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“I’m part of the furniture now, innit?”

Risk governance and moral thwarting among life-sentenced men in English prisons

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ABSTRACT People serving indeterminate prison sentences in England & Wales progress largely based on assessments by officials of how well they have performed against the expectation to ‘reduce their risk’ of harming others in future. Prison scholars have noted that this kind of assessment prompts pains of ‘tightness’. This paper draws on case studies of two life-sentenced men in an open prison, both contemplating the ‘tight’ conditions under which they might be released, and reflecting on their ethical lives in light of these. It describes the moral messages they received through punishment, and how they responded, ethically, to these. The paper argues that both men felt morally thwarted. For one, apparently impressive rehabilitative progress meant little because his licence conditions would make it impossible to fully pursue what he saw as as ‘good’ life; for the other, it felt impossible to mould himself to the complicated expectations risk management measures communicated. Both men were framing their ethical goals mainly in relation to the demands of their sentences rather than the lives they hoped to lead afterwards. This undermined one of the sentence’s supposed aims, to reform and rehabilitate them and restore them to a position of qualified freedom.

Keywords: penal theory, moral communication, punishment, life imprisonment, murder, risk, risk governance, ethics, anthropology of ethics, moral thwarting

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Introduction

> I haven't made any progress… whether I go from B to C to D… to me, that's not progress.[1] I'm still in prison. When I go out, I will still be on licence[2] and I'll still be a prisoner. That's the way I look at things […] Going from B to C to D, no– I don't think that's progress. I just think that's just the natural course of events.
>
> Grant

> BJ: Your tariff was… what, ten years ago, eleven years ago now?

> Jeff: Eleven. I knew I'd go past, but I didn't know I'd go past it this long […] I just kept thinking to myself, "how long have I got to do? How long am I going to be here for?" And then it was a year, another year, another year [and] I started thinking, "Pfffft… Part of the furniture now, innit?"[3]

Grant and Jeff were both held in an open prison. Both aged around sixty and both convicted of murder many years before, Grant, who was nearing his 'tariff' date,[4] had recently learned that prison staff were recommending that the Parole Board release him, reasoning that the risk of his harming others again was manageable. Jeff's tariff, however, had long since passed, and his record of occasionally unpredictable behaviour in custody left the impression of a riskier release. Although Jeff felt like 'part of the furniture'—a forgotten and unnoticed feature of a wider scene—official worries associated with his possible release meant he was in fact subject to more intense behaviour monitoring than many of his peers, though whether he was aware of this was less clear. He was eager for release but uncertain what could bring it about, while Grant, who was likely to be released soon, said he was 'in no hurry'.

As Grant's words suggest, both men had progressed well enough against official expectations that they were trusted in an open prison. Even so, both also shared the feeling that their ethical lives were thwarted by the sentence, in that their efforts to 'do the right thing' over many years had still left them unable to realise the long-term intentions which really mattered to them.

To explain this situation, it is first necessary to review recent anthropological scholarship for an account of how people strive to shape themselves into whom they need to become. Two theoretical strands in this literature are discussed, before the specifics of each empirical case are described in greater detail. A final, concluding section discusses how Jeff's and Grant's attempts to be ethical were frustrated by the way officialdom addressed them about ethics: by imposing quasi-universal moral obligations, which were difficult if not impossible for them to realise in practice.

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[1] 'B-cat', 'C-cat' and 'D-cat': security classifications for male prisoners in England and Wales. Category-A prisoners are held in maximum-security conditions. Category-D prisoners are held in 'open' prisons, involving the lowest degree of restrictions. Categories B and C are intermediate steps.

[2] 'On licence': subject to formal supervision requirements and control measures. These are imposed for life and non-compliance with them can prompt recall to custody.

[3] i.e. having become invisible or unnoticed, usually through lengthy occupation of a scene.

[4] i.e. the end of the 'minimum term' to be served in custody, marking the end of the 'penalty phase' of a life sentence.

