

SAUL SMILANSKY

HARD DETERMINISM AND PUNISHMENT: A PRACTICAL
REDUCTIO

(Accepted 23 March 2011)

ABSTRACT. How can hard determinism deal with the need to punish, when coupled with the obligation to be just? I argue that even though hard determinists might find it morally permissible to incarcerate wrongdoers apart from lawful society, they are committed to the punishment's taking a very different form from common practice in contemporary Western societies. Hard determinists are in fact committed to what I will call funishment, instead of punishment. But, by its nature funishment is a practical reductio of hard determinism: it makes implementing hard determinism impossible to contemplate. Indeed, the social practices that hard determinism requires turn out to be morally bad even according to hard determinism itself. I conclude by briefly reflecting upon the implications.

When... a criminal must be confined indefinitely, his life should not be made unnecessarily unpleasant.

Derk Pereboom, *Living Without Free Will*

The free will paradigm holds that free will is a necessary condition for moral responsibility, which is a condition for desert, which is required for just punishment.¹ Libertarians and compatibilists differ, of course, in the way they understand the needed form of free will, but both can justify punishment within the paradigm. Both can find punishment morally acceptable as it is commonly practiced, involving long-term incarceration in unpleasant institutions set apart from lawful society. This need not even involve the idea that punishment is intrinsically

¹ Some have argued that there are forms of desert that do not depend upon free will and moral responsibility (see e.g. Sher 1987; Feldman 1995). But whatever one may think about that larger question, the notion of desert involved in the justification of punishment is clearly responsibility-dependent.

good. If such punishment is socially useful (for purposes of deterrence, for example), libertarians and compatibilists may not object to it, since they would accept that the criminal has made himself liable to be disposed of in harsh ways, through his free actions. By contrast, hard determinists believe that there is no free will, and so no moral responsibility, and no desert. How, then, can hard determinists deal with the need to punish, when coupled with the obligation to be just?

I will argue that even though hard determinists might find it morally permissible to incarcerate wrongdoers apart from lawful society, they are committed to the punishment's taking a very different form from common practice in contemporary Western societies. Hard determinists are in fact committed to what I will call *funishment*, instead of punishment. But, by its nature funishment is a practical *reductio* of hard determinism: it makes implementing hard determinism impossible to contemplate. Indeed, the social practices that hard determinism requires turn out to be morally bad even according to hard determinism itself. I will conclude by briefly reflecting upon the implications.

Hard determinism is a position that combines determinism with a demanding ("hard") interpretation of the conditions for free will and moral responsibility, so that, given determinism, these cannot exist. This is in contrast to compatibilism which, although it is typically deterministic ("soft determinism"), is less demanding, and holds that free will and moral responsibility can exist even under determinism.² Later on we will consider with some care the possibility for certain types of normative arguments (based on, for example, considerations about justice, or consequentialist concerns), in the hard determinist context. More general doubts about normativity in a deterministic world are beyond our scope here. There is little reason to think that reasoned discussion can never be effective, and hard determinists themselves have wanted to argue, for instance, that we ought not to punish for retributivist reasons.³

² In fact as has been widely recognized for a long time, what matters is not determinism but the existence of a strong metaphysical, "libertarian", free will. This probably does not exist, irrespective of determinism, because possible non-deterministic elements (such as Quantum Mechanics indeterminacy) would not give us a robust sense of free will; or even because the very notion of a robust libertarian free will is incoherent (see, for example, Strawson 2002). But we can avoid these complications and remain with the traditional terminology.

³ More specifically, we will also be assuming that while the absence of free will would rule out desert, blameworthiness, and praiseworthiness, it would not rule out moral obligation, rightness, and wrongness. This assumption has been challenged even within the free will debate (notably Haji 2002, who argues that obligation would also be threatened), yet it remains standard in the debate. One is morally obliged to stop and save a toddler who is about to run into a busy street, although (for hard determinists) one is not blameworthy if one then does not do so.

I will also be treating hard determinism as a deep moral view that has something to say about punishment, and goes beyond the mere denial of free will and moral responsibility (this will be further explicated below). In this I follow most hard determinists themselves. But first, let us see the road to funishment.

Murderers, rapists, violent bullies, thieves and other miscreants need to be kept apart from lawful society; we have no real choice, for otherwise they will kill, rape, steal and make life miserable for the rest of us. We can perhaps give up the element of moral censure traditionally involved in punishment, but we must retain the option of incarceration. But should the criminals be incarcerated away from the law-abiding, or should the law-abiding be incarcerated apart from the criminals? For libertarians and compatibilists, the answer is obvious: criminals deserve to pay the price of incarceration, due to their freely chosen but unacceptable actions. For hard determinists, however, the answer is not at all obvious. Yet we can assume, for pragmatic reasons, that even if we are hard determinists the criminals will be incarcerated apart from lawful society (and not vice versa). A society controlled by vicious criminals would not be morally acceptable: it could not be depended upon to keep incarcerated non-criminals out of harm's way, and to provide them with morally adequate conditions.

Hard determinists cannot, however, permit incarceration in institutions of punishment such as those that currently prevail. Instead of punishment, they must opt for funishment. Funishment would resemble punishment in that criminals would be incarcerated apart from lawful society; and institutions of funishment would also need to be as secure as current prisons, to prevent criminals from escaping. But here the similarity ends. For institutions of funishment would also need to be as delightful as possible. They would need to resemble five-star hotels, where the residents are given every opportunity to enjoy life. This would go beyond material conditions: each criminal will need to be permitted considerable leeway in running his or her own personal lives, as well as a large measure of freedom of social interaction (including frequent visits from outsiders, when possible). Since hard determinism holds that no one deserves the hardship of being separated from regular society, this hardship needs to be *compensated* for. Hence no effort and no expense should be spared, in order that a person

undergoing funishment, a fun-soner – the term parallels prisoner – will have a good life despite being separated from regular society, and deprived of the freedom and opportunity to move among the rest of us.

The cost of funishment will be incomparably higher than that of punishment. The expense of keeping a prisoner in a typical high security prison in California is currently estimated at roughly \$50,000 per year. A similar expense will need to be laid out when we move to funishment, for the fun-soners must not be allowed to escape (in fact funishment will require far heavier security expenses than punishment, as I will shortly explain). But on top of that, the life of opulent entertainment that would be required is very costly (consider the expense of going on holiday to a top resort for a week or two, and multiply accordingly). In a word, it is difficult to contemplate the implementation of hard determinism: the hard determinist equivalent of punishment will be horrendously expensive.

It might be thought that this is too extreme: our duty is only to make the relevant social deviants as well off as we can consistent with our other social needs. So competing needs for other important social goods will weigh against the goal of making life fun for the criminals, and proportionally reduce its weight. This is true, but we should not let it hide from us the magnitude of the task that would nevertheless be morally required of any economically advanced society. Of course we need not sell off all our hospital baby incubators in order to finance golf lessons for the criminals, but, given that we are depriving them of their freedom (while, according to hard determinism, this is not something that anyone can come to deserve), their moral claim on social resources is very high. After all, we can assume that in most cases such long-term deprivation cannot be construed as being for the benefit of the criminals themselves; and we are depriving them of their freedom primarily with our own good in mind. Hence, unless we compensate the criminals very generously, they will have become – through incarceration – victims of the greatest injustice. This is not the injustice of taking someone's freedom on account of his guilt, when in fact no one is guilty (which is how hard determinists would view ordinary practices of punishment). But it is, nevertheless, an injustice: the highly undesirable nature of the incarceration (both in itself and as compared to normal life on the outside), when we recall that it is completely undeserved,

cannot but be grave injustice. In itself it is no less an injustice than would be the random punishment of any non-criminal. We are ruining the lives of people who in no way deserve this.

It is important to see that if we (as hard determinists) treat people in this way, without providing the compensation of funishment, this differs fundamentally from acquiescence in “metaphysical” harm. Why must we spend more on compensating the criminals than we do today on, say, compensating unfortunate cancer patients? The answer is that the criminals are proposed to become *our* victims: they will suffer grave deprivation and harm (in itself, and relatively to others on the outside), due to our own intentional actions, and because this serves our interests. We, as a society, are proposing to target and injure them in a special way, which they do not deserve, for our own purposes. In order to be permitted to do so, we must provide adequate compensation.

