towards the person they harmed:

Importantly, it has been demonstrated that individuals who can regulate their emotions are more likely to experience *empathy*, and to interact in morally desirable ways with others... In contrast, people who experience their emotions intensely, especially negative emotions, are more prone to *personal distress*, an aversive emotional reaction (e.g. anxiety or discomfort) that is based on the recognition of another's emotional state or condition.<sup>389</sup>

[I]f perceiving another person in an emotionally or physically painful circumstance elicits personal distress, then the observer may tend not to fully attend to the other's experience and as a result fail to display sympathetic behaviors.<sup>390</sup>

[E]mpathic concern for sadness does lead to prosocial resource allocation in young children [3 year olds and 5-6 year olds] both by promoting sharing and decreasing envy.<sup>391</sup>

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<sup>389</sup>Decety & Lamm (2009), p. 12. Italics added.

<sup>390</sup>Decety & Lamm (2009), p. 7-8

<sup>391</sup>Williams et al (2014), p. 52

Even neuroimaging data seems to support there being a fundamental difference between empathic concern and personal distress, with the latter involving greater activity in the amygdala, which plays a crucial role in "fear-related behaviors".<sup>392</sup> If an agent has caused someone harm through their wrong action, and then they feel overwhelming personal distress, they are more likely to have a fear-related response and to attempt to remove themselves from the situation — instead of staying and trying to make amends to their victim.

Here I will indulge in a little empirical speculation. I suspect that the distress caused by punishment is likely to function in a way similar to the psychologist's "personal distress". I suspect that a child who is punished (especially if the punishment causes significant distress) is likely to be *less* inclined to feel sympathy, and less inclined to help anybody they've harmed through their wrongdoing, than a child who is not punished in an otherwise similar situation. Furthermore, I expect that the mechanism — a neurological fear response — is similar in children who experience excessive personal distress (as a result of witnessing others' distress) and in children who experience punishment. And that such a response interferes with feelings of empathy and guilt.

However, even if my empirical speculation turns out to be mistaken, it's nevertheless the case that parents should avoid intentionally inflicting (self-oriented) distress in the form of punishment and should instead help their children to appreciate any harm they have caused and helping them to make amends. Gentle censure (i.e. censure that doesn't cause too much distress) and encouraging (or allowing, or enabling; not preventing) feelings of guilt are what is needed in order for a child to be motivated to apologize and make amends. Yes, a child may feel some distress or discomfort as a result of another's child's upset, but parents can play the role of helping

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<sup>392</sup>Decety & Lamm (2009), p. 9

their child deal with those feelings and one of the best ways is for them to learn how to express a genuine apology and how they might make amends.

It might be objected that if a parent intends a child to experience distress, albeit in the form of sympathy and guilt (eg by bringing their attention to another child's upset, with the hope that first child will feel sympathy), then this is just another form of punishment. This is not correct, however. Recall the distinction between punitive and non-punitive discipline from the Introduction:

Goals of *both* punitive and non-punitive discipline are things like recognition of wrongdoing, moral education, taking responsibility, the experience of guilt, sympathy for victims, improved future behaviour, justice, fairness, and so on. How such goals are approached can be punitive or non-punitive. If they are approached via some *other* (typically self-oriented) distress that is intentionally inflicted, the method is punitive. If they are *not* approached via some other distress that is intentionally inflicted, the method is not punitive.

Instrumentalist theories of punishment maintain that punishment is intentionally inflicted on a child as a causal *means* of reaching a certain goal, such as moral education, behavioural training, etc. And, long term, it's hoped that because of such punishments — as well as non-punitive discipline — a child will gradually learn right from wrong, behave better, be guided by empathy, and so on. The punishment is the means, and when a parent imposes it, they are intentionally causing distress. The distress is the means to the further goal that they also intend. They intend the means (distress) and they intend the goal (moral education or whatever). They intend distress because it is supposed to cause something else that they intend.

A retributivist theory of punishment doesn't maintain that punishment is a *causal* means to some further goal (unless, like von Hirsch, they hold a mixed theory which combines retributivist elements with instrumentalist elements). Instead, the punishment itself is supposed to *in-*

*stantiate* certain things that the parent intends. The punishment that the child receives instantiates: the child's distress (they "feel bad"); the parent's censure of the child's action; a burdensome apology; a ritualized, secular penance; and so on. The intentionally caused distress is not a means, in the causal sense, but it is a means in what we might call an instantiation sense. The retributivist intends distress (or pain or suffering) because it is supposed to instantiate something else that they intend (such as censure, burdensome apology, and so on).

