

The Terrorist Attacks in Norway, July 22nd 2011

– SOME KANTIAN REFLECTIONS –

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This paper provides a Kantian interpretation of core issues involved in the trial following the terrorist attacks that struck Norway on July 22nd 2011. Why did the wrongdoer's mind strike us as so endlessly disturbed? Is the Norwegian legal system able to deal with cases involving extreme violence, including as committed by psychologically impaired mass murderers?

Introduction¹

The unthinkable happened on July 22nd 2011: a Norwegian citizen bombed a building («Høyblokka») in Oslo's Government Quarter and opened fire on hundreds of people gathered on the small island of Utøya in a lake just outside of Oslo. The 950 kg bomb was placed in a car in front of Høyblokka. When it went off, at least 250 persons were inside the targeted building and 75 more were in the immediate vicinity of the car. The perpetrator – Anders Behring Breivik (hereafter: ABB) – intended the bomb to kill as many people as possible. He succeeded in killing eight and seriously injuring nine more.

Roughly 200 more suffered less serious injuries. After detonating the bomb, ABB traveled to Utøya, where a total of 564 people – mostly teenagers and young adults – were gathered for the annual meeting of the Labor Party's youth division («Arbeidernes Ungdomsfylking,» or «AUF»). ABB, posing as a police officer in a fake uniform transported himself and his weapons to Utøya by the AUF-ferry. Once on the island, ABB shot and killed (by individual gunshots) 67 people of whom only seven were over the age of 25. Fifty-six were under the age of 21; 33 were under the age of 18; and 14 were only 14 or 15 years old. Two more people fell to their deaths as they attempted to escape. ABB shot and injured an

additional 33 people, and many more were injured trying to escape or save others.² When the police arrived in Utøya 80 minutes after ABB, he surrendered without resistance.

In his testimony during the ten-week trial (May-June, 2012), ABB admitted to all the actions listed above and described, in detail, his reasons, his plans, and his actions. His ultranationalist manifesto, *2083 – A European Declaration of Independence* also conveys much of this information. This manifesto, ABB claims, was written at the request of a secret order called «Knights Templar,» to serve as the program for a new, revolutionary contrajihadist European network, similar in its decentralized, one-cell structure to Al-Qaeda. This mix of personal notes from his life and his terrorist agenda includes extensive quoted or plagiarized material from other sources, such as Theodore Kaczynski's *Unabomber's Manifesto*. The manifesto describes the supposed problems of «cultural Marxism» and «multiculturalism,» such as the «colonization» of Europe by Muslims. Additionally, it describes the planned attacks, predicts likely responses to the attacks, and envisions Europe's and Norway's futures, where, for example, the «proper,» «traditional» male and female roles (currently «perverted» by feminism) would be reestablished and Norway would yet again be «pure.» The attacks were directed at the Labor Party, in power at the time and the most influential political party in Norway since World War II. By attacking Høyblokka (where the office of the Prime Minister and Minister of Justice were located) and Utøya (where the future leaders of the Labor Party were gathered), ABB saw himself attacking the heart of the Labor Party – and, so, the center of the «cultural Marxism» that «corrupts» Norway from

within. Moreover, to injure the Labor Party as much as possible and make the assault spectacular (maximize the «propaganda effect»), ABB aimed to kill as many as possible. Because of delays encountered while electronically distributing his manifesto to newspapers and politicians, as well as traffic delays on the morning of the attack, it was late afternoon by the time ABB arrived at Høyblokka. Many had already left for the day, and there were fewer people on the streets than he had planned for.

During the trial, ABB claimed that if he had succeeded in killing more people at Høyblokka, he would have abandoned the second stage of the plan (Utøya). He also maintained that his original goal had been to arrive at Utøya before that day's main speaker, Gro Harlem Brundtland, departed. Brundtland is nicknamed «Mother Norway» («landsmoder»), in part because she is considered the most influential Prime Minister in postwar Norway. ABB planned to film himself decapitating Brundtland while reading an ultranationalist statement and make the video available on the Internet. Because of the delays, however, Brundtland left Utøya two hours before he arrived. Additionally, ABB had initially planned to use the cold water around the island of Utøya as a «weapon of mass destruction» against anyone who tried to swim to the mainland. This strategy failed; many who fled were strong swimmers, and people on the mainland learned what was happening and sped towards the island in their private boats to save these swimmers. According to ABB, he let himself be captured by the police because it was the best strategy for the next, «propaganda» stage of his revolutionary plan.

Upon capture, ABB immediately claimed to have acted under emergency right, since

he was protecting himself and Norway from complete «cultural destruction.» At trial, ABB explained that he had expected to be tortured and killed after capture, either by the police, by lynch mobs, or by prison guards and inmates after a treason conviction. Despite some familiarity with the concept of emergency right, ABB didn't seem aware that torture and killing of prisoners by the police are illegal, or that Norway has no death penalty.³ Once the Norwegian people understood what had happened, however, their immediate reaction to the tragedy was not violence but, simply, grief. The youth at Utøya came from all over Norway, and Norway's size (a population of 5 million) entailed that many knew or were related to the family or friends of at least one of the victims. After the attacks, the media and the public also tried, with varying degrees of success, to give the many people who were personally affected space for their grief, with ABB-free editions of newspapers and news programs. In addition, spontaneous and planned public gatherings allowed people to grieve together, in smaller communities and as a nation. At «rose marches,» people carrying roses (the political symbol for the Labor Party) walked together in the streets before gathering in public squares to share their grief – crying, holding each other, listening to speeches, and singing. Various public figures – members of the royal family, government officials, former and active politicians, religious leaders, artists, and so on – helped create these public spaces for people to grieve together. These figures also grieved publicly for those killed, for the bereaved, for their own losses, for those they knew who were suffering, and for the nation. For the first time in history, the King (Harald) cried during a public speech (his first after

the attacks), and the royal family, the Prime Minister, and various public figures cried as they hugged survivors and victims' loved ones. And of course, to Norwegians, it would have been strange indeed if they hadn't cried.

During the first couple of weeks after the attacks, little attention was paid to the perpetrator. It was simply a period of grief, as it should be. After this immediate period of mourning was over, however, the public's focus naturally shifted to include ABB. Though Norwegians were bewildered and disoriented in the grief-stricken aftermath of the attacks, their bewilderment dramatically increased over the next few months as the phenomenon of ABB was revealed. In fact, most people appeared deeply perplexed during the trial, because it was difficult to understand what we were witnessing. My aim in this paper is to apply Kant's moral philosophy to some of these perplexing issues, and thereby contribute to the public discussion of the case. In my view, only by better understanding what happened – the kind of violence the attacks exposed us to; the ethical, legal, and political principles upheld during the trial; the question of which principles we should uphold in the future – will it be possible to heal and move on as a nation, where that includes taking on the challenging task of considering possible legal and political reforms. After a brief sketch of the trial itself (section 1), I proceed (section 2) to present a Kantian suggestion of why the wrongdoer's mind struck us as so profoundly disturbed.⁴ The Kantian perspective, I argue in section 3, also helps us understand why it was so important to respond to the violence through the legal system and to treat ABB so respectfully before, during, and after the trial. Finally, in section 4, I address the contro-

versial issue now facing Norway as we move forward: how capable is the Norwegian legal system to deal with cases involving extreme violence, including the violence committed by psychologically impaired, deeply disturbed mass murderers?

1. The Trial

The confusions surrounding the trial were many and complex, so let me first sketch them. The first confusion began when the Court (“Oslo Tingrett») obtained the psychiatric evaluation of ABB (standard legal procedure). The Court first authorized a team of two leading psychiatrists to evaluate the legal sanity of ABB during the attacks. Their work, begun in August of 2011, yielded a psychiatric report in November, according to which ABB had been in a psychotic state when performing the actions. ABB, the report says, has normal cognitive and intellectual capacities, but suffered a mental breakdown in 2006 from which he has never recovered. In 2006, ABB moved back into his mother’s home; withdrew from society, family, and friends; and occupied himself primarily with the computer game «World of Warcraft.» Later, his focus shifted to composing his extremist religious-political manifesto and, later still, to planning and preparing for the attacks. During this period, the report maintains, ABB became a paranoid schizophrenic with grandiose and bizarre (logically or factually impossible) delusions. For example, he viewed himself as a crusader engaged in a great war between good and evil (a grandiose delusion); as someone with the right to decide who should live and who should die (another grandiose delusion); and as a participant at a meeting of a (non-existent) organiza-

tion, «The Knights Templar,» where he was authorized to write a religious-political manifesto to unify the revolutionary war efforts of the organization (a bizarre delusion). According to Norwegian law, a paranoid schizophrenic with grandiose delusions is psychotic (mentally ill), and must receive forced mental health treatment instead of punishment. A commission of experts on psychiatry and psychology (“Den Rettsmedisinske Kommisjonen,» hereafter «the Commission») subsequently evaluated the report (also standard legal procedure), and unanimously approved it with only minor comments.

This psychiatric report created public uproar and deeply offended ABB, who claimed that it was filled with «200 lies». The Court ultimately responded by appointing a second team of psychiatrists to evaluate ABB. They completed their work between February and March of 2012. Their report, issued in April, maintains that ABB was *not* suffering from paranoid schizophrenia with grandiose and bizarre delusions and was not psychotic during the attacks. According to this report, ABB’s descriptions of Europe should be understood in the context of his extreme political views. Since such descriptions are common among extremists of his type, they do not qualify as delusional. Moreover, this report argues that ABB was not delusional (psychotic), but rather that he exaggerated, fantasized, or lied (and still does) in his various descriptions of the Knights Templar organization. He is, they argue, an aggressive, extreme political activist suffering from a narcissistic personality disorder (NPD), namely, a dissocial personality disorder involving self-absorption and the consequent inability to be empathetic and respond appropriately to other persons’ points of view.

An aggressive NPD and extreme political views do not make one legally insane, and hence, this report concludes, ABB is punishable. The majority of the Norwegian people seemed relieved by this second report and supported it. ABB was likewise happy about its basic claim that he was legally sane.

Once the Commission completed its official evaluation of the second report, new confusion arose. No one – not the Court, the lawyers, the media, nor anyone else – could figure out whether or not the Commission actually had approved it.⁵ Absent a decision about which report the Court should use, the ten-week trial began in May of 2012 with both psychiatric teams present in the courtroom. In their opening statements, the prosecutors explained that they would defend the claim that the defendant was legally insane during the attacks (in accordance with the first report), whereas the defense attorney declared that he would challenge this and argue for his client's legal sanity (in accordance with both the second report and ABB's wishes).

The first week of the trial was devoted to ABB's own statement and follow-up questions from the prosecutors, defense attorney, and the judges. Lars Gule, a Norwegian philosopher and expert witness on extremist political ideologies, described feeling as if «the gates of hell» were opened when ABB spoke, especially when he recounted the killings at Utøya. The newspaper reported that even the public officials, all of whom were well prepared psychologically for ABB's testimony, looked pained as they kept their emotions in check while the worst details were given. ABB, in contrast, was largely dispassionate. He became spirited only while describing his planning and the attacks themselves. Though passionate when

explaining his extremist political ideology, he withdrew or became angry or annoyed when questioned about his childhood, upbringing, or psychological state rather than his ideology or the preparation and execution of the attacks. Sometimes he laughed – either sarcastically at the prosecutors or witnesses, or self-consciously when he realized he had said something particularly stupid. ABB had tears in his eyes only twice: on the first day, when clips were shown from the propaganda film he made to broadcast his manifesto, and later when his mother was referenced for the first time. Otherwise, he showed no signs of regret, remorse, or any other emotions appropriate to the circumstances. He never had to fight to control his emotions when describing what he had done, facing his victims, or listening to the testimony of his victims' loved ones. Not once was there reason to think that he understood, in the ordinary moral sense of the word, what he had done. He repeatedly described his actions as «gruesome, but necessary,» which, with his gestures, communicated his conviction that his actions revealed psychological strength. When questioned about his apparent inability to experience empathy, he maintained that he had trained himself not to feel emotions (by «dehumanizing others»), and explained that he could not allow himself to experience empathy because then he would «break down.» When further questioned about whether he could deliberately choose to feel empathy, he refused to answer.

As the trial developed, it became evident that most (if not all) of us couldn't understand what we were observing. It wasn't so strange, as it turned out, that there were two conflicting psychiatric evaluations of ABB. No one seemed capable of convincingly ex-

plaining what we were seeing, despite the many bombastic statements about ABB's psychological profile made during the trial, by psychiatrists, psychologists, reporters, philosophers, legal scholars, and historians, among others. In any case, once ABB toned down the grandiosity of his account, he and the prosecution disagreed over only four significant factual points,⁶ while he and his own defense lawyer disagreed over two. The only point of discrepancy between ABB's descriptions of the events and those of the survivors concerned some survivors' claims that ABB expressed thrill (e.g., yelled «wo-hoo!») while he was shooting at the youth at Utøya. Neither the defense nor the prosecution noted this difference in their final proceedings.

In their closing statement, the prosecutors explained that they were not certain regarding the issue of legal sanity, but found it correct to uphold their original claim (following the first psychiatric report) that ABB had been in a psychotic state during the attacks. The trial and the second psychiatric report provided insufficient reason, they argued, to think that ABB was «merely» an extreme political activist with an NPD.⁷ Nevertheless, ABB's two acts of terror, the prosecutors continued, should be understood as punishable according to the Penal Code's §§147a, 148, and 223.⁸ Hence, the prosecution contended that *if* the Court ruled that ABB was legally sane during the attacks, then he should be punished with the legal maximum in Norway for any crime: 21 years in prison under the category of «forvaring» («safekeeping»). «Forvaring» means that even after having served a sentence, a prisoner cannot be released unless psychiatrists deem him or her no longer a danger to society.⁹ The prosecution further

argued that when doubt exists in a legal proceeding, Norwegian law requires that the doubt benefit the defendant. Since it is worse to sentence a mentally ill individual to prison than to force a mentally healthy individual to receive mental health treatment, the latter option should be chosen. Still, they concluded, since ABB was legally insane when performing his actions (psychotic), he should be admitted to forced treatment in a mental health facility according to Penal Code §39.

Also the defense expressed a lack of complete confidence regarding the issue of ABB's legal sanity, but continued by explaining that he and his team still found it correct to deem ABB legally sane. In addition, the defense formally presented (but did not defend) ABB's claim that he was not guilty in the charges against him, and presented as plausible ABB's claim that he decided to carry out the attack at Utøya only after hearing about the Høyblokka-bomb's ineffectiveness on the radio. The defense also defended ABB's view that he should be given the mildest possible punishment (prison) if found guilty, and not «forvaring» (safekeeping), as there was good reason to believe that he would now politically protest by means of the pen only. Most of the defense attorney's closing statement focused, however, on ABB's claim that he was legally sane during the attacks.¹⁰ The defense argued that since the two psychiatric reports were inconsistent, the Court stood free to disregard them. Moreover, he emphasized the human right to assume responsibility for one's actions and maintained that being forced to receive mental health treatment when healthy is just as bad as being forced into prison when mentally ill. The defense then endorsed the second report's claim that ABB was suffering

from a lack of empathy (of the kind associated with NPD) in combination with extreme political views, rather than delusions. The evidence for this claim was the absence of a significant history of violence (for ABB) and ABB's decision not to kill three people at Utøya whom he identified as innocents rather than as «political targets.»¹¹ The defense also argued that the evidence supported the second report's claim that ABB mistakenly believed in a colonizing war between Europeans and Muslims (as is common in these extremist political milieus) and that ABB had exaggerated, fantasized, or lied about the existence of the Knights Templar. The defense also emphasized mistaken beliefs that ABB had corrected, such as his misapprehension about torture in Norwegian prisons. The defense further argued that ABB's behavior showed that he clearly knew it was wrong «in our culture» to kill. ABB «chose to kill» because the end (the revolution) legitimated the means (the killings), a classic line of reasoning of terrorists. Additionally, several professionals who had evaluated ABB in the period after his surrender (such as the psychiatrist who evaluated his risk of suicide and the experienced prison guards who were around him) did not observe any signs of psychosis (and so did not treat him as a psychotic). Finally, the defense supported the second report's claim that ABB's withdrawal in 2006 was not caused by a mental breakdown, since during this withdrawn period ABB was still able to make a lot of money (legally and illegally), participate in online political forums and the World of Warcraft community, and manage his relationships with family and friends, all while keeping his terrorist project a secret.

The final verdict came down on August 24, 2012: the Court deemed ABB legally

sane during the attacks and sentenced him to 21 years of «forvaring,» specifying that he must spend a minimum of 10 years in prison. Undoubtedly, most were relieved that the Court followed the second report's determination of legal sanity, and that the sentence was for «forvaring.» Even those who agreed with the prosecution that ABB should be deemed legally insane found that the trial had settled this issue legitimately. It was clear, however, that most people didn't fully understand their own responses or exactly what had happened in the trial. Many also experienced significant frustration over the fact that ABB might one day be free, whether they were personally and directly affected by his crimes or not. Many were uncomfortable with the attention ABB had received throughout the trial, which allowed him to express his «propaganda» and offensive thoughts. Some were puzzled by the respect ABB was accorded, not only in light of his horrendous acts of violence, but also his at times offensive courtroom behavior. Still, both during and after the trial most people, including victims and victims' loved ones expressed deep gratitude for the way most of those involved in the trial conducted themselves, in particular the judges, the prosecutors, the defense, and much of the media. Clearly, too, many expressed admiration for the incredible courage the victims displayed in helping each other during the attacks and in facing and testifying against ABB during the trial. Finally, most found it hard to find ways to capture the seemingly bottomless tragedy of it all, a tragedy compassing ABB and his family and friends. In the following sections, I use Kantian philosophical theory to provide a unified account of these varied responses to the trial, in the hope of contrib-

uting to the continuous, public discussion surrounding it. I'll begin with the central question of ABB's legal sanity.

2. Mental vs. Moral Illness

The two psychiatric reports disagree, as we saw above, about whether ABB was suffering from paranoid schizophrenia with grandiose and bizarre delusions (the first report, which the prosecution found most persuasive) or from a narcissistic personality disorder (NPD) in combination with aggressive, extreme political views (the second report, which the defense favored). I will argue that people who suffer from mental illness cannot be punished because their conditions make it impossible for them, by their own devices, to correct their mistaken beliefs and so to act as persons responsible for their actions. I then distinguish mental illness from personality disorders (such as NPD) by characterizing the latter as conditions that subjectively challenge (but do not make impossible) one's ability to act morally, or «as a person.» When a person gives in to the challenges associated with such a personality disorder, we may say, that he becomes morally ill.¹² Understanding ABB as suffering from a condition posing subjective, constitutional challenges to his ability to act morally (as a person) can explain two things: (1) why we both hold him legally responsible for his actions (since he can assume responsibility for his mistaken beliefs) and (2) why a normal prison sentence would be insufficient to deal with the danger he poses as long as he does not take on the job of learning how to regain control over his psychological condition. I also argue that if we set aside questions about the possible mental state of ABB at the time of the crime, his aggressive NPD ex-

plains not only his racist and sexist beliefs, but his particular way of envisioning the future of Norway. Finally, if we assume that this is also the correct diagnosis of ABB at the time of the crime, then, I maintain, the «forvaring» (safekeeping) clause in the prison sentence was appropriate.

2.1 *Mental Illness and Legal Insanity*

How is it that we can understand those suffering from paranoid schizophrenia with delusions mentally ill in such a way that they cannot be responsible and punished for their wrongful actions? The paranoid schizophrenic with grandiose delusions is mentally ill in the sense that she cannot understand what is really going on; she fundamentally misperceives factual reality without having the ability to correct her mistaken beliefs about the world. Such a person cannot assume responsibility for her actions, since it is impossible for her to perceive the world as it actually is and so her actions as they actually are.

The first psychiatric team believed ABB was suffering from this condition because of the way in which he explained himself and his actions when they first encountered him just after the attacks; his behavior then, they argue, only makes sense on the assumption of grandiose and bizarre delusions (rather than correctible, mistaken beliefs). The most worrisome of these, I take it, were not the grandiose delusions, since ABB was often willing to tone these down, but the bizarre ones, including ABB's claims about the existence of the «Knights Templar» organization and his meeting with its leaders – a description shown by the police to be false. The first psychiatric team maintained that ABB genuinely believed this when they first met him, and since he didn't budge on this

point during cross-examination, the prosecution found that they had to follow the first report, despite their significant doubts about its correctness.

2.2 *Moral Illness and Legal Sanity*

ABB's behavior in the courtroom corresponds to that of a person suffering from an aggressive narcissistic personality disorder (NPD), which was the diagnosis of the second report, and the one supported by the defense and affirmed by the Court. In fact, such a diagnosis explains much of what was so terrifying about ABB's behavior in the courtroom. ABB's detailed descriptions (and very accurate memory) of his extreme violence were deeply frightening, as was his lack of empathy, sadness, compassion, or any emotional or cognitive struggle while describing his actions or when confronting his victims and their loved ones.¹³

Yet we must wonder what it is about people with an aggressive NPD that makes them less able to experience various morally appropriate emotions, such as affection, empathy, and compassion. How is it that they are legally responsible for their actions even if they cannot easily experience these morally appropriate emotions? In what follows, I elaborate on the idea that suffering from an NPD should be understood as suffering from a condition that constitutionally, subjectively challenges one's ability to have the kind of focus and moral, affectionate emotions constitutive of being a person. If not dealt with and kept under control, such a condition can spiral into deeply morally disturbed ways of being, as happened in this case. I argue that, because those suffering from these conditions can correct their beliefs (at all times) and so are making choices to set aside societal norms as they commit

their wrongful actions, they are legally responsible for them. This explanation of the moral responsibility associated with aggressive NPD also explains how the account makes sense of the «forvaring» clause.

Having an NPD is commonly understood to involve extreme self-absorption: it is a psychological condition characterized by an excessive sense of self-importance, a lack of empathy, and a radical preoccupation with oneself and one's own concerns. Surprisingly, then, my Kantian analysis attributes this kind of moral disorder to the *lack* of a healthy sense of self. That is why it's a *personality* disorder: this condition subjectively, constitutionally challenges a human being's ability to be a person.¹⁴ According to Kant, having a healthy moral self involves being capable of setting and pursuing ends of one's own, in a manner determined by one's own reason. When one acts in this way, one's actions are compatible with everyone else acting in the same, reciprocally respectful way at all times, whether in the pursuit of one's individual ends or ends adopted jointly with others. There are, however, various conditions or aspects of such a healthy self that come prior to it and enable it to flourish through the choices it makes. The absence of these prior elements requires a person to concentrate too much on constructing the self *itself* – of creating a sense of self, a sense of existing – instead of concentrating on ends to be pursued in the world (on one's own or together with others). The person with an NPD has only partially developed some of these prior features of a healthy self, which makes her so easily preoccupied with herself.

The healthy way to respond to the fact that one's reactions and preoccupations seem a little off as compared to those of oth-

ers – the fact that others seem more stable and at ease with themselves, including when they are emotionally upset – is, of course, to get some of the missing bits in place. This is the work of therapy, and for most it requires some psychological or psychiatric guidance. A person who does not compensate for his inabilities with this kind of work has an unstable basis in himself and thus a constant need to turn the focus onto himself. He may try to flee away from interactions and his own self altogether through drugs, alcohol, dangerous activities, intense entertainment, and the like. In addition, such a person turns aggressive when he makes others to pay attention to him and make him their primary project. The preoccupation with himself constantly challenges or makes unstable his ability to love, respect, and care for others in the right way, in a way consistent with others having ends of their own too.¹⁵

Normative yet psychological features enable us to be healthy, functioning emotional persons. These personal and social features include our unreflective personal and social identities (who we are), and they concern how we are fundamentally grounded in the world, how we feel safe in the world as the persons we are. These ways that we spontaneously, naturally, or automatically perceive or emotionally orient ourselves in the world as a normative space are unreflective, in contrast to how we reflectively think about or act in the world. For example, many of my moral emotions (what I love, grieve, take pride in, am ashamed of, etc.) are linked to my identity as a Norwegian woman with a particular family and set of friends. These parts of me are not things I've simply chosen, but features of me that I've either been given (nationality, family) and have affection for or found myself affection-

ately drawn to (close friends). Such unreflective identities give us a sense of being in a good world in which we have a good place, a place that is ours and that is affirmed by others. Insofar as these identities are healthy, they are part of what makes us feel existentially secure, so that we can confidently and playfully set and pursue our projects. They compose the assumed, unreflective background that gives us the confidence to act as persons in the world. Just as we are oriented toward the countries and people in the world that are part of who we are – those we love and deeply care for – the people of those countries and the people we love are similarly oriented toward us. We all assume such a background as we go about our lives in the world in good ways.

Morally healthy persons (for our purposes here: those who are not suffering from NPDs) always already (unreflectively) assume that they are being seen and paid attention to even if they are not the explicit objects of others' attention. They relate to the world as a safe place where they can interact with others as the people they are. As a result, their confidence to act in the is not conditional on others explicitly focusing on them or being about them. In contrast, morally challenged persons (again, here: persons with NPDs) do not always or easily (unreflectively) assume that they are seen and taken into account when they are not explicitly the object of others' attention. Nor do they always assume that the world is a safe place – a world that is theirs to enjoy, where they should challenge themselves and pursue their projects. Instead, they experience the world as an uneasy, unsafe place that forgets, ignores, or attacks them; they readily feel unimportant or disregarded, though these feels have no factual basis. As a result,

these people are morally challenged in the sense that their basic orientation in the world is not one of carefree, healthy engagