Moral Enhancement and Persistent Violent Offenders

On the ethical issues surrounding forced morally enhancing neurotechnological treatments on persistent violent offenders

Group no. 1

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Resumé

In this paper we ask whether or not we should force persistent violent offenders to undergo morally enhancing treatments. After having introduced the subject we go on to clarify what is meant by moral enhancement and point out that this paper makes no distinction between moral treatment and moral enhancement.

When we have given a clear definition of what we mean by a persistent violent offender, we continue by going through two fictive but realistic cases of persistent violent offenders.

The first case introduces Tommy; a persistent violent offender who loses control over himself when he gets aggressive. The second case introduces Timmy; another persistent violent offender who suffers from a psychopathic disorder and enjoys hurting others.

These two cases serve two purposes. The first purpose is to give the reader a clear idea of what type of background an offender might come from. The second purpose is to function as a reference point when we evaluate and discusses the arguments.

In the arguments section we reconstruct and critically discuss a variety of arguments such as arguments based on the common good, autonomy, paternalism, risk assessment and how moral enhancement can be seen as a punishment.

In the end we conclude that it is not only morally permissible, but morally required that we force persistent violent offenders to undergo morally enhancing treatments given that the medicine works.
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Introduction

Modern neuroscience is constantly making new discoveries about how the brain works, and hence how we may be able to alter it. This is in part possible because of enhanced brain scans and improved methods of manipulating the brain, including treatments such as psychopharmaca or neurosurgeries. With a growing understanding of the brain and expanding possibilities within the field of neuroscience, several new ethical problems arise. These include questions about how we should treat and inform patients at hospitals concerning these new possibilities, but most central to this paper, the question of how our criminal justice system should work in light of the advances in neuroscience. During our readings we failed to come across anyone in the neuroethics literature arguing that we should force neurotechnological treatments on violent offenders. This was a surprise since coercive treatments of the mentally ill has been used for many years in California for example. We were left with the impression that the subject of forced neurotechnological treatments in general has been left unattended, and as a result is underdeveloped.

In this paper we ask if persistent violent offenders should be forced to undergo morally enhancing neurotechnological treatments.

This is a highly relevant question as we have good reasons to expect that we in the near future will be able to morally enhance violent offenders, and hence their behaviour, through neurotechnological treatments. Moreover these treatments have huge implication not only for the offender but for the society as a whole. These implications include the prospect of minimizing the amount of resources we spend on our criminal system by lowering the rate of recidivism in offenders and the number of potential victims. The use of forced treatments on offenders is a controversial subject, and many people will find the thought disturbing as they are reminded of the popular procedure of Lobotomi in the 1940s and 1950s. The procedures that we talk about in this paper will differ from Lobotomi in that they generally will be of benefit to the offender. We should note here that modern procedures, like Deep Brain Stimulation, have been used with great success to treat Parkinson’s patients during recent years (Weaver, et al., 2009). Moreover we are
already using psychopharmaca on sexual offenders with some success today, and
neurotechnological treatments in general are much safer now than they have ever been before.
We have known for decades that physical and chemical abnormalities in the brain are causing
increased violent behaviour (Volavka, 2002). This suggests that we might find ourselves in a
situation where our range of actions are limited and our behaviour is beyond our control. As in
the case of parkinson’s patients, who suffers from an abnormality in the brain as well, ought we
not to help individuals with increased violent behaviour? None of the two, i.e. the parkinson’s
patient and the violent individual, has, freely, chosen the abnormal construction of/in the brain.
The question which now strikes us is whether or not we should force this correction on persistent
violent criminal offenders, against their will, the moment that we are able to correct these
abnormalities.
To evaluate this we will look at different arguments for and against forcing violent offenders to
undergo morally enhancing neurotechnological treatments. We will reconstruct and critically
discuss these arguments, some of them from a consequentialist perspective, and some of them
from a retributivist perspective. We intend to show that a consensus between consequentialists
and retributivists can be reached.

The choice to look at arguments from both a consequentialist and retributivist angle was made in
order to cover two major theoretical backgrounds in criminal justice ethics. Their core ideas
about why we punish is also echoed in the general population. The common idea that someone
should be punished because they someone deserve it, captures the core of the retributivist
justification for punishment. Whereas the general idea, that punishment (should) serve(s) as a
preventative and rehabilitative tool, is of the consequentialist.
In order to have a clear understanding of the subject we will begin by looking at what exactly is
meant when we refer to moral enhancement. Subsequently we will give a brief clarification of
what and who counts as a persistent violent offender. And before we start evaluating the
arguments, we will look at two different examples of persistent violent criminal offenders, as we
are convinced that the implications of the arguments will be easier and better understood when
we have some clear and practical cases in the back of our heads.
Defining Moral Enhancement

Exactly what is meant by moral enhancement is somewhat controversial. As demonstrated in the paper “On Defining Moral enhancement: A Clarificatory Taxonomy” (K. Raus et al., 2014) there has been much discussion about what qualifies to be understood as an example of moral enhancement.

In this section we will offer some insight into the different ways people understand and use the term ‘moral enhancement’, and clarify the definitions used in this paper to elude potential misunderstandings. In order to have some common references, we will use the clarificatory taxonomy found in the above mentioned article.

Types of interventions

Different types of interventions, ranging from non-invasive to highly invasive medical procedures, targeted at individuals to groups of individuals or the society as a whole, qualifies as moral enhancements. The focus in this paper will be on moral bioenhancement targeted at individuals. Non-invasive moral enhancement, such as talk therapy or moral education, will therefore not be discussed. Moral bioenhancement is the use of invasive procedures such as deep brain stimulation, surgery or pharmaceutical treatment (Raus et al., 2014: 265). Bioenhancement also entails enhancing our gene pool through genetic selection. This could potentially be a very powerful way of decreasing the amount of violent offenders in the future. However, since this paper focuses on what we should do with violent offenders that already exist, it will not be discussed further in this paper.

Moral treatment or enhancement?