In the case of non-punitive discipline, the parent might intend the child to feel sympathy, remorse, guilt etc — those are unpleasant feelings that we might call "distress", just as in the case of punishment. That distress may be a goal of their action — sympathy and so on is something they are trying to achieve. But, crucially, the means of achieving this goal is *not* to inflict any other kind of (self-oriented) distress such as pain, loneliness, etc. It might be to calmly talk to the child and explain how their action affected someone else. It might be to gently turn the child's body in order to bring their attention to an upset playmate. They do not cause physical pain or emotional upset *in order* to cause feelings of sympathy or guilt! The further hopes the parent might have are for the misbehaving child to be motivated to apologize, to make amends, and so on.

As Duff (2001) says, we can hope "to communicate censure [and] thereby to persuade offenders to repentance, self-reform, and reconciliation."<sup>393</sup> But, contrary to Duff, we don't have to support the use punishment in order to do so. In sum:

Retributivist censure/discipline: Aims to induce remorse, repentance, guilt, self-reform, etc. *by* intentionally inflicting pain, suffering, distress etc (i.e. by inflicting a punishment).

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<sup>393</sup>p. xix

Non-punitive censure/discipline: Aims to induce remorse, repentance, guilt, self-reform, etc. *without* intentionally inflicting pain, suffering, distress, etc (i.e. without inflicting a punishment).

I hope to have shown in this chapter that contemporary retributivists are correct to emphasize the importance of censure, which has the function of making wrongdoers "feel bad" about what they've done. I also hope to have shown that it is appropriate for this "feeling bad" to consist in (other-oriented) feelings of sympathy and guilt — which are best achieved by non-punitive censure which, unlike punishment, does not intentionally inflict (self-oriented) distress.



## CHAPTER NINE: Non-punitive discipline

This dissertation has discussed a classic philosophical issue, the problem of punishment, in a context that has largely been neglected by philosophers: parental punishment of children. I have concluded that parental punishment of children is not morally justified. Here's a reminder of my overall argument:

1. It's a default rule of behaviour to avoid intentionally causing distress.
2. Punishing children is an instance of intentionally causing distress (departing from the default rule of behaviour).
3. Intentionally causing distress (departing from the default rule of behaviour) requires justification.
4. Therefore, punishing children requires justification.
5. If punishing children is not justified, parents ought not to do so.
6. Punishing children is not justified.
7. Therefore, parents ought not to punish children.

The arguments in defense of premise (6) vary, depending on the type of theory of punishment being considered. For instrumentalist theories, I argued that none of the ones on offer succeed in justifying punishment because they fail to meet the following three requirements:

- (1) The distress inflicted (both intended and not intended) is not excessive, compared to the amount and/or type of benefit gained.
- (2) The distress inflicted will likely lead to the intended goal.
- (3) There is no comparably effective alternative that causes less distress.

The empirical evidence I summarized in Chapters 2, 3, and 4 shows that they fail to meet (2) — that is, punishments do not tend to be useful for reasonable goals parents might have. In the one case in which punishments have been found to have some benefit (spanking for compliance, when combined with reasoning, with 2 and 3 year olds), the gain in compliance is so minimal (an average of an additional 42 minutes of good behaviour), that punishment fails to meet (1). In the present chapter, the evidence in favour of non-punitive discipline will support the conclusion that instrumentalist punishment also fails to meet (3). So even if the various goals *would*, theoretically, be able to justify punishment, the punishments in fact fail to achieve them. I have not focused on showing that various instrumentalist theories of punishment are false. Instead, I aimed to show that no matter what instrumentalist theory someone might hold, parental punishment of children fails to be justified by it.

Note that even if the evidence in favour of non-punitive discipline was non-existent or inconclusive, instrumentalist theories would still fail to justify PPC (because failing to meet *any* of the three requirements is sufficient).

Like instrumentalist theories, consequentialist moral theories have to take into consideration whether or not punishment is likely to have overall beneficial effects (despite the distress it initially inflicts). The evidence we looked at in the chapters on instrumentalist theories, and the evidence of risk of harms that we reviewed in Chapter 6, supports the view that consequentialism would not be able to justify punishment. The evidence in this chapter, in favour of non-punitive alternatives, will lend further support to that conclusion.