1 Virtue ethics in practice

'Poststructuralist' accounts of virtue ethics (cf. Faubion 2011, 2012; Laidlaw 2013; Mahmood 2005; Mattingly 2012), look particularly to the work of the later Foucault (1986; e.g. 1988) for conceptual and theoretical foundations. In this view, ethics consists in striving to occupy a 'subject position'. Subject positions are shaped by a range of influences, not simply systematic moral codes. Certainly, they respond to such codes, which in turn are promoted by various social institutions (e.g. schools, professions, prisons, organised religions). To the extent that moral codes are promoted by established institutions, they are structured by existing power relations. But ethical duties also arise from relationships—familial, occupational, kinship, etc. —meaning that to occupy a subject position is not simply to replicate a moral code, but rather to reflect on one's duties, to evaluate oneself, and to choose how one might fulfil the duties consistent with a good life.

Ethics, on this view, is not about reproducing norms. Rather, it is a question of reflective *autopoiesis* or self-formation: it involves cultivating the virtues commensurate with fluent moral action. 'Technologies of the self' are the means to this end, and might include any practice enabling such reflection: reading, prayer, psychotherapy, physical exercise, or artistic creation could all qualify, as could more explicitly pedagogical relationships with moral exemplars : teachers, mentors, or another person recognised as already occupying a given subject position, and through whom one encounters virtues and values (e.g. compassion, excellence, wisdom), realised in the world. The key feature shared by technologies of the self is that they afford reflexivity and a change of perspective, thereby permitting the subject takes the self an object of thought and action.[5]

Subject positions are neither immutable nor monolithic, even when moral codes appear to be . Put simply, this is because "one's duties are one matter [but] one's values and the ideals to which one might aspire are often quite another" (Faubion 2011 p. 30). Different people may appropriate and fulfil similar duties in different ways. On this view, autopoiesis mostly reproduces moral norms, with idiosyncratic but insubstantial differences of praxis. But occasionally, especially when a subject finds their existing moral resources ill-fitted to unfamiliar circumstances or an alien environment, ethical reflection points *away* from the reproduction of moral norms and towards moral innovation, such that previously authoritative duties are reframed or discarded as no longer relevant (cf. Robbins 2007). Unaccustomed or unexpected circumstances might prompt crises or jolt subjects out of habitual patterns of activity, prompting more fundamental kinds of reevaluation (Zigon 2007).

A separate strand of scholarship on virtue draws largely on Aristotelian ethics. This 'humanist' strand (Mattingly 2012) is in some ways similar to its poststructuralist counterpart. Both doubt the universal applicability of *any* approach to moral reasoning. Both are therefore opposed to Kantian deontology, utilitarian consequentialism, or the notion of any 'authoritative' approaches to right action. Both strands, rather than seeking to answer how human beings ought to conduct themselves, instead observe how human beings reflect on and evaluate their actions. –>

[5]Using different conceptual language, Webb Keane (Keane 2016 pp. 27–32) might describe technologies of the self as *ethical affordances*—features of a person's environment which are real but not determinative of action, and which solicit the subject's attention as being useful in some way for ethical work.

'Humanist' approaches to virtue ethics emphasise not so much how ethical considerations are embedded in power relations and social structure, but rather the phenomenological character of ethics. Its account is more biographical and temporal, and emphasises the lived-forward-understood-backwards aspects of ethical life , which in turn highlights the role of fate and luck in ethical thinking, and the notion of 'moral tragedy': situations in which people strive for unattainable, opposed, flawed or incommensurable visions of the good. Where people possess imperfect knowledge, for example, they are often nevertheless forced to imagine alternative scenarios they might still have no choice between. Narrative is important to humanist accounts of virtue ethics, both because it helps construct retrospective accounts of meaning, but also because it can project the self into possible futures (Mattingly 2018) . Also important in such accounts of virtue are the notions of first- and second-order desire. First-order desires are the things one *actually* wants; second-order desires are the things, having reflected on one's situation and on the kind of person one might need to become, one might *want to want* (or might *need* should foreseeable circumstances arise). Finally, humanist virtue ethics has given us the concept of the ethical 'ground project' : an organising narrative often inextricably linked with personal identity, and usually framed as a stable, lasting, long-term project of care (for the self or for others).