There is some debate as to whether or not there is a difference between moral treatment and moral enhancement. As described in K. Raus et al.’s paper some philosophers argue that there is a difference between raising a person’s moral conduct from below average to average, and from average to above average. It is hard to say what constitutes average, but for practical purposes we define an acceptable average level as a level in which the person is moral enough that he is not going to commit serious violent crimes.
The argument is that boosting a person from $M^{BA} \rightarrow M^{A_1}$ should be considered a medical treatment and not an enhancement, while boosting an individual from $M^A \rightarrow M^{AA}$ should be considered a genuine moral enhancement (Raus et al., 2014: 266). As this paper focuses on interventions that improve the morality of persistent violent offenders, who we define as individuals with $M^{BA}$ to a level as ‘high as possible’, we will not distinguish between moral treatment and enhancement. In essence the aim is to use the intervention (X) that has the highest possible chance of raising $M^{BA} \rightarrow M^{HAP}$.

**Boosting capacities or improving behaviour**

There are some philosophers that argue that enhancing morality means doing more than just regulating behaviour. John Harris says that: “I take moral enhancement to involve enhancing our ability to think ethically(...), not manipulating the probability of some reacting in ways that others deem ethical.” (Raus et al., 2014: 269). By this definition an intervention would still be labelled as a moral enhancement if the person reflects differently but acts the same. It is therefore possible to have violent offenders receive morally enhancing treatments, without it actually making them any less dangerous. From a pragmatic viewpoint this is problematic. That the violent offender reflects differently and more empathetic while molesting an innocent victim does not solve any of the societal and individual problems connected to violent behaviour. The problem is not reliable solved by a change of reflection in the mind of the offender, it is solved by a reliable change of behaviour.

Because of this we argue that someone has been morally enhanced if the consequence of his treatment is that his behaviour has been improved. While it seems intuitive that it constitutes a more genuine moral enhancement if someone reflects differently and therefore acts differently compared to someone that reflects the same but acts differently, we still argue that the latter is an example of moral enhancement, albeit a weaker one.

To summarize: when we refer to moral enhancement, we refer to treatments aiming at improving individuals with $M^{BA} \rightarrow M^{HAP}$ through bioenhancement. Because of the pragmatic nature of this paper, we accept treatments, which only regulate behaviour, as a moral enhancement, but count
them as inferior to treatments that affect both moral capacity but also regulate behaviour. All other things being equal the chances that the offender will perform a morally just act versus simply just refraining from doing an unjust act will be greater if he is enhanced both in regard of his moral capacity and his behaviour. Refraining from doing a morally bad act indeed is inferior to actively doing a morally good one.
Definition of Persistent Violent Offenders

In this paper we have chosen to focus on persistent violent offenders who by the criminal justice system has been judged as responsible agents. This is due to several factors. First, we find it necessary to have a delimitation in order to make the analysis and conclusion as definite as possible. Had we chosen to evaluate the arguments on a broader spectrum of criminal activity such as economic crimes or crimes of acquisition, the scope would have been too broad to reach an effective conclusion. Having said that, we believe that the assumptions, arguments and conclusions put forward in this paper are largely applicable when looking at a broader segment of offenders. Secondly, an important reason for why we have chosen to focus on persistent violent offenders is that we have realistic expectations that we in the near future are able to change persistent violent behaviour through moral bioenhancement. If successful this means that we would be able to reduce the rate of recidivism, a very damaging and costly phenomenon economically and socially for both the offender and the society. Our definition of a persistent violent criminal offender is, without specifying the details of the crimes committed, an offender who (1) more than once has been sentenced to imprisonment due to an extreme violent behaviour, and (2) once again stands to serve time for a serious violent offence. However, the first premise can be replaced in cases where the offender during his years as a minor has committed several violent crimes that he would have been punished for had he been of age.

In the following section we will look at two imaginary but realistic examples of different types of offenders. Afterwards they will be used as cases when we look at the arguments for and against forcing persistent violent offenders to undergo morally enhancing treatments.
The Tragic Cases of Tommy and Timmy

In this section we look at two realistic but imaginary stories. These two cases have two main purposes. The first purpose is to give the reader a clear idea of the type of background that persistent violent offenders come from. The second purpose is to function as a reference when we evaluation and discuss the arguments.

The Tragic Life of Tommy

As long as he could remember, Tommy had always felt like society was out to get him. His first memories was crying. Endless crying. It started when he was very little. He remembered waking up crying for his mom, but she only came hours after he woke up and she was usually angry and smelling of alcohol. He remembered how his dad spend all day on the sofa with the table in front of him filled with empty beer cans and a full ashtray.

His first school years he remembered primarily by the memories of being bullied because of his uncut hair and his second hand clothes. It was in these year that he first started fighting. He would go into a rage so powerful that it didn’t end before someone held him down.

As the years went by, and as his dad continuously tried to beat him and his mother into submission, he began experimenting with alcohol and drugs. In eighth grade the police came by his house at least once a month. As he turned eighteen fights at bars and parties were a normal weekend activity. After seeing red and beating the hell out of some guy talking to his girl, he got his first sentence for aggravated assault.

His first time in jail was accompanied by several fights including some beatings. The first one began after what started out as a peaceful conversation about political parties, but as they kept interrupting him the rage took over.

In the first half of his twenties he visited jail three more times before he finally decided to get his life together. In the following years he settled down in a small apartment with his new girlfriend. The rage seemed under control and they were even talking about getting a kid.

It all ended abruptly after his girlfriend came home from a Christmas party two hours later than she had told him before she left. For some reason, he could not point out exactly why, this made
him furious. Soon he started yelling, and when she yelled back he found himself hitting her as his father had done to his mother so many times in the past. This revelation disgusted him, but instead of making him stop, it made him even angrier. She awoke from the coma after a half year, but he only learned about this after three years in prison. He wanted to talk to her, to tell her how sorry he was. He loved her after all, though he held no illusions that she would ever forgive him. His whole life, his rage had controlled him.