In Chapter 5, we looked at a non-instrumentalist theory of punishment: consent theory. It claims that punishing children is justified because, in effect, children consent to punishment when they break household rules (that they understand are liable to punishment when broken,

etc). I argued that even if children consent to punishment when they break a rule, the consent is not morally transformative (i.e. it doesn't turn intentionally inflicting distress into a permissible action). This is because parents are *impermissibly limiting* their child's options — there are *preferable* options that there is no good reason not to offer, such as non-punitive discipline. The evidence in this chapter is important for this argument because it bolsters the case that non-punitive discipline is preferable to punitive discipline.<sup>394</sup>

And, finally, in Chapter 8, we looked at retributivist theories of punishment. I concluded that while the retributivist is correct that it's appropriate for children to "feel bad" when they do something wrong, the retributivist is mistaken that parents should attempt to induce such feelings through punishment. This is because punishment results in the wrong kind of "feeling bad" — such as physical pain, self-pity, resentment, victim-blaming, and so on. Instead, a non-punitive response to wrongdoing can encourage a child to make amends, apologize, and so on — and to allow (or encourage, or enable) a child to feel guilty about their action, such as calmly pointing out to a child that their action has upset someone else or hurt their feelings. Helping a child to notice others' distress, to feel responsible or to feel guilty about their own action may have other positive effects:

There is accumulating evidence showing that guilt in itself serves an adaptive interpersonal function, as it stimulates restorative actions in case of moral transgressions, thereby promoting the development of empathy and conscience and reducing aggression and other externalizing problems.<sup>395</sup>

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<sup>394</sup>Note that the child needn't actually *prefer* the non-punitive option to the punitive option. The point is that the non-punitive option is *objectively preferable*, i.e. it's better for the child (and the family, given the parent's goals), compared to punitive alternatives.

<sup>395</sup>Meesters et al (2017)

It's important to note that non-punitive discipline is indeed discipline. The alternative to punishing is *not* doing nothing. Kids who receive no discipline at all, or very little discipline, are harmed by their parents. Discipline is guidance or teaching regarding morality and proper behaviour and failing to provide such guidance is arguably a way of *neglecting* children, and that is of course harmful.<sup>396</sup> Punishment is only one form of discipline, however, and there is no evidence that refraining from punishing a child — and instead using non-punitive discipline — is harmful in any way.

Evidence that punishing children is overall at least as beneficial or more beneficial than alternative, non-punitive, forms of discipline simply does not exist.<sup>397</sup> There have been very few studies comparing punitive discipline with non-punitive discipline, and none at all comparing kids who are sometimes punished with kids who are *never* punished — perhaps because the latter are in such short supply in rich world societies where most research takes place. In this chapter, I will briefly summarize a sample of some of the research that has been done on non-punitive discipline.

Our tendency might be to think that supporting non-punitive discipline means supporting praise and rewards for children — carrots instead of sticks. But non-punitive discipline isn't only

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<sup>396</sup>For example, the definition of 'neglect' at the US Department of Health and Human Services website includes "Permitting or not keeping the child from engaging in risky, illegal, or harmful behaviors". <https://www.childwelfare.gov/pubs/usermanuals/neglect/chaptertwo.cfm>. See also McCord (1991).

<sup>397</sup>Larzelere et al (1998) compared punishment, reasoning + punishment, and reasoning alone with a single form of non-punitive "reasoning", with a narrow age group (2-3 year olds), on a single dimension (compliance). It tells us nothing about harms and benefits more broadly, and it tells us nothing about other forms of non-punitive discipline with this age group, or with children of other ages.

praise and rewards, although they might be one element in successful discipline. There is some evidence that praise and rewards can have positive effects.

Owen et al (2012) reports that when parents are taught to combine effective ways of giving instructions to children and, when children are compliant, to praise and give positive non-verbal responses (such as pats on the back), child compliance increases (among children identified as noncompliant and at high risk for antisocial behaviour problems).

Parents often struggle with getting their kids to eat vegetables, and children's refusal to comply with parental demands to eat them is a typical punishment scenario. Cooke et al (2011), using a sample of 422 4-6 year olds, found that "rewarding children for tasting an initially disliked food produced sustained increases in acceptance, with no negative effects on liking."<sup>398</sup> Rewards (stickers) and praise helped children both *consume* more and *like* more a previously disliked vegetable.