What follows draws on both accounts of virtue ethics . Jeff and Grant, both censured to lifelong punishment, were both subject to demanding moral codes suggested by their punishment. The moral demands of retributivist censure (which emphasised their autonomy and accountability) were imperfectly compatible with the expectation that they should subjectivate themselves to a licence regime in which their dangerousness (and lack of ethical autonomy) would be taken for granted . These codes posed contradictory demands, but were also backed by 'tight' penal power which made compliance a precondition of release from prison and subsequent parole.

The following sections describe, in turn, how each man responded to some of these contradictions, and how each came to feel thwarted, because the life licence either directly blocked what they understood themselves to be living *for*—their 'ground projects'—or made these projects appear confoundingly difficult to pursue, even to the extent that they might appear (to officials) unethical.

2 Grant

As the epigrammatic quotation at the start of this paper makes clear, Grant insisted that he had made no progress in prison. But this was puzzling. Simply for him to be in an open prison *before* his tariff expired was unusual; his confidence in a fair chance of release at the first opportunity even more so. From a third-person perspective, Grant had made *exceptional* progress in custody. Seen from the *inside*, however, Grant's entire sentence was a story of unredeemed remorse.

Grant had killed his wife after learning she had been unfaithful. Describing memories of his career and (for many years) his happy marriage, Grant's account of how things had gone so wrong took the form of a tragic narrative. He was at repeated pains to emphasise that he was fully responsible for the grave wrongs and harms caused by his lethal violence, and he worried about how his wife appeared in his telling of the story, but nonetheless maintained that both of them were responsible for the marriage having become toxic. This, he said, had been a delicate point to make in an offending behaviour course, which had been predicated on teaching Grant the 'skills' needed to better manage his emotions in (presumptively) "healthier" future

relationships. While he had willingly participated in the course, Grant intended to completely pre-empt such a situation:

> *If* I got into a relationship, then yeah, there's a bloody increased risk. Course there is. And I understand where they're coming from. And I respect that. But what they should be also respecting [is] that I'm not gonna get in a relationship. [I said this to them] and [the facilitator] said to me, "oh, don't you trust women?" I said, "no, it's not to do with that, it's how I feel". I said, "supposing I meet someone", [...] I said, "do I take her to the ballet, and then at half-time, over a gin and tonic, I say, 'oh, by the way, I murdered my wife'?" It ain't going to happen! It's just not going to happen, you know? [five-second pause] Yes, it's nice to have companionship, and that could be a problem later on.[five-second pause] But you don't have to be lonely in this life [sighing] [...] There's no more lonelier place than in prison. And, I mean, I've got through [that].

As these words suggest, Grant found it difficult to look to a future which could *replicate* what he had lost, in which he could simply begin a new relationship but with the benefit of added 'skills'. Rehabilitation could not *restore* him to a better life . Instead, Grant found it more meaningful to occupy the subject position of a repentant, but morally accountable, 'retributive subject'. Grant accepted that he *could* be risky, not that he *would* be. Instead of working to internalise the idea that he was dangerous, and learning the 'skills' required to manage this risk, he emphasised moral agency, responsibility, remorse, and repentance (see, for example, Bottoms 2019; Murphy 2011; Tasioulas 2006, 2007). How important this had become to him was especially clear in his account of an interaction with a key member of staff:

> I had a new offender manager.[6] This is nearly three years ago [...] Twenty minutes [into our first meeting], he said he was a great believer in fate. And he said it wouldn't have mattered who I married, he believes I would have killed them [...] He doesn't know the background because [...] it never came out in court. It wasn't allowed to. So he's just going on the records. Which I understand he's got to do. That's his job. I understand that. I'm not knocking that. But his personal thoughts and his personal beliefs about fate, I think he should have kept to himself [...] So... afterwards, I said to him, I said, "the courses that I've done and, like, the bereavement things I've done... about changing my beliefs, adapting them, dropping my beliefs completely..." I said, "isn't it about time you looked at your beliefs?" And he went silent. He just did not know what to say. Because I think he felt that maybe I was right. And then his attitude changed towards me and we got on great guns,[7] and we have ever since. I mean, he really has tried to help me.

Offender managers (henceforth 'OMs') have a key voice in the release process, through their written recommendations to parole panels [which are usually followed; see Bradford & Cowell (2012); Dyke *et al.* (2020); Lackenby (2018); Power (2018)]. For Grant to challenge his OM so starkly in a first meeting potentially jeopardised this important relationship, but can also be seen as a 'costly signal' of Grant's being (ethically speaking) the 'real deal' (on costly signals

[6] An official tasked with assessing a prisoner's risk of causing harm in future, and with formulating a plan to manage it.

[7] i.e. got on very well together, formed a very good relationship.

in biology and criminology, see, variously, Bushway & Apel 2012; Gambetta 2011; Maruna 2012; Zahavi & Zahavi 1997). In effect, Grant was demanding the OM recognise him as a responsible, ethical person, not misrecognise him as a 'bad' person or a risk. He did this not by questioning the legitimacy of risk assessment but by pointing to his accomplishments in a different moral register. His reference of a privileged understanding of the background to his crime ("it never came out in court") is also striking. It hints that he had *reasons* to act as he did. Admittedly, these were reasons he now recognised to be mistaken, bad, wrong, even unacceptable; and he wanted it known that he had renounced them. Nevertheless, in referring to them his narrative sought to remind me that by taking responsibility for a shameful act and dissociating himself from the beliefs that led him to it, he had done the right thing. This was the basis for Grant's turning of the tables on his OM, and his demand for recognition on his own terms.

Unlike technocratic classifications, interpersonal interactions can become ethically charged by questions of mutual regard (Keane 2016 Chapter 2) . That is to say, they entail the potential for second-person (or I-thou) rather than third-person (or I-it) relationships (cf. Liebling 2015). For Grant, being visibly repentant was the ethical 'ground project': it had become so important to who he thought he was that he might "not know [himself]" without it (Mattingly 2014 p. 12). It arose from his understanding of censure: that it was communicative, rather than merely expressive, calling for a response, not merely passive acceptance (see, variously, Brownlee 2011; Duff 1991, 2003a, 2003b, 2020). Hence when Grant's OM typified him according to a managerial logic which erased his sense of a *developing* moral character, and instead reduced him to a flatly risky other, Grant could not remain silent. From a subject position influenced by retributive, censuring forms of moral communication, he gave an account of his moral worth.

Grant's response to censure might have involved expressions of remorse or regret, attempts at redress, or (where these are ignored, or impossible) the imbuing of future actions with some kind of redemptive meaning. All of these have been documented among life-sentenced prisoners in his position, albeit mostly those convicted when younger (cf. Crewe *et al.* 2020 Chapter 7; Herbert 2018; 2019 Chapters 2–4; Irwin 2009 Chapter 5). Yet the temporality of Grant's sentence—the fact that it came *after* he had, and lost, a family—left him struggling to imagine a new start. His daily life was replete with practices of penance, but struggled to accommodate practices of hope. He said his years in prison had been 'too easy', and he had, at times deliberately induced bodily suffering by declining to take essential medication. Grant also emphasised a penitent readiness to accept the imposition of lowered moral status. It appeared an ethical practice for him to try and fit his desires to the constraints of his situation, because *this was what he deserved*:

> All the way through my sentence, I've always had so many different offender managers, you know. And I've heard so many stories [from other prisoners] about exactly what's just happened to me. They [OMs] leave [their jobs] just before your parole hearing then a new one replaces them [and they don't recommend release]. Well, that's part and parcel.[8] […] It has been said to me by OMU[9] and my OM… "You know, Grant, you don't keep badgering[10] us over things, you just get on with it." And that's true. I just do. If I get a home leave, fantastic. If I don't, I go to work [laughs].

While complaints about short-staffing in the OMU and administrative logjams were common in the open prison where Grant was held, he explicitly forswore "pushing" his needs to the front of the queue by chasing them up. Where others campaigned for home leaves by "manipulating the system" (Grant's own evaluative description), his own ethical practices involved dutiful acceptance of whatever fate might send him. In part, this was because he felt so disconnected from the single thing that mattered to him the most, and decisions about his release therefore felt less important. Grant lived to be reconciled with his children:

> G: I'm not one of those prisoners who is fighting to get out. I was going to say I wasn't fussed about getting out. That's not quite true. But I'm in no hurry, then [...]
>
> BJ: What if your children were in the picture?
>
> G: If my children was in my life, then I would want to be out yesterday. [...] Let's say I do get out on this first parole [...] I'm getting out still without my kids in my life. So, yes, I can get on with my life. But what I want is my children in my life. To make it worthwhile, let's say. So the prison's priorities and my priorities will never match.