The Fatal Story of Timmy

Timmy did not have any contact to his parents anymore. Most of his childhood they had been afraid of him, and they seemed genuinely relieved when he moved away. It had all started when he was about six years old. One day, out of boredom, he had taken the family cat and thrown it out of the window. He remembered how angry they had been at first, but it did not matter to him. Watching the cat getting crushed against the ground made him smile. He was send to some psychologist at the age of eight after he lit his siblings rabbit on fire, it was a glorious sight. The psychologist seemed friendly enough, he always offered him sweets and said the right things. His meetings with this man was only temporary though. His primary memories after his parents had a new baby was the crying, constant crying. It was a frustrating sound, and it filled the entire home. One day when his mother was in the garden, it started crying again. His mother did not seem to hear it, but its voice kept interrupting him as he pulled the legs off spiders in order to see how long they would survive. He remembered getting up while grabbing the tape off the shelf. As he taped the baby's face together he congratulated himself. Problem fixed. It was not before an hour later that they found the blue faced baby. After that day things changed. His parents would not look at him or speak to him. It did not matter really. Mostly he found other people annoying anyway. As he sat in the courtroom he zoned out the voice of the prosecutor. Instead he recalled the memory of how he had led the sad girl from the school party down to the lake. He had always hated the sound of crying, and the memory of how he had drowned her along with the annoying sobbing sound she made, made him smile.

These two stories represent different but realistic backgrounds for violent behaviour. We know today that extreme behavior is often a mix between social upbringing and biology. Though
behavior in some way always manifests in the brain, the two cases are very different in nature. Tommy’s tendency to violence was brought on by a combination of strong raging impulses mixed with a life of bad examples. Normal responses and behaviour becomes distorted as a result. Timmy’s story is that of classic psychopath. With no damaging social upbringing it is clear that his violence comes from abnormalities in the brain. It is well known now that lack of activity in certain areas of the brain such as the Amygdala can have huge consequences for our ability to understand and empathize with other living beings (Blair, 2003). The individual background of violent behaviour means that not all moral enhancements would require the same treatment. Some people might also claim that the actual reason behind violent behaviour is morally relevant when discussing arguments for and against forcing persistent violent offenders to receive morally enhancing treatments. In the following section we will look at these and other arguments.
Arguments for and against forcing persistent violent offenders to undergo morally enhancing neurotechnological treatments

In the following we will identify, reconstruct, and critically discuss different arguments. The arguments will present both retributivistic and consequentialist viewpoint on the topic of forced moral enhancement. We look at and evaluate arguments from these two positions because they represent two huge ethical schools of thought, and because we believe that the core ideas in the theories together represents the general understanding in society of why we punish criminal offenders. We will begin by discussing a consequentialist argument in support of forced moral enhancement based on the common good. Then we will criticize the conclusion of this argument by looking at an argument based in autonomy and see if this argument makes it morally impermissible to force moral enhancement on violent offenders. We will also look at an argument against moral enhancement based on the diminishing of individual worth. After this we will reconstruct and critically examine two arguments that demonstrate how forced moral enhancement can be justified from a retributivist standpoint.

Arguments from the common good

One argument for why we should force these treatments on violent offenders is because it would be for the common good. The nature of this argument revolves around the benefits for society. The cost of maintaining large prison populations is high. The state of California uses more than $8 billion or 11% of the state budget on prisons each year (Monahan, 2013: 62). Persistent violent offenders are on average more expensive than prisoners who could serve time at home with an electric shackle on their leg. It is a costly situation that takes up a lot of resources that could otherwise be spent more effectively when it comes to promoting welfare. As an example the money could be spent on reducing the likelihood that young people start a criminal career which would be an advantage not only for society, but also for the potential offenders. The argument could then be put like this:
P1  Our justice system ought to maximize the common good.

P2  By maximizing the resources that we use on crime prevention, and by not using more resources than necessary on our prison population, we maximize the common good.

P3  Forcing persistent violent offenders to undergo morally enhancing treatments would decrease the number of victims of serious crimes and allow us to lower the prison expenses and thereby enable us to maximize the resources that we use on crime prevention.

C  We should therefore force persistent violent offenders to undergo morally enhancing treatments.

The above argument is consequentialist in its nature. The goal is to maximize welfare. The question of how we should allocate our resources is always of importance and the argument from the common good makes a strong case as to how we could spend our limited resources more effectively. It should however be noted here that it is possible to make at least two objections this. The first objection would be that the research, production and distribution of the relevant treatments in itself can be very costly, and that these costs should be taken into account. The other objection would be that if enough people are against the idea of forced moral enhancement, it could lead to decreased trust in the criminal justice system and as a result lower the welfare. If the concerns raised in these two objections are not too comprehensive, we have good reasons to believe that forced moral enhancement would help maximizing welfare.

While most people agree that the common good is an important and relevant factor, it is not the only one. There are several arguments that questions whether or not moral enhancement is an attractive solution to violent criminal behavior, and some believe that they are more important than the common good. In the following we will examine such an argument based on autonomy.

An Argument from Autonomy

A strong argument for why we should not force persistent violent offenders to undergo morally enhancing neurotechnological treatments is that such treatments compromise autonomy in ways
we cannot ethically justify. Note here that this argument does not regard the actual institution of punishment as problematic but rather the nature or form of the punishment, i.e. the morally enhancing neurotechnological treatments. We find it unnecessary to present and challenge abolitionist arguments due to the fact that we already accept several forms of punishment and treatments, which in one way or another may deprive the autonomy of the punished. Take for instance the imprisonment of violent offenders, home detention or even involuntary treatment of mentally ill individuals.