Praise and rewards, like punishment, are responses to particular instances of child behaviour. But there are parenting behaviours other than specific disciplinary actions that can affect children's behaviour and moral development, so that discipline itself can play less of a role. For example, Lee et al (2014) and Talwar et al (2016) found that telling children fictional stories influenced their lying and truth-telling behaviour. Telling children stories that emphasized the good effects of telling the truth encouraged children to be honest:

[C]hildren between 3 and 7 years old were approximately three times more likely to tell the truth about their transgression (i.e. peeking at a forbidden toy) when they heard a story that emphasized the positive effects of telling the truth (i.e. *George Washington and the Cherry Tree*) compared with one that had no relevance to honesty (i.e. *The Tortoise and the Hare*). In contrast, moral stories that focused on the negative ramifications of dishonesty (i.e. *The Boy Who Cried Wolf*) were ineffective in

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<sup>398</sup>Cooke et al (2011), p. 195

promoting truthfulness and resulted in lie-telling rates similar to that of the control story. There were no age differences found.<sup>399</sup>

Non-punitive parenting programs, such as Triple P, tend to teach parents discipline methods alongside more general ways to improve parents' relationships with their children, which in turn can help with children's behaviour. Triple P has been empirically tested over many years and it trains parents to adopt 17 different parenting strategies, approximately two thirds of which are about building the parent-child relationship, not about responding to misbehaviour. With respect to discipline, Triple P recommends that parents and children come up with household rules together and establish "logical consequences" for when these rules are broken.<sup>400</sup> In many contexts (such as popular parenting magazines and websites) "logical consequence" is often used simply as a euphemism for "punishment", but in Triple P, a logical consequence is just what happens in order to stop the rule-breaking behaviour. So to use an example from earlier, separating the Nerf gun from the cat — by removing the Nerf gun from my daughter, or confining the cat away from the daughter (or vice versa) — is a "logical consequence" of breaking the "don't shoot at the cat" rule that she and I have agreed upon.

Triple P is an entire *program* designed to help parents change their own parenting behaviour, which helps to change their kids' behaviour. To really improve kids' behaviour over the long term, many parents need to change their own behaviour over the long term — not simply institute a new kind of discipline method. Parents often need to pay more attention to their kids, play with them more, teach them problem-solving skills, increase supervision, acknowledge good be-

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<sup>399</sup>Talwar et al (2016), p. 488

<sup>400</sup>Conversation with Peggy Govers, the Training and Implementation Consultant for Triple P Parenting Canada.

haviour, help children learn to calm their emotions, and so on. (And, I would argue, governments need to support parents in these efforts.) All these parental behaviours together can work to reduce kids' misbehaviour — more than simply adopting a different discipline method to use in response to misbehaviour.

The Triple P program has various Levels (1 to 5). Level 1 is for any parents who are interested in improving their parenting skills, including with children who have shown no sign of needing an intervention; the goal is to prevent behavioural problems before they start. Level 5 is for parents who are dealing with severe child behaviour problems or family dysfunction. Empirical studies tend to find larger effect sizes when children start off with more serious problems. (There's less room for improvement in children who don't have behaviour issues.)

A 2008 meta-analysis<sup>401</sup> examined studies that considered any of the levels of Triple P, and found small to moderate effect sizes:

The results (N = 55 studies) indicate that Triple P causes positive changes in parenting skills, child problem behavior and parental well-being in the small to moderate range, varying as a function of the intensity [i.e. the level] of the intervention.<sup>402</sup>

Another 2008 meta-analysis<sup>403</sup> conducted by researchers in the Netherlands looked specifically at Level 4 Triple P, which "targets high-risk individuals who are identified as having detectable problems but who do not yet meet diagnostic criteria for a behavioral disorder."<sup>404</sup>

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<sup>401</sup>Nowak and Heinrichs (2008)

<sup>402</sup>Nowak and Heinrichs (2008), p. 144

<sup>403</sup>De Graaf et al (2008)

<sup>404</sup>De Graaf et al (2008), p. 715

They concluded that "Level 4 of Triple P has moderate to large effects on behavior problems of children that last in follow-up measurements of 6 to 12 months."<sup>405</sup>

Reedtz and Klest (2016) also found "medium to large" positive effects of the Triple P parenting program. Their sample was also a high risk, but non-clinical, sample of 189 kids and parents; half were randomly assigned to the intervention and half to a "care as usual" control group. This study used parent-, teacher-, and self-reports, collecting data pre-intervention, immediately post-intervention, 1 year later, and 4 years later:

The differences between the [intervention] and control groups on parenting practices suggest that mothers in the intervention group use positive parenting strategies such as problem-solving, giving the child opportunities to correct mistakes, praising the child, giving compliments, offering privileges, tokens and reinforcements for positive behaviours, as well as kissing and hugging the child, significantly more often than the mothers in the control group.

The mothers in the intervention group dropped significantly from pre to 4 year follow-up compared to the control group in the use of negative parenting strategies such as raising their voices and yelling at the child, threats to punish the child physically or non-physically, grounding the child, hitting the child, flicking the child's ear, as well as slapping the child. The control group also reduced their use of such strategies, but at a slower pace, and to a lesser degree.

And there were differences in the children's behaviour, although this difference levelled off over time. So it may be beneficial for parents to take "refresher" courses, which makes sense given how much children change developmentally and behaviourally over the first few years of life:

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<sup>405</sup>De Graaf et al (2008), p. 730



The group who received the [intervention] showed an immediate drop in the intensity of child problem behaviour following the intervention. This significant reduction levelled off and remained stable through the 4 year follow-up assessment. In contrast, the control group, who received services as usual, maintained a higher level of child problem behaviour at post intervention and showed a slower decline until the levels matched those of the intervention group at 4 year follow-up.

In addition to the Triple P program, there is also empirical evidence in favour of *The Incredible Years Parent Training*,<sup>406</sup> which is another non-punitive parent training program. In Webster-Stratton et al (2001), parents and Head Start teachers participated in the intervention. This is a non-clinical sample (i.e. not diagnosed with any disorders), but some of the children were at high risk of behavioural problems. The researchers included independent blind observer assessments of child behaviour (not just parental reports regarding child behaviour), at home and at school. The researchers found that, "Following the 12-session weekly program, experimental mothers had significantly lower negative parenting and significantly higher positive parenting scores than control mothers"<sup>407</sup> and there was a difference in their children's behaviour:

Children of mothers who attended 6 or more intervention sessions showed significantly fewer conduct problems at home than control children. Children who were the "highest risk" at baseline (high rates of noncompliant and aggressive behavior) showed more clinically significant reductions in these behaviors than highrisk control children.<sup>408</sup>

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<sup>406</sup>"Analyses of 50 IYPT studies revealed that the IYPT is effective in diminishing disruptive behavior and increasing prosocial behavior, according to parents, teachers, and observers." Menting et al (2013). See also Lessard et al (2016), Hutching et al (2016).

<sup>407</sup>Reedtz et al (2011), p. 131

<sup>408</sup>Webster-Stratton et al (2001), p. 283

One year later the experimental effects were maintained for parents who attended more than 6 groups. The clinically significant reductions in behavior problems for the highest risk experimental children were also maintained.<sup>409</sup>

Other studies have also found effects after a year. Reedtz et al (2011) found, after a 1 year follow-up, "reductions in harsh parenting and child behavior problems, and enhancement of positive parenting and parents' sense of competence in the intervention group",<sup>410</sup> compared to the control group.

I think that there is sufficient evidence to conclude that non-punitive discipline and reducing (preferably eliminating) punishment can be beneficial for children and their families. For the best results, it might be necessary for parents to receive training in how to administer non-punitive discipline (and also how they might change their other behaviours in order to reduce the need for discipline), and it might be beneficial for parents to receive periodic "refresher" courses as their children get older. At the moment, however, there isn't research on the effects of multiple courses over a period of many years.

In conclusion, we have seen throughout this dissertation that parents have multiple good reasons to refrain from punishing their children:

~ Punishment intentionally causes immediate distress to children, such as pain and emotional upset; and we ought generally to avoid intentionally causing other people distress.

~ Punishing children does not have sufficient benefits (such as decreased aggression, better behaviour, or improved conscience) that might justify departing from the default rule, "avoid intentionally causing other people distress".

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<sup>409</sup>Webster-Stratton et al (2001), p. 283

<sup>410</sup>Reedtz et al (2011), p. 131

- ~ Parental punishment of children is not successfully justified by any philosophical theory of punishment (whether instrumentalist or consequentialist, consent theory, or retributivist).
- ~ Punishment increases the risk of various long term harms to children, such as increased anxiety, increased aggression, slower moral internalization, increased dishonesty.
- ~ There is evidence for positive effects of non-punitive discipline.