However, measures in place to manage Grant's risk of harming others meant this option was simply not open to him to pursue:

> Without my children, I feel empty [fifteen-second pause, begins to cry] Now, I haven't heard from my children for [a long time]. I don't know where they live. I don't know if they're married. I don't know if they've got children. I haven't got a Scooby.[11] But I've got that little bit of hope [...] If I was to hear tomorrow that– If I got a letter, saying, "we never want to see you, you horrible bastard" [sobbing] then I'd have nothing. I wouldn't care about work. I wouldn't care about getting out [...] When I had my risk board,[12] the governor, she said to me [...] "you can't try and contact these names". And two of the names were my children. And she said, "is that an issue?" I went, "yeah, of course it's a bloody issue, but it's not a problem" [...] I'm not going to break the rules to satisfy myself [...] I'm not going to break those licence conditions and then try and contact them. But it's still a bloody issue.

Risk management measures presuppose Grant to be at least potentially dangerous, such that he requires lifelong supervision and control. The possibility that he might actually be who he claims to be—a morally accountable and potentially trustworthy actor, and free to pursue his own visions of a good life—is discounted. Risk management , as a relation of power, preordained the *telos* Grant might permissibly work towards: the absence of harm to others. What mattered to him and what he considered to be important, ultimately mattered only to the ex-

[8] 'Part and parcel' - "that's an integral part of the situation", "that's just the way things are"

[9] OMU: the Offender Management Unit, the department in every prison which employs Offender Managers and which is responsible for risk assessment and sentence planning.

[10] 'Badgering': persistently and repeatedly asking the same question.

[11] Rhyming slang: "Scooby[-Doo]" = "clue". Hence, "I have absolutely no idea".

[12] A meeting at which the conditions surrounding Grant's release, and the terms of his release licence, was discussed.

tent that it was compatible with a moral duty to make no unwarranted demands on others, and to become the means to their safety, security, and freedom from harm. Ultimately, then, risk management requires a good life for Grant (as the recipient of lifelong punishment) to be subordinate to that of his children, unless they take the initiative in contacting him. To the extent that he might try to realise his view of a good life, it was unlikely to be read as such, but instead as evidence of risk.

It was in this sense that Grant felt thwarted, and unable fully to realise the selfhood he most prized. His subject position was that of a penitent, fitted best to the carceral half-world of the prison, but prepared to adapt himself to the thin and partial version of rehabilitation on offer to him beyond its walls .

3 Jeff

Jeff's progression to open prison had been slower and more circuitous than Grant's. Like Grant, he emphasised his remorse over his offence, and also that he deserved punishment. While he expressed frustrations about having served nearly one-and-a-half times his tariff (see below), he often qualified these, as the following two quotes should make clear:

> I've taken somebody's life, yes, and [they're] trying to make me stay in prison for the rest of my life. So maybe I'll just die in prison and not see the outside again.

> I've deserved every single day of it. Every single day.

It had taken Jeff some years to fully acknowledge the gravity of his responsibility for having raped and killed a stranger in their home. Although he had handed himself in to the police, his guilty plea was not accepted, because by initially denying the rape he seemed to take a less-than-complete form of responsibility. He had been convicted by a jury and received a very long tariff by the standards of the time. His early prison experiences hinted at one source of the stigma he feared:

> The staff used to [point prisoners out and] tell people, "oh, he's a sex offender, he's in for killing a kid, he's in for this, that, the other". Then they'd walk off and you'd get beat up and all that, yes? […] People [used to be] scalded, cut […] One of the lads I used to knock about with, he hung himself in his cell.