Although we already accept these many forms of punishment, which by definition restrict the autonomy of the offender, one could argue that the form of punishment we discuss would cause an unjustly deprivation of autonomy. This despite the fact that such treatments would fulfill the same purpose as forced psychotherapy and involuntary treatments for example, and maybe even more effectively. Yet, still something triggers people’s intuitions to raise a flag when it comes to more invasive interventions - as Farah put it. She points to the distinction between losing the freedom of movement and losing the freedom to think freely (Farah, 2002: 9). The argument builds its normative premise on an intrinsic value in the capacity to think freely, which by no means must be overruled. If our ability to think freely is removed from us, it would be an unjust deprivation of autonomy. A simple reconstruction of the autonomy-based argument against forced neurotechnological treatments would look like the following:

P1 Freedom of thought should not be violated
P2 Forcing neurotechnological treatments on persistent violent offenders as a form of punishment will violate freedom of thought
C Hence we should not introduce neurotechnological treatments as a form of punishment

In anger management class, as Farah explains, “a person is free to think, >>This is stupid. No way am I going to use these methods.<<” (Farah, 2002: 9) While in contrast, a person is neither able to resist nor accept the mechanisms of a neurotechnological treatment, which curbs the violent impulses, if they are forced upon that person (Ibid.).

In the case of involuntary treatments of mentally ill persons it is true that we force them to
undergo medical treatments, which indeed do affect their freedom of thought directly, but we do so for the benefit of themselves. Such treatments are justified as we assume that the patients are mentally incompetent and hence not in a position to think freely, and rationally choose what is in their best interest. These treatments should therefore not be seen as a punishment but as an exercise of paternalism (Thompson, 1980: 251). These treatments generally does not include highly invasive, permanent interventions. Forcing persistent violent offenders to undergo (invasive) morally enhancing neurotechnological treatments is potentially far more intervening than giving psychopharmacaca to a mentally ill person due to the invasive and permanent character of treatments like deep brain stimulation (Focquaert, 2014: 12). Focquaert reaches a similar conclusion to Farah, though she is more focused on the bodily privacy than on the freedom of thought per se. She argues that there seems to be a fundamental difference between depriving people the right to free movement and depriving or invading an individual’s bodily privacy, which makes forced invasive treatment ethically indefensible (Focquaert, 2014: 10). You cannot just stop or scale down such neurotechnological treatments. We could thus outline the argument in a new, more precise reconstruction, which takes these concerns into account:

P1 We ought not to intervene in the mind in a highly invasive, permanent manner as we would compromise autonomy irrevocably.

P2 Forced neurotechnological treatments are both highly invasive and permanent of nature.

P3 Hence we should not introduce forced neurotechnological treatments.

Forced morally enhancing neurotechnological treatments are thus ethically wrong not because they deprive the offenders autonomy per se but because they intervene in the mind in a highly invasive, permanent manner.

**A discussion of the arguments of autonomy**

The above examined arguments seem intuitively strong. But a closer examination will show that they have flaws. We shall in following examine and discuss these flaws. First off we will look at and counter the normative premise in both the first and second argument which respectively
protects the mind per se from invasive, permanent intervention. Subsequently we shall have a glance at the argument of paternalism and discuss whether or not a persistent violent offender should be treated in the same way as a mentally ill person. We will see if it could be argued that he suffers from a mental incompetence that is comparable to that of the mentally ill person, as the cases of Tommy and Timmy might suggest.

Many feel an inherent concern when it comes to invasive treatments which intuitively causes us to raise a flag, though we are not quite sure why. Farah and Focquaert explains that the “flag-raising-action” is triggered by our intuition that the mind is fundamentally sacred. Yet, as we saw above, we generally think that we are justified in forcing people to attend to all sorts of rehabilitation programs, which all have the same goal as the neurotechnological treatments. The only difference between the interventions is the process and nature of them. The current treatments and punishments, that we make use of today, have varying degrees of success due to the fact that we cannot ensure that the psychotherapy sessions or the imprisonment will succeed in resocializing the offender. And in regard to treating offenders with psychopharmaca we cannot effectively ensure that the offender will continue to take the medicine when he is not institutionalized, and there is therefore always the risk that the offender will stop taking the medicine and fall back into his violent nature. In other words, both the current and the potential punishment aims to make the offender better off, but the proposed neurotechnological treatment could potentially have more reliable results and thus more effectively decrease the rate of recidivism, which indeed would improve the offender’s autonomy - especially in the long run. By introducing forced treatments the state might violate autonomy now, but improve it later on. This act becomes morally desirable much like the deontological argument that local harm is good if it prevents global harm.

Note that the above examined argument is not focused on the ethical virtue of the process of getting better (in this case getting less violent and more moral), it is only focused on the unethical form of the treatment. We will in another section look at the argument of “gain without pain”, which tackles this ethical dilemma of whether or not we are corrupting an intrinsic virtue by cutting of the resocializing process.
Does it not seem wrong that we accept one kind of treatment but refuse another kind if it fulfills the same purpose, but with a potentially greater rate of success? The mind, as we have seen in the examination of the arguments, is not that sacred after all. What is sacred must eventually be the bodily privacy? We are allowed to interfere with the mind and restrict autonomy to the extent that we do not make a highly invasive, permanent intervention. But why is that? We will in the following consider some possible concerns. Is it (1) because such treatments are unnatural or (2) because there is a fine line between forced treatment of milder invasive nature and of higher invasive nature, of which the later is inherently wrong? Both due to its violation of the bodily privacy and its permanent character, as Farah suggested (Farah, 2002: 9)?

**Objectionable concerns**

The first concern “of the unnaturalness” is a classic, recurring concern that is voiced against many new technologies. Fundamentally the argument states that something is unnatural and therefore wrong. But arguments of this sort are not very strong. In fact it would be a deprivation of one’s intellectuality to accept such arguments without reflecting on at least two conditions. First off a defender of such an argument would have to explain what is meant with unnaturalness and vice versa. Indeed it is not an easy task and he would probably have to think long and hard to figure out a plausible answer, from which it would also follow that what is unnatural would also be immoral. Our bet is that he will have his hands full figuring out an answer from the time his alarm rings in the morning, to he put on cloths, brush his teeths, eat his vitamin pills and drive on to the court where he works as a judge, sentencing violent offenders to imprisonment and rehabilitation programs. Should he, eventually, figure out why all the actions that have occupied his day are natural in contrast to neurotechnological treatments, he would then have to defend why it is a morally relevant factor that something is unnatural. And then we are back at where we started. If he reaches the conclusion that morally enhancing neurotechnological treatments are wrong because they are unusual, he would lose his argument. An action cannot be ethically wrong just because it is unusual. If that were the case it would imply that all technological progress would be wrong, as they would be unusual or unfamiliar to us.

The opponent could also perceive the treatments to be unnatural - and therefore wrong - because
of their supernaturalness or their artificiality as Thomas Douglas suggests (Douglas, 2008: 236-238). But both of these concepts of unnaturalness are as we shall see not very strong either. Douglas outlines one popular account of the concept of supernaturalness as follows: “something is unnatural if, or to the extent that, it lies outside the world that can be studied by the sciences.” (Ibid.: 236). From this definition is seems clear that the concept of unnaturalness as supernaturalness renders false. And the same goes with the concern of the artificiality of the treatment:

“That something is unnatural if it involves human action, or certain types of human action (such as intentional action). (...) Whenever we intentionally adopt some means to some end, that means involves intentional human action. But it does not follow that we have reason not to adopt that means. If it did, we would have reason not to intentionally adopt any means to any end. And this surely cannot be right.” (Ibid.: 237).

The second concern, that forced highly invasive treatments are inherently unethical, because they just are, is of course very weak. In fact it is more a demonstration of a feeling than an argument. As long as the opponent cannot specify exactly why such treatments cause greater damage to the offender’s autonomy than the ones we currently his argument is invalid. But as Farah pointed out this feeling might be triggered by a relevant ethical factor. The permanent nature or effect of the invasive treatment might simply compromise autonomy in ways we cannot ethically defend. The current state of treatments is no where near as permanent in its effect and it should stay so for several ethical reasons. One important ethical factor could be the argument of gain without pain, which we will look at in the following.

**The argument against gain without pain**

The argument against forced moral enhancement based on the ‘gain without pain argument’ is briefly dealt with by Vedder and Klaming in their paper “Human Enhancement for the Common good-Using Neurotechnologies to Improve Eyewitness Memory” (Vedder & Klaming, 2010: 29). Though their paper is primarily concerned with the enhancement of eyewitnesses, the same argument could be used on the subject of moral enhancement. The core idea of the argument is
that the end in itself is not the only thing that matters. How we get to that end is important too. There is something likeable that talks to our common sense in this idea. We generally accept that how a student got an A in his paper is very important. If one student got an A because he borrowed another student’s paper, and another student got an A because of long and intense studies, we tend to favor the second student. The argument in the case of a persistent criminal offender then becomes:

P1 We should always go through the process when we strive to reach a certain goal because there is an intrinsic and important quality in that process.

P2 When a persistent violent offender is forced to undergo morally enhancing treatments he does not benefit from the important quality of the process.

C Therefore we should not force violent offenders to undergo morally enhancing treatments.

While the argument has a strong point when we look at the case of the student, it is not clear that the same applies in the case of the persistent violent offender. When we are evaluating whether or not we should release a persistent violent offender we should not evaluate what kind of treatment he has been through, we should evaluate the effectiveness of it. The processes of talk therapy, religious counseling or moral enhancement through neurotechnological treatments have very different processes, but in the end we are not choosing one over the other because of the process, we are evaluating them based on their effectiveness. The focus on the process raises additional problems. We could easily imagine a case in which any process is out of the question. Consider for example the case of Timmy:

(Timmy has an abnormality in the brain. and as a result he cannot experience empathy or care for others. Should we refuse to fix his brain if we could only do it through neurotechnological treatments, because he then would be cured without having experienced a long and hard process?)

That the right answer to this question is clearly no, it would be unethical to rob Timmy of the possibility of living a good life outside of prison just because he is unable to change through a
normal process.

If the pain without gain argument is invalid we are left with the argument that it is problematic that the treatment has an invasive and permanent character. But why would we not want the treatment or rather the consequences to be of a permanent character? If the goal is that the punishments and treatments should make both the offender and the society better off, should we not then choose the treatment which have the best and most permanent effect? Remember that the same opponent, of introducing these neurotechnological treatments, has agreed on the ethical permissibility of punishing people, to deprive them off their autonomy and to alter their violent behaviour and their ability to think. That they ought not to be of permanent character seems counter-productive and wrong. Moreover, one could argue that the neurotechnological treatments does not restrict the offender’s ability to think and reflect autonomous. Rather, they create or give back the offender’s ability to think and behave as he inherently wants, as we shall see in the argument from paternalism below. A last point would be that it is quite possible that a moral enhancement actually could enable someone like Timmy to participate in the process of talk therapy for example, so even if we think that the process is very important, there would be good reasons to support forced moral enhancement.

**An Argument from Paternalism**

An argument from paternalism could, in contrast to the argument from autonomy that we examined prior, claim that we might enforce the autonomy of the punished by introducing these treatments. As we saw in the argument from autonomy it is ethically defensible to punish mentally ill persons with psychopharmacca as we assume that their mental capacities are weakened to the extent where we do not perceive them to have full autonomy over their thoughts. Or rather, we do not punish them but treat them because we recognize that they have a decreased mental functionality. Could the same not be said of persistent violent criminal offenders? Take the cases of Tommy and Timmy for instance. Tommy would be a perfect example of an unwillingly violent offender who is restricted in his autonomy both in thought and behaviour. The problem of Timmy is somewhat different and he might not be restricted in sense of autonomy in the same
way as Tommy. After all, he acts and behaves in accordance with what pleases him. What we can question and problematize is the pleasures and thoughts his behaviour is based on. Could one not argue that he suffers from a restricted capacity to distinguish between right and wrong, good and bad, which restricts him from achieving what he would want had his brain functioned normally? John Rawl offers a theory concerning this very issue on how we (the society) are to decide which preferences that are right and wrong, good and bad, and what goals and goods we (humans) inherently, if fully autonomous, want:

"As we know less and less about a person, we act for him as we would act for ourselves from the standpoint of the original position. We try to get for him the things he presumably wants whatever else he wants. Primary goods are "things that every rational man is presumed to want. These goods normally have a use whatever a person's rational plan of life." They include rights and liberties, powers and opportunities, income and wealth, and self-respect.”

(Thompson, 1980: 254).

Although Rawl’s theory is as open to critique as any other theory concerning the initial needs and wishes of individuals, it probably provides the most promising basis for the criteria that liberal paternalism needs in order to be justified. Furthermore as Thompson explains:

“Paternalistic legislation, which applies to an entire society, cannot easily be tailored to the settled preferences or life plans of particular individuals. We are thus driven to invoke a theory of the good that derives, not from the life plan of only one person, but from the plans of virtually all persons in the society.” (Thompson, 1980: 254)

As we already demonstrated, we are of a pragmatic, consequentialistic approach in regard to the issues related to persistent violent offenders and the solutions hereof. It should be clear that if we want a functional and safe society, we cannot have people like Tommy and Timmy running around, beating people up and pleasuring themselves by molesting innocent people, respectively. And as we cannot place them and other individuals with same inclinations on an remote island (this would arguably also be very unethical), where they can mingle and live as they desire, we would have to lock them up. This is not only expensive for the society, especially having the rate
of recidivism in mind, but also very sad and indeed unethical. We have already recognized that the violent offenders stand a chance to be “cured”. This is why we force them to undergo various rehabilitation programs. Modern neuroscientific findings have proved that offenders with severe psychopathy, as in the case of Timmy, suffers from both structural and functional impairments in regions of the brain that implicates on the (un)normal development of moral reasoning and decision-making (Focquaert, 2014: 2).

On the backdrop of these findings, ought we not to do whatever it takes to reestablish or fix these abnormalities in the brain as soon as we are capable of doing it? John Stuart Mill, who despite being a self-proclaimed antipaternalist, offered the following example, which justifies paternalism on non-mentally incompetent individuals, although Mill himself did not perceive it to be a matter of paternalism:

“If either a public officer or anyone else saw a person attempting to cross a bridge which had been ascertained to be unsafe, and there were not time to warn him of his danger, they might seize him and turn him back, without any real infringement of his liberty; for liberty consists in doing what one desires, and he does not desire to fall into the river” (Thompson, 1980: 250).

As it appears Mill does not perceive it problematic to deprive someone of their autonomy in cases where that someone is not in full control or conscious about the consequences of his or her actions. Or rather, in Mill’s view, one does not in fact deprive the autonomy of another if that another does not have full autonomy. Hence paternalism, in Mill’s point of view, becomes a matter of giving back the autonomy to the individuals. It thus comes possible to reinforce autonomy by forcing treatments on offenders in the name of public safety and individual benefit at the same time.

In the following we will look at an argument against moral enhancement based on the diminishing of individual worth.
The argument from diminishing individual worth

Another argument against forcing persistent violent offenders to be morally enhanced for the common good is the argument from diminishing individual worth. This argument was formulated by Chang and Buccafurni in a short paper (Chang & Buccafurni, 2010: 49) responding to the former mentioned paper by Vedder and Klaming’s on Human Enhancement for the Common Good. Though the argument is focused on the question of the enhancement of eyewitnesses for the common good, the same argument can be used against moral enhancement for the common good. Chang and Buccafurni’s argument is best presented in their own words:

“If cognitive capacity manipulation is accepted because it benefits the common good, this would mean that it is also accepted that the individual good is worth sacrificing for the common good. We define individual good not simply as the absence of physical or psychological pain but as the presence of respect for cognitive capacities as an intrinsically valuable end in itself. If respect for human cognitive capabilities is treated as an end in itself, then accepting the manipulation of these capacities for the common good is a violation of this respect. In other words, accepting that the individual good is worth sacrificing for the common good violates the intrinsic value of the individual. As a result, the worth of the individual is diminished.” (Chang & Buccafurni, 2010: 49).

A reconstructed version of the argument in the case of moral enhancement would then look like this:

P1 We should not manipulate an individual’s cognitive capacity because (1) there is an intrinsic value in respecting cognitive capabilities, and (2) because it diminishes the worth of the individual.

P2 Forced moral enhancement manipulates an individual’s cognitive capacity.

C Therefore we should not force persistent violent offenders to undergo morally enhancing treatments.

The argument seems intuitively to be very strong. Diminishing the worth of the individual sounds like a very bad thing, and in general it is. Few of us would like to live in a society where
we without warning could be sacrificed for the common good. It does, however, not follow that we by diminishing the individual in a few well defined situations, such as with a persistent violent offender, diminishes individuals as a whole. We already accept that we for the common good have to lock up dangerous persons. We also accept the use of sedative medication on dangerous mentally ill persons because we understand that they are a danger to themselves and others. It is therefore not at all clear that forcing persistent violent offenders to be morally enhanced would diminish the individual on a general and meaningful scale. It should also be mentioned that the first premise is not self-evident. Why should there be an intrinsic value in respect for cognitive capabilities that are not worthy of respect? Respect is something that is earned and how we evaluate the worth of cognitive capabilities is tied to the brain’s ability to experience it’s own existence including sensations such as pain, suffering, happiness and empathy. The evaluation of mental capacities is what justifies us in killing bugs without the need to be labelled a murderer, so it is not self evident that there is an intrinsic value in respecting cognitive capabilities in general.

**Arguments from Risk Assessment**

We chose to focus on persistent offenders due to several reasons. The main reason, however, was that we have reason to believe that a persistent offender is more likely to continue his violent behaviour since we already know that his first offense did not stop him. Because of that, the persistent offender represents an ongoing problem in that he either continues to be a threat to society, or if he is locked up in jail, continues to drain the society from resources that could have been used more effectively in other areas when it comes to maximizing welfare. This focus does however leave the argument vulnerable to arguments that question our ability to make trustworthy risk assessments. It also forces us to deal with ideologies that do not find the probability of future offenses relevant for how we punish offenses that have already taken place.

Critics of Risk Assessment could with good reason point out that it is hard to draw up a clear line of how much the probability of recidivism should be before we are justified in taking it into account. Is fifty percent enough, or should we be closer to eighty percent - maybe a 100 percent is the line, but how can we ever be 100 percent sure of anything? Setting the bar at a 100 percent
seems unfairly high. The bar for when we can punish people in the first place is not defined as ‘we should be 100 percent sure that the accused is guilty’, instead we say that we have to ‘prove the accused guilty beyond any reasonable doubt’. It would be arbitrary to argue that the criteria for when risk assessment should influence the punishment, should be even harder to achieve than the criteria used when we are justified in finding someone guilty of an offense. If we can demonstrate, in a way that leaves us without reasonable doubts, that we have very good reasons to believe that the persistent offender will continue to offend, we are justified in incorporating risk assessment into the way we punish.

One way to assess the risk of recidivism would be to look at biological risk factors. As Monahan points out we already have strong statistical evidence that age plays a factor in the likelihood of recidivism of violent crimes such as rape. The risk gradually declines the older a person becomes (Monahan, 2013: 66-67). Another factor for violent behaviour is gender. We know that males are more likely to commit violent crimes than females. We also know that this behaviour can be “found as early as social play begins - at age 2 or 2½ (Monahan, 2013: 67). If we find out exactly which biological conditions are responsible for this diversity in behaviour we can use it in risk assessment. Consider as an example the story of Tommy:

(Tommy comes from a bad social background in which violence was part of his everyday life. We also know that he had not just a bad temper, but an all consuming rage that he could not stop and control. Had Tommy’s life been different, and had he been raised in another family he might have been better at recognising when his temper was about to go off and therefore act to minimize the consequences in time, but even then he would still constantly fight a biological factor which origin he had no control over.)

The point here is that the biological condition that drives his aggression is present in most people but stronger in him. Given that we have a sufficient understanding of the brain and of social factors like family, we have a strong tool that we can use to make an accurate risk assessment. It is generally accepted that biological factors in the brain have the potential to influence our actions and if we can show that a persistent violent offender have biological factors in his brain that are associated with violent behaviour, we have good reasons to believe that the offender will
continue to offend in the future. As Ryberg rightly points out there will always be a risk of false positives or false negatives (Ryberg, 2014/2015: 9). This risk will not disappear in the near future but we should strive to minimize both by using better predictive tools and understanding biological risk factors, in the brain, could be a big improvement.

From a consequentialist viewpoint this provides us a good reason to support forcing moral enhancement on persistent violent offenders. The argument echoes the argument from the common good, but can be briefly formulated like this with a focus on risk factors:

P1: We ought not to release offenders that we believe will harm other people.

P2: The biological risk factors justify us in believing that Tommy will harm other people.

P3: Moral Enhancement can remove those biological risk factors.

C: Therefore we should force moral enhancement on Tommy.

Convincing retributivists who believe that we, because of the concept of just desert, are only allowed to punish based on crimes already committed and not on the likelihood of future crimes, requires some additional work. It could also be argued that an offender cannot deserve a punishment if he is not responsible for the factors leading him to offend in the first place. However, retributivists such as Duff or Morse have already argued that risk assessment should be relevant when we decide how to punish. Morse’s argument from desert is reconstructed in the following way:

\[ P1 \quad \text{An offender who has committed (1) at least one serious and violent crime and who is (2) consciously aware that she is dangerous and who, (3) at the same time, culpably fails to take preventive action by taking effective steps to avoid causing future violent harm, deserves, all else being equal, to be punished more harshly than offenders who do not satisfy (1), (2) and (3).} \]

\[ P2 \quad \text{There are some offenders O who are guilty of serious and violent crimes, and who are aware that they are dangerous and who at the same time fail to take effective steps to avoid causing future violent harm.} \]
If we accept this argument then retributivists would be able to justify punishing Tommy harsher than someone with a lower risk of committing violent acts in the future because he (1) was aware that he was dangerous - we can conclude this because he after a long life of violence tried to turn it around and settle down - and (2) failed to take effective preventive action since he ended up harming his girlfriend. What remains then is to convince the retributivist that forcing moral enhancement on a violent persistent offender can be seen as a harsh punishment, even in cases where the offender ultimately might be better off. How this can be done will be explored in the following section.

**Can moral enhancement be seen as a punishment?**

It is probably not an over exaggeration to say that a significant amount of the population, represented by the retributivists, feel that the role of punishment is not only consequentialist in its goals. These people do not believe that we should only punish in a way that brings about the best possible consequences, but that we should also punish because the offender deserves to be punished. It is important that people get what they deserve, even if the consequence is that we lower the total amount of welfare. It therefore becomes important to provide a convincing argument that moral enhancement, even when it ultimately leaves the offender better off, can still satisfy the role of punishment.

There are several ways of thinking about moral enhancement as a punishment even if it leaves the offender better off.

**The use of force against someone's will**

When someone does something against our will it is generally accepted as being a bad thing. This idea was made very clear in the section on autonomy, and it is one of the core aspects of the punishing effects of putting someone in jail. When we put the offender in jail against his wishes we take away his right to decide what he wants to do, and where he wants to do it. The loss of autonomy is so central to the punishing aspect of a punishment that we have extended it beyond
our prisons and use it to confine people in their own homes through electric shackles on people's legs.

When we confine people to a prison, they are left with their mind intact and are free to think what they want to think. When they are morally enhanced they lose this privilege. The offender might be better off after the treatment, but if loss of autonomy is a punishment, and if forced moral enhancement constitutes a greater loss of autonomy than a normal prison sentence, then a morally enhanced offender has been punished harder than a prisoner serving a normal prison sentence. The argument in its essence looks like this:

- P1: The loss of autonomy is in itself a punishment.
- P2: Forced moral enhancement represents a loss of autonomy.
- C: Therefore forced moral enhancement is a punishment.

Taking away the offender’s right to say no to moral enhancement can be seen as a punishment, but we should also be aware that some offenders might not see it as a punishment to lose their autonomy. Like Odysseus, who prefered to be roped to the mast so that the temptation of the Sirens could not make him act against his will, they might prefer to be morally enhanced to prevent them from committing further crimes.