It could be argued that sometimes we do not feel the need for full compensation when harming members of our own society. Especially when it comes to the justification of state intervention, we think that the state can deprive us of things without giving us full compensation, when this is not done gratuitously, or simply in order to make us suffer. Yet there are significant limitations to such an argument. We do not, for example, think that the state can deprive us of our property even for socially beneficial uses, without significant compensation. And depriving us of our freedom is a much greater impingement on our rights. Perhaps the only major counter-example lies in military conscription, where people are deprived of significant freedoms and are sometimes even put in life-threatening situations. But if imposed conscription, unlike punishment, is broadly if not universally applied for this very reason, that morally such deprivations cannot be comfortably imposed only on a limited portion of a relevant age cohort. Moreover, no civilized society forces a life sentence of military service on conscripts (at least this is so for those among them who get to live a long life); conscription is typically limited in duration. And finally, we do feel as a society the need to compensate the conscripts, by granting them free education for example, for the deprivations that we have imposed on them.

The analogy of the quarantine has been used by hard determinists to justify incarceration (e.g. Pereboom 2001, pp. 174–186). But this analogy is of only limited help. Quarantine is, in modern times, quite

rare, is typically limited in duration, and is mostly imposed on foreigners. Our intuitions on it are hence not well-formed, in a way that would be informative in the present context. Quarantine is also thought to be justified only in cases of immediate danger of the gravest sort. Those features are not present in most cases when we want to imprison people. Most criminals are imprisoned for crimes that are not life threatening, and so could not be quarantined at all, according to the standards we demand for medical quarantine. Note how reluctant we are to quarantine AIDS sufferers despite the potential dangers of contagion (and this was so even at the time when catching AIDS would have been fatal). And even in those extreme cases where it might be strictly necessary to quarantine people for long periods of time, we would then need to provide them with excellent living conditions. Excluding innocent people from normal social interaction morally requires very significant efforts at compensation. The idea of quarantine provides, at best, limited support for the idea of the incarceration of criminals; but (for hard determinists) it provides no support at all for the idea of trying to do so on the cheap.

Likewise, it might be pointed out that even today we punish people without assuming that they are morally responsible, in strict liability offences. Hard determinists engaging in punishment (without the compensation of funishment) would just be extending this practice. A hard determinist seeking to avoid the need for funishment, who would raise the topic of strict liability would, however, only be playing into my hands. It is not accidental that just punishment is commonly based upon a thorough investigation into responsibility, and that offences of strict liability are so exceptional and marginal. The typical strict liability offence (such as a parking violation) would involve no more than a fine; and where it has been used more substantively, this has invited widespread moral and legal criticism. Most commentators and many courts have found substantial punishment for strict liability a moral anathema. Hence the moral acceptability of strict liability provides a poor analogy and defense for the type of long-term incarceration under discussion.

Consider an analogy: let us assume that incarceration under conditions of punishment without compensation is equivalent to having one's leg cut off. This is not an outlandish comparison, for many people sentenced to a long prison term would be willing to give up a leg if they

could thereby be released. If we as a society go on to cut healthy people's limbs, as against their interests, and for our own purposes, then we should at least have the decency to compensate them so that they will have a good chance of living a life as good as our own.

We must not allow our (pre-hard-determinist) negative view of criminals bias our sense of the moral priorities. The fact that they have made others miserable, or violated people's rights, while true, is not, according to hard determinism, within their control and hence it is not their fault. They do not, as it were, own their actions, and do not deserve to suffer for them. They may be incarcerated if there is no better alternative, but not punished: at most, human beings may be funished. By comparison to the injustice and the evils of (unfunished) incarceration, most other social goals must be seen, morally, as quite a luxury. We will have to give the criminal's interests a very high precedence, and devote a large proportion of our resources to turning punishment into funishment.

Yet our problems as hard determinists have just begun. For consider the practical implications of the switch from punishment to funishment. Criminals currently have to balance the temptations of crime with the risks of punishment: the risk that, if caught, they are likely to spend many of the best years of their lives in miserable, ugly, harsh, nasty, violent and otherwise highly unpleasant institutions. Some people nevertheless take the risk, while many others are deterred. But once funishment replaces punishment, matters change radically. The potential offender knows that, if he is not caught, he can enjoy the spoils of his crime. But even if he is caught, he faces only some time in an institution of funishment, which – apart from being separated from lawful society – will be like a fabulous holiday. Indeed, society would be committed to doing all that it can to assure that the level of well-being of the captured criminal would not be lower than life on the outside. For, we recall, according to hard determinism no one deserves to be harmed (and to be made worse off than another), whatever crime he or she has committed. So if society singles out a criminal for detention, society must fully compensate this person for the privation involved.

But then, following hard determinism means that much less disincentive for offending remains. The criminal life is at risk of being perceived as a win-win situation, such that, either way, crime pays. Due to the inherent unattractiveness of incarceration for most people,

life on the inside will need to be considerably better than life on the outside, in almost every respect, in order to attempt to compensate for the incarceration. The wonders of funishment could not be kept secret. In fact, some people are likely to be attracted by the idea of trying out the fabulous institutions of funishment. We would thus even be providing to some a strong positive incentive to become criminals: in order to be caught. Perhaps whole groups of friends or even the families of the offenders will seek to join them. We would not purposefully make funishment better than freedom, overall, it would only need to be overall as good, i.e. compensate for the deprivation of freedom. Yet this deprivation requires so much to balance it that funishment will be marvelous in many ways and, given human diversity and irrationality, some will be positively attracted by it. This, however, is merely an additional problem on top of the inevitable destruction of the deterrent effect of punishment, of the move towards funishment.

My claim that a system which could threaten potential offenders with, at worse, funishment, would be challenged in its efforts to deter, while empirical, can hardly be controversial. Modern societies are finding it difficult to deter many people even with present, highly unpleasant prisons; a turn towards funishment must greatly harm deterrence. Whether by failing to provide a sufficient disincentive for crime, or perhaps through providing even a positive motive to engage in it, following hard determinism would lead to a flood of crime. The number of people who would need to be kept apart from lawful society would increase enormously. Many people who would otherwise not have become involved in crime, nor ever suffer detention, would be caught up in that very life. In the meantime, the rest of us would be living in the worst possible world: suffering unprecedented crime waves while paying unimaginable sums for the upkeep of offenders in opulent institutions of funishment.⁴

A corresponding dynamics to that which would destroy the deterrent force of the threat of incarceration for potential criminals, would also apply within prisons. Criminals undergoing funishment who would hurt or even kill guards, service personnel (whose jobs

⁴ There will be further twists. For example, since the criminals undergoing funishment ought not to be made worse off than people living on the outside, the nature of life outside the institutions of funishment affects how much compensation the criminals should receive within funishment. Hence well-ordered, progressive and generous societies, i.e. those that treat even their worse off (non-criminal) citizens well, will confront the force of my argument to a *greater* degree. Due to their goodness towards non-criminals, they will be obliged to increase the fun element in the funishment of criminals, thereby becoming only more deeply ensnared in the *reductio*.

make the fun-soners joyful as part of the compensation package for incarceration), or other fun-soners, could not be dealt with harshly. Although they might be separated from others in prison, once again they would immediately need to be compensated in proportion to *that* further deprivation. After all, we recall that hard determinism denies that deprivation can be deserved whatever one does, and no one would suddenly, miraculously, come to deserve solitary confinement in prison. All this would, in turn, make such misbehavior all the more tempting. It would also of course multiply the expense of keeping a fun-zone (a prison operating according to hard-determinist guidelines), if not make it altogether impossible to run.

Even in hard determinist terms, all this is a very bad state of affairs. Hard determinists have sought to limit the number of people that the justice system must deal with, to reduce public hatred of offenders, and to beneficially reform the social conditions that generate crime. But hard determinism itself defeats all those idealistic goals. If implemented, the view would generate more rather than less crime, more criminals would be caught up in the system and incarcerated apart from society (albeit under improved conditions), and public sentiment would hardly move towards an offender-sympathetic stance, once crime blossoms, and the taxation required to finance the regime of funishment mushrooms. A backlash against hard determinist reforms would be inevitable. But that result is philosophically less interesting than the consequences of full implementation of hard determinism itself: it is not only that implementing hard determinism would result in a traumatic reaction and an abandonment of hard determinist policies. A hard determinist order would be nightmarish, even for hard determinism, if *correctly* implemented. Hard determinists themselves cannot desire the results of the reforms required by their own position (rising crime, much higher levels of incarceration, etc). Hard determinism is, in practice, self-defeating.

Incarcerating people away from ordinary life is a harsh and morally problematic measure. It harms people, and threatens to make their life highly unpleasant in itself, and much worse than normal life on the outside. Unlike libertarians and compatibilists, hard determinists cannot accept such incarceration except under conditions of funish-

ment, whereby the harm is compensated for and the (comparative and non-comparative) badness is largely avoided. But this pushes hard determinism into the jaws of the *reductio*.