His change of stance came about because a full admission of guilt was a precondition of participation in an offending behaviour course which Jeff understood to be a prerequisite for sentence progression. Jeff's description of the course was revealing:

> J: You had to do roleplays of what happened. BJ: What was that like? J: It does your head in[13] […] Because you have to play your victim, yes? To see how they felt, what they were going through, yes? […] Then you have to be you again, with somebody else as your victim. It's not very nice, you know? Well, obviously, it makes you realise, you know, what they were going through, and I think that's what they did it for. BJ: Yes. Do you think that's a legitimate thing to do with people? J: I don't know. I think if you're strong,

> maybe, but some people aren't that strong, are they? [...] BJ: Mmm. Did you feel strong? J: I felt I've got to do it, innit? So I needed to understand where I went wrong and that, in my life, you know, what led up to it and that. So yes.

The reference to 'strength' here is significant, as is the whiff of moral coercion—Jeff's feeling that he had "got to do it". Both suggest an understanding of moral censure as expressive, not communicative:

> [C]ommunication involves, as expression need not, a reciprocal and rational engagement. Expression requires only one who expresses. If there [**is**] someone at whom it is directed, that person need figure only as its passive object or recipient [...] Communication thus addresses the other as a rational agent, whereas expression need not. (Duff 2003b pp. 79–80)

For Jeff, retributive ethics posited 'hard treatment' (see Matravers 2011) as something to be endured, not responded to. Jeff's "understanding" of his offence, referred to below, came in the form of received wisdom, imparted through binary categories :

> They made me understand things, like the course and making me understand the different ways about my life when I was outside, where I went wrong, pinpointed everything out for me [...] I didn't care about things, you know? I liked to have a drink, I liked money. Obviously I didn't care about people, which I do now, because I used to rob people's houses and take their cars and now I know that's wrong.

Jeff's description of his risk-related licence conditions was similarly passive, again suggesting compliance prompted by 'dull compulsion' (Carrabine 2005) not ethical subjectivation . Nevertheless, Jeff did not agree with all of the conditions proposed for his license. Risk assessors' classification of Jeff's elderly parents as 'vulnerable' made his visiting them at home into a potential safeguarding issue. This jeopardised the hope that mattered most to Jeff, which was that he would be released in time to live nearby and care for them. Yet he felt obligated to reciprocate their unstinting support ever since his crime:

> You know, you say things to [the prison], like, "Oh, they're ill," and this, that and the other, and "they haven't got that long left". I don't think they believe, you know? They don't really know what's going on. It will cause problems if they say to me I can't see them [...] Obviously, I know I'm going to be on life licence, so, obviously I know I need to get a job and get my own place and settle down, but I've got a family as well [...] To distance me from them is not going to give me any support, is it?

However, in light of the role intoxication had played in his offence, and his history of sporadic substance misuse in prison, Jeff's release was assessed to pose a 'high' risk of serious harm to the public, and as such would require tighter restrictions. Jeff saw these as unwarranted, but unlike Grant had learned not to offer a challenge. He found it difficult to explain this stance to his family:

[13] "Does your head in" - is difficult to think about, is extremely unpleasant.

> J: I told my mum, yes. She wasn't very happy. I didn't want to worry her [...] Saying, "Oh, when I come out, I might not be able to see the kids and I've got to have permission to see you." She's going, "Why? Why? Why? What's...?" and then she said that again: "You need to stand up for yourself. Tell them, innit." BJ: Yes. What would happen if you did [stand up to them]? Let's say, in your next parole board– R: [...] I'd probably say to them– Obviously, you can only keep saying sorry and explaining what happened [...] so much, yes? I'd say, "You've got all these licence conditions that you want me to do." Because to me, yes, with all those licence conditions– They put those licence conditions on it, I think, mostly because some of them are hard [and they want you] to fail, yes? So if you go out there and you don't fail, yes, then they're wrong, aren't they? That's what I'm saying. So, yes, pull me out of here, release me to prove you wrong.