We should be led to conclude that parental punishment of children is not justified and parents ought not to punish their children. They ought to spare the rod, the time-out, and every other kind of childhood punishment too.

### ***Parents' culpability***

Are parents who punish their children culpable for doing so? If a parent knows nothing of the non-moral facts (such as the risk of harm of punishment, and its lack of benefit), and they are not culpable for that ignorance, then even though, when they punish, they do something "objectively" wrong, they may not be culpable at all. As Mason (2015) puts it:

Non-culpable ignorance of fact is usually a straightforward excuse. If I didn't know that the lever was connected to a puppy killing device, and there is no way I could have known or suspected that it was, then I am not blameworthy for pulling the lever.<sup>411</sup>

So, to take a clear example: a parent who is poor, illiterate, and lives in a remote village that is largely cut off from the outside world is (let's suppose) non-culpably ignorant of the non-moral facts. Perhaps they are following tradition in punishing their children, as do all their neighbours

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<sup>411</sup>Mason (2015), p. 3038

in the village. Because their ignorance of the facts is non-culpable, then they may not be culpable for punishing their children.

Parents who have information more accessible to them are perhaps more culpable — and the more harsh or frequent their punishments are, the more likely they are to be more culpable. When it comes to spanking a child, say, I think that parents really are under an obligation to at least reflect on whether or not that's morally acceptable, and to look up some information on its purported benefits. It's now so well established in our society that hitting people *other than* children is wrong, except in extreme circumstances, that I suspect that parents who do not at least question the ethics of hitting their children are engaging in what Moody-Adams (1994) calls (and attributes to Aquinas), "affected ignorance":

Affected ignorance — choosing not to know what one can and should know — is a complex phenomenon, but sometimes it simply involves refusing to consider whether some practice in which one participates might be wrong.<sup>412</sup>

For some parents, it is likely difficult to think about the possibility of not spanking their children (and perhaps the possibility of not punishing at all genuinely hasn't even occurred to them), and because it's difficult, they might avoid properly facing the issue. And this is especially true when they are surrounded by other parents who also spank (and practice punishment more generally).

Sometimes — perhaps much of the time — cultures are perpetuated by human beings who are uncritically committed to the internal perspective on the way of life they hope to preserve.<sup>413</sup>

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<sup>412</sup>Moody-Adams (1994), p. 296

<sup>413</sup>Moody-Adams (1994), p. 296

While spanking children is not what we'd call a "way of life", punishment is generally considered an essential part of raising children in our culture. And it's uncomfortable for parents to think that their behaviour might be wrong (or that their past behaviour might have been wrong, if their children are already grown). But even though it's difficult, I do think parents who don't even question whether or not spanking is permissible are morally culpable to some degree. And the easier it is for them to look into it (higher level of education, internet access, leisure time, and so on), the more culpable they are for their ignorance. The information regarding other kinds of punishment is less readily available, so I doubt that parents who are ignorant of the non-moral facts regarding nonphysical punishment are culpable for their ignorance.

So, I suspect that parents generally are not culpable for their ignorance of the non-moral facts regarding nonphysical punishment, even though they may well be culpable for their ignorance of the non-moral facts regarding physical punishment. At the bare minimum, parents (in our society) who spank should question the practice, and if they don't, my inclination is to think that they are culpable for their ignorance.

What about the default moral rule "Avoid intentionally causing others distress"? People who didn't recognize this rule would be morally problematic (at least). But I suspect that most parents *do* recognize that rule — in the sense that they generally abide by it and it's reflected in their behaviour and behavioural dispositions — but they assume that it's justified to override it in the case of parental punishment of children. But this is because they are typically ignorant of the non-moral facts regarding its usefulness and its risks. I think that ignorance regarding the moral status of PPC is largely based on ignorance of the non-moral facts (because most parents assume that punishment is beneficial and not harmful, and that is why they do it). Every parent bears some responsibility for intentionally inflicting distress. And every parent knows that not all dis-

cipline is punitive. (Even parents who engage in frequent harsh punishment don't *always* use punitive discipline.) But the more excusable the ignorance of the non-moral facts, the less culpable a parent is, especially when parents are surrounded by punitive parenting. It's hard for human beings to swim alone against the tide of their communities.

So educating parents matters. I think it's important for parents to be made aware of punishment's lack of benefits, and its risk of harms, and for them to learn about alternative methods of discipline. I have hope that, over time, parents will come to rely less and less on punishment — which will be better for everyone, parents and children alike.

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