That hard determinism leads to its own *reductio* renders highly implausible the position of those who can be called “happy hard determinists” (e.g., Waller 1990; Pereboom 2001; Sommers 2007), who have welcomed the demise of belief in free will and moral responsibility, in favor of a moral order in which no one would be made to suffer, or made to be worse off than others, on account of his or her choices and actions.

Nothing in my argument requires that we accept that current levels of punishment are optimal, and in fact it is likely that we over-criminalize and over-punish. But even after we take account of plausible reforms, a large amount of long-term criminal incarceration seems unavoidable, given realistic social prospects and the human condition as we know it. In theory it is of course possible that society might discover some pharmaceutical (or otherwise dependably therapeutic) method, whereby offenders and potential offenders could somehow function normally but also be rendered socially safe without the (threat of) lengthy incarceration. But, in addition to all the familiar Brave New World fears that such ideas arouse, they cannot at present be taken seriously as an alternative basis for social policy. Even the most humane societies have not found a systematic substitute for incarceration, as a way of deterring potential offenders and keeping actual offenders off the streets.

But why cannot the hard determinist avoid my argument by simply opting for some sort of utilitarian-like consequentialism? Using (non-desert) consequentialist considerations would let the hard determinist avoid the *reductio*, since the requirement that I posited for compensating the criminals, and the concomitant motivational catastrophe, would never get off the ground. However, a hard determinist arguing in this way would betray the moral force of hard determinism. Utilitarianism has, of course, been available for a long time, but people worried about free will and moral responsibility are concerned with more than utility. This concern has been the basis for taking the moral high ground as against a solely utilitarian justification of blame, guilt, and harsh punishment, rightly saying that making people suffer guilt or punishment *just because doing so would*

be socially useful is morally unacceptable. We cannot use the morally innocent in such ways even if it furthers social interests. Blame and punishment must also be just, and not only socially efficient. And in order for them to be just, they must follow upon the choices and actions of moral agents, who through their free actions have made themselves liable to blame and punishment. That is why the punishment of the innocent is the paradigm of injustice (yet it is of no principled concern to a utilitarian).⁵ But for hard determinists, everyone is morally innocent! Hard determinism as a moral position thus holds that no one deserves to be made to suffer, or to be made worse off than another, and hence that it would be *unjust* to do so. Hard determinism cannot turn to consequentialism for assistance in overcoming the *reductio*, for it would thereby completely betray itself as a distinct ethical position.

The terminology can mislead us here. Hard determinism could simply be taken to be the conjunction of determinism with incompatibilism, namely, as the view that determinism exists, while the sort of (“compatibilist”) free will that could ground moral responsibility in a deterministic world does not exist. This understanding would be adequate for certain purposes, but not in the present context. For it leaves it an open question whether we may punish people (say, based solely on consequentialist criteria). In our context such a narrow understanding of hard determinism makes it completely mysterious as to why we care about the free will problem in the first place. Hard determinism understood as a deep moral view shares the broadly deontological paradigm notion of free will (the idea that free will is required for moral responsibility, which is a necessary basis for desert and punishment) with libertarianism and compatibilism. But unlike them, hard determinism is pessimistic as to whether the right sort of free will can exist. This pessimism would not suddenly make a morally serious hard determinist indifferent to the fact that we do not have free will and moral responsibility, and permissive about blame and punishment. On the contrary, such a hard determinist thinks that *because* we lack free will and moral responsibility, it would be *morally wrong* to punish (or blame, etc.) anyone.

⁵ It may seem as though this would be of concern only in extreme or far-fetched examples, yet this is demonstrably not so; see Smilansky 1990.

But does not the absence of positive desert, according to hard determinism, mean that we must abandon the free will paradigm? If there is no free will and no moral responsibility, then (it might be argued) the very notion of desert ceases to make any sense, and needs to be abandoned. And then perhaps the pragmatic justification of punishment (or of anything else) can proceed undisturbed. But this argument as well is unconvincing. Desert is a way of justifying divergence from a moral baseline. If desert becomes impossible, this does not mean that the moral baseline has somehow disappeared, and “anything goes” (cf. Smilansky 1996). If the moral baseline is that everyone ought to be treated as innocent unless proven guilty (through his or her free actions), then, if no one can become guilty, the moral baseline of innocence remains. Not to respect it would be unjust. No one can be guilty, and indeed according to hard determinism everyone is, in the deep moral sense, innocent, and ought to be treated as such, whatever he or she does. That is one of the deepest insights and moral contributions of hard determinism, if indeed we lack free will and moral responsibility. It is thus a mistake to believe that since hard determinism rules out desert, there is no justice (or injustice) in a hard determinist world.

Similarly, if we assume a moral position requiring that a state treat all of its citizens equally, unless they come to deserve otherwise through their free actions, then – if it is thought that they cannot come to deserve otherwise – the baseline of equality is all that remains. A state, then, cannot treat some of its citizens substantively worse than it treats others (and if it does so in some respect, such as by incarcerating them, it needs to offer such compensation as will right the balance). We need not decide here upon the exact nature of the baseline; suffice to say that morally it remains in force, even if we come to think that (free will-based) divergence from it is impossible. And surely when we are contemplating incarceration by and in the name of society, the moral baseline is both demanding and morally crucial.

Hard determinism hence confronts a vicious philosophical fork: attempting to maintain its integrity leads it to failure in practice and to self-defeat even in its own terms; while attempting to avoid those

grim outcomes through embracing consequentialism, leads it to moral and philosophical self-betrayal.⁶

Notice that I have been conservative in my assumptions about the baseline, in an important way: for the *reductio* argument to go through, it suffices that we focus on the deprivation involved in incarceration apart from society, and see that (for hard determinists) it must be conducted by way of funishment, rather than through punishment of the usual form. If one holds to a morally more demanding baseline, the force of the argument should just increase. A very strong baseline of equality, for example, may require that, when we funish people, we compensate them not only for the deprivations of incarceration, but also for the deprivations of their earlier lives (deprivations which may well have led them to crime!). This would, as a rule, only raise the demandingness of funishment, and further build up the *reductio*. But I need not have recourse to such stronger assumptions.

I have also limited myself to the practical form of the *reductio*. To some extent, the very thought that often those who most harm others will be treated to the greatest amount of fun(ishment), as a response, may serve as a *reductio* of the theory that requires this. In other words, some will see a *theoretical reductio* of hard determinism that is instantiated irrespective of what unfolds in practice: the very fact that hard determinism demands funishment in itself suffices to make this theory ludicrous. Yet I have sought to go beyond this, and so am not dependent on our common-sense intuitions; and on whether we can come to accept the moral need for funishment.

⁶ The hard determinist could not look for assistance from contractual theories of morality. Those theories divide into two types. One seeks to achieve an impartial moral perspective through the idea of a contract (John Rawls's "veil of ignorance" is the most familiar version). Such ideas will face the same sort of criticism that we put to utilitarian types of justification: that a morally deep hard determinist will not accept punishment (as compared to funishment), even if it is justified by Rawlsian (or utilitarian) methods. A second type of contractualism is based upon the actual agreements of real parties. The idea would presumably be that a person can deserve to be punished because he or she has first freely chosen to subscribe to the contractual arrangement, and has then freely reneged on the deal. But this idea is directly at odds with a hard determinist perspective. Indeed, taking contractualism of this sort seriously is likely to imply that one accepts compatibilist if not libertarian notions of control, responsibility, and culpability. I think that contractual ideas have an important role to play in justifying punishment (although this is not the place to defend such a view). But to the extent that they can do so, this is a problem rather than a support for hard determinism.

Given that the empirical basis for the practical *reductio* of hard determinism (if it were implemented) is sound, then even if one has no intuitive reservations about implementing it, it would simply make no sense, even for hard determinists, to do so. Even if we can come to accept the moral case for funishment (rather than see this in itself as already discrediting hard determinism on the theoretical level), nevertheless it cannot be implemented. Funishment is not a viable (hard determinist) form of punishment, but a striking practical failure for hard determinism.

What does the pragmatic *reductio* of hard determinism mean? One natural response is that it demolishes hard determinism on the theoretical level as well. Moral theories need to have at least a prospect of being implemented in significant ways. Morality is inherently practical, and serves as a basis to help people to live with each other, and so abandoning any relationship to practice is destructive for a normative ethical view. That seems to be a reasonable position. But perhaps it is not the only plausible one. It may be conceivable that a moral theory can be philosophically true, even though it cannot be implemented in any way, and even though it is indeed completely self-defeating in practice, even in its own terms. Such concepts sound crazy, particularly when we are thinking of an all-encompassing moral position such as hard determinism. But perhaps it is nevertheless true and we are in such a “Crazy Ethics” condition. In that case theory and practice will have come apart, and for hard determinists morality will have collapsed upon itself. This paper has not evaluated the philosophical merits of hard determinism (apart from the implications of the *reductio*); nor has it dealt with the general issue of the meta-philosophical constraints on viable ethical theories.⁷ I have sought to show that at least as a moral theory with bearings on

⁷ I have defended elsewhere a position on the free will problem that tries to incorporate the true but limited insights of hard determinism together with the true but limited insights of compatibilism (see, e.g., Smilansky 2000: Part I). As I argued there and in Smilansky 2005, hard determinism does not properly respect persons, and morally it ought to be rejected as a basis for personal and social life. But this does not directly affect the present argument, where I have granted hard determinism for the sake of discussion, and followed it to where it leads.

practical moral life, hard determinism is a failure, and we ought not to follow it.⁸

In the foreseeable future, even hard determinists will need to incarcerate criminals apart from lawful society. They cannot, however, accept common forms of punishment, in the way that both libertarians and compatibilists can. I have argued that morally serious hard determinists are committed to funishment instead of punishment, and that this creates a practical *reductio* of their position.⁹

REFERENCES

- Feldman, Fred 'Desert: Reconsideration of Some Received Wisdom', *Mind* 104 (1995): 63–77.
 Haji, Ishtiyaque, *Deontic Morality and Control* (Cambridge: Cambridge University Press, 2002).
 Pereboom, Derk, *Living Without Free Will* (Cambridge: Cambridge University Press, 2001).
 Sher, George, *Desert* (Princeton: Princeton University Press, 1987).
 Smilansky, Saul 'Utilitarianism and the 'Punishment' of the Innocent: The General Problem', *Analysis* 50 (1990): 256–261.
 Smilansky, Saul 'Responsibility and Desert: Defending the Connection', *Mind* 105 (1996): 157–163.
 Smilansky, Saul, *Free Will and Illusion* (Oxford: Oxford University Press, 2000).
 Smilansky, Saul 'Free Will and Respect for Persons', *Midwest Studies in Philosophy* 29 (2005): 248–261.
 Sommers, Tamler 'The Objective Attitude', *Philosophical Quarterly* 57 (2007): 321–342.
 Strawson, Galen, The Bounds of Freedom. in Kane Robert H. (Ed.), *Oxford Handbook on Free Will*, (New York: Oxford University Press, 2002).
 Waller, Bruce, *Freedom Without Responsibility* (Philadelphia: Temple University Press, 1990).

Department of Philosophy,
University of Haifa, Haifa 31905, Israel
E-mail: smilsaul@research.haifa.ac.il

⁸ My argument has focused on the clear-cut case of punishment. But matters would not stop there. The broad framework of human reactive attitudes would be similarly disrupted. Most human reactions have the potential to make people feel bad, whether directly or comparatively. But according to hard determinism no one can come to deserve to suffer such negative (or comparatively deficient) reactions; no one is blameworthy. Yet it is hard to imagine interpersonal life without them. Presumably those who are made either directly or comparatively unhappy by such reactions would need to be compensated, in the psychological equivalent of funishment. The negative attitude, if it were not to make the targeted person unjustly despondent, would presumably need to be immediately accompanied by a stronger, compensating, positive emotional response, which would make him or her feel good about him/herself. But not only would this be artificial and disruptive of natural human interaction – it would typically and at once empty the negative reactions of their purpose and effectiveness. With the reactive attitudes there are, however, other considerations, which complicate the picture; and justice is hardly of prime concern, as it ought to be with punishment. There is no need to consider all this here, and I will limit my claims to punishment.

⁹ Versions of this paper were discussed at the Bled Workshop on Normative Ethics, at John Martin Fischer's seminar on free will in the University of California, Riverside, and at the colloquium of the Department of Philosophy in the University of California, San-Diego; I am grateful to numerous participants for their very helpful comments. I am also very grateful to Zohar Geva, Iddo Landau, Tal Manor, Michael McKenna, Ariel Meirav, Dana Nelkin, Tamler Sommers, Daniel Statman, Victor Tadros, and two anonymous referees for *Law and Philosophy*, for many excellent comments on written drafts of the paper.