It is significant that when Jeff was challenged by his mother to "stand up for himself" , he understands this to raise retributive questions—whether he has "said sorry" enough, or been punished enough—rather than questions about measures necessary to manage his risk. In part, this was because he found the risk-based requirements so confusing that the best course of action appeared to be to delegate the substantive ethical work of self-representation in relation to them to a third party :

> There's no point disagreeing with it. Not me, anyway. I let my solicitor deal with it because he's more clued up and he knows about all the laws and that, yes? To me, it's more confusing than anything. You know, it's just confused me. It's just confusing to me.

Jeff understood compliance narrowly, and treated the license as a set of external impositions ("conditions you want me to do", above). He believed his duty was to accept censure and endure hard treatment, not to subjectivate himself to a more exacting (and ambiguous) set of demands he hardly understood. This, and 'outsourcing' ethical accountability to his solicitor, arguably made him appear *more* risky, in that he appeared unable even to self-govern. If so, this would jeopardise the project that most engaged his hopes—getting out of prison to care for his parents . He found it hard to imagine how he would carry on if they died before his release:

> When I read things like that in my parole [papers] [i.e. licence conditions obstructing contact with his family], I think, "is it worth me getting out? Is my life... you know, well... why?

Jeff's implicit claim—that he had responded appropriately to retributive punishment by receiving 'enough' pain—was similar to Grant's. However, it was also less successful, in that it was less likely to be recognised as a coherent ethical presentation, and (in its passivity) was less compatible with the 'tight' expectations of penal power (see Crewe 2011; Crewe & Ievins 2021; Rennie & Crewe 2022) . Jeff's offence and his patchy compliance record meant that risk assessors were bound to exercise caution; but this only increased the importance that Jeff perform fluently in the role of the reformed penal subject.

There are serious questions over the fairness of Jeff's situation, mostly relating to his difficulties with understanding what was expected of him. Jeff's prison records recorded his difficul-

ties in various ways. One report in his files stated that he "[met] the criteria for mild intellectual disability"; another recorded that he had "antisocial personality problems, untreatable", and was "bordering on psychopathic". Each assessment, however technically valid, implied different moral evaluations . Jeff could appear needy and confused, or uncontrolled, manipulative and dangerous, depending on the framework of understanding applied to him.

In any case, from the perspective of risk assessment he was not autonomous but dependent, and not trustworthy but risky, a classification which reproduced itself. The nearly thirty separate risk factors listed in his proposed licence conditions attested to the enormous range of ways in which might fall foul of his licence. Yet a retributivist understanding of Jeff's conviction (including his own) would be that he *had* done wrong and *was* accountable. Challenged to account for himself, he gave reasons for his behaviour. But these were simplistic, and risk assessors responded by intensifying surveillance and monitoring, as though his behaviour were caused and pathological, not reasoned and ethically errant. Jeff's response was confusion.

4 Conclusion: risk-driven punishment as an incapacitative 'morality system'

Incapacitative rationales imply certain presumptions about the moral status of the person being punished and the obligations to be expected from them. First, lifelong surveillance and control measures imply a presumption of permanently elevated risk. Second, lifelong supervision and permanently diminished civil rights imply a presumption of permanently lowered social status. Third, the life-sentenced prisoner on licence is presumed less competent in the art of ethical deliberation, with their ethical aspirations and hopes seeming to coexist with those of others only in a zero-sum relationship . Fourth, if the ethical aspirations of the person being punished differ from the welfare or interests of others, the relationship is presumed to be zero-sum unless proven otherwise, meaning that the realisation of these aspirations must be thwarted .

Ethically, all of this recalls the philosopher Bernard Williams's description of how ethical considerations congeal into "morality systems" (Chappell & Smyth 2018; Williams 2011). For Williams, ethical considerations apply *contingently*. The norms envisaged by moral codes might be wide in scope, but balancing them out and applying them in practice is a matter for deliberation by particular persons situated in contingent contexts. The resonance with the poststructuralist account of moral codes and subject positions should be clear; so too the temporal themes of imperfect knowledge and moral tragedy in Jeff's and Grant's accounts recall the humanist focus on first-person ethics.