**Moral enhancement as a way of experiencing the consequences of one's actions**

Guilt can be a very powerful and devastating feeling. To live with strong guilt can be argued to be a punishment. It is not uncommon to hear the phrase: “Haven’t he suffered enough” when looking at accidents with fatal outcomes. Not all violent offenders are able to feel the consequences of their actions on the victim itself or the victim's loved ones. While there can be more than one reason that an offender is unable to feel empathy toward others, we will look at the case of Timmy. Timmy is unable to experience the guilt of his actions because of biological factors in his brain. His psychopathy prevents him from being able to feel the pain of others. He had no feelings for his little sister who he suffocated to death by covering her face with tape, and he had no feelings about the schoolgirl he drowned in the lake. Timmy is entirely without guilt.
Any feeling of regret he might feel is attributed to the fact that he is going to spend a lot of time in jail. Because we come from a retributivist standpoint we want Timmy to be punished severely because of his actions. By forcing him to receive deep brain stimulation we are able to stimulate the areas of his brain that because of their lack of activity made him unable to experience guilt. Timmy is now not only a person with the same moral capacities as ‘normal’ people, he is also in excruciating pain because of the strong feelings of guilt that he now experiences. While it is still unclear whether or not deep brain stimulation could be used as effectively as described here, the point about enabling guilt still stands. The argument can be summarised like this:

P1: A person feeling a strong sense of guilt has, all else being equal, a lower amount of welfare than someone without a strong sense of guilt.
P2: Lowering someone's welfare can be seen as a punishment.
P3: Moral Enhancement can be used to make a person feel guilty about his actions.
C: Therefore Moral Enhancement can be used as a kind of punishment.

As the two arguments above demonstrate it is possible to make a convincing case that forced moral enhancement can be seen as a punishment. The challenge then becomes to convince the retributivists that the punishment it offers is satisfactory in its intensity. Whether or not this is possible will depend on the individual case. If we compare the cases of Tommy and Timmy we see that the consequences of their actions are different. Tommy gave his girlfriend a beating serious enough to put her in a coma for some time, but he never killed anyone. Timmy’s action did result in fatal casualties and as a result the retributivist standpoint is that he should be punished harder. For retributivists to support forced moral enhancement it might therefore be necessary to add additional punishments to the moral enhancement in order to make it ‘just’. This could be done by forcing the offender to do charity work, community services or even by giving the offender forced medication that makes him vomit all the time (This seems unnecessary and unethical but we will let the retributivists argue why it is necessary to inflict further harm on the offender).
The point here is that even though retributivists could argue that in some cases forced moral enhancement is not punishing enough, it is an argument against forced moral enhancement as the only punishment, and not an argument against using forced moral enhancement in the criminal justice system.

**What risks are acceptable when we choose to force violent offenders to be morally enhanced?**

The above question might form the basis of an argument against the use of forced moral enhancement. In most treatments there are some kind of risk involved. This risk might not always be fatal, but the use of pharmaceuticals often come with side-effects. While moral enhancement through neurotechnological treatments also includes the use of drugs, some of the treatments are more invasive in their nature. Take as an example the method of deep brain stimulation. In deep brain stimulation we insert an electrode that creates electrical impulses in regions of the brain. Unforeseen complications such as infections when we open up the skull are always a risk.

The question then becomes where we should draw the line, what is an acceptable risk? The answer is not easy to find. It seems clear that it would be morally wrong to force an offender if the risk of fatality was 50/50, but what if it was 90/10 or 99/1? If the treatment was optional and the offender freely could choose it after having been informed about the risks it would be easier to decide.

Perhaps we do not need to find a precise number. In other situations we agree that it is preferable to take risks if the consequences of not taking them are worse. We see this when young children are forced into treatments or surgeries because we evaluate that it is better for them in the long run, even if there might be some risks of infections or other side effects.

If we are talking about a very dangerous violent offender, the consequence of him not being morally enhanced could very likely be that he is going to spend the rest of his life in a jail. This life is generally going to be a life in which the offender is going to experience a much lesser degree of welfare in comparison to a life in freedom with the possibility of having a job and a family. What the risks of the specific enhancements are, is going to differ from treatment to
treatment, but it is clear that we in order to force an offender into treatments should not have to be at a risk level that is lower than the acceptable level when we force kids into treatments. A retributivist could even argue that because an offender has broken the laws and hurt other people, he deserves the treatment even if the risks are higher than we would normally require it to be for non offenders.

What the acceptable risk factor should be might also be influenced by the risk assessment of the offender. Some might argue that the more dangerous an offender is, the more risks we should be willing to take. We are not going to make a final conclusion on what risk factor should be acceptable, but we suggests that it should be found in a combination of the risk that we normally accept in non-offenders and in the degree of dangerousness that the offender represents.
Conclusion

We believe, based on our reconstructions and critical discussions, that the arguments against forced moral enhancement face some serious problems.

The argument from autonomy fails to demonstrate a morally relevant factor that can defend the claim that it should be a greater loss of autonomy to be forced to undergo morally enhancing treatments than to be imprisoned.

The argument from gain without pain and the diminishing of individual worth both faced serious problems and left us unconvinced because they failed to demonstrate their relevance when it comes to the treatment of violent offenders.

Unlike the arguments against forced moral enhancement, we believe that the argument from common good provides a strong basis for supporting forced moral enhancement. The argument from paternalism demonstrates that we have good reasons to believe that it is morally preferable to take away an offender’s autonomy when it is in their best interest.

The argument from risk assessment shows that the threat of further harm justifies forced moral enhancement as a way of decreasing the rate of recidivism.

Our section on moral enhancement as a punishment gives two plausible examples of how forced moral enhancement can be justified as a punishment, which gives the retributivists a reason to support forced moral enhancement as a part of our criminal justice system.

Based on this paper we believe that there are good reasons to think that it is not only morally permissible, but morally required that we force persistent violent offenders to undergo morally enhancing treatments given that the medicine works.
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