Since the Enlightenment, Williams argued, there has been an increasing tendency to treat ethical considerations as though they are prompted, always and everywhere, by *moral obligations* of a more universal character:

> [T]here is a pressure within the morality system to represent every consideration that goes into a deliberation and yields a particular obligation as being itself a general obligation; so if I am *now* under an obligation to do something that would be for the best, this will be because I have some *general* obligation, perhaps among others, to do what is for the best. (Williams 2011 p. 175, emphasis added)

Untethered from temporal and biographical context, obligations proliferate and become overriding, general and inescapable. Moreover, obligations must always be reconcilable, otherwise they are not obligations. It follows that they must *all* be accomplished; if not, either the deliberation was faulty, or the actor was simply immoral. As Williams made clear, this makes "blame [the] characteristic reaction of the morality system", and "remorse or self-reproach or guilt [...] [its] characteristic first-person reaction". Without experiencing these, individual persons "would not belong to the morality system or be a full moral agent in its terms". Put simply, there is no escape from blame:

> "moral judgment and blame can apply [even to those who] want to live outside that system altogether. From the perspective of morality, there is nowhere outside the system, or at least nowhere for a responsible agent." (Williams 2011 pp. 177–8)

Morality systems, then, make obligations categorical, so that they trump and sideline other considerations, even those which are undeniably ethical (in that they concern how a particular person can imagine and pursue their own idea of 'flourishing'). From this universalising position, considerations defined by what matters to a given person (in Grant's case, the possibility of reconciliation with his children, or in Jeff's case, the imperative to reciprocate his parents' care) are simply subjective—in the pejorative sense of being solipsistic and antisocial. They lack priority, compared to the apparent universal good secured by 'preventing harm'.

Jeff's and Grant's attempts to be ethical existed within a wider context where they were both blamed as if accountable and responsible, *and* controlled as if unaccountable and 'dangerous'. Their moral status, therefore, was 'overdetermined' (see Altman & Coe 2021)

> Overdetermined actions fit neither into the temporality of backward-looking retribution —in which the punishment follows the crime—nor the temporality of forward-looking deterrence—in which future crimes can be prevented [...] the specifics of an individual's past actions and the open-endedness of their future actions are shouldered out by the assumption that they are essentially wrongdoers who pose a danger to [...] innocent, lawful (typically white) citizens. (Altman & Coe 2021 p. 14)

To Jeff and Grant, the norms of responsibility and blame suggested a commensurate ethical response of repentance . What seemed appropriate to the subject position of an autonomous moral agent was to explore and declare the reasons for the offence, repudiate the beliefs and the selfhood that had produced them, and, in some sense, to think of themselves as 'changed'.

On the other hand, their classification as 'dangerous' (to the extent that it left any space at all for moral agency) pitted their taken-for-granted self-interestedness against an abstracted notion of the general good enjoyed by others. It sought not their *reasons* for the crime, but an account of the *causes* which had produced it; and it sought this account so as to enlist them in the effort to govern risk. They could respond by coming to agree that they had acted under the influence of some ethically deranging influence (e.g. substance misuse, mental ill-health, cognitive disability, faulty thinking, etc.), and if so it followed that their autonomy and self-control were dilute or non-existent and could fail again. Or they could respond by dissenting and continuing to offer their reasons; but doing so would reveal them as incorrigible, or even

as predators. In either case, their wrongdoing would be classified as caused, not as driven by (mistaken or disavowed) moral reasons.

In either case, the commensurate ethical response from the recipient of punishment was patient endurance, while officials strove to diagnose and treat pathology. The extent of compliance, the observed consistency of changed behaviour, and the subject's responsiveness to incentives and disincentives, would all reveal whether they were rational agents capable of supervised self-governance, or incorrigible and dangerous beings warranting only fear and control; but the judgement could only be made from outside.

As philosophers of punishment have argued—and as this paper shows empirically—the two views are hard to reconcile and the availability of each to be deployed in the event of a breach of obligations makes balancing them out extremely difficult for the individual. As Grant's retort to his OM suggests, moral recognition can be demanded from persons, but not from systems. The life-licensed prisoner has been constructed as a category of person who must self-govern without appearing to impinge on others, and who must live within the constraints of their lowered status. This formidably constrains ethical life. It is scarcely surprising that many life-sentenced prisoners espouse a more retributive worldview, even at the cost of trapping themselves in the past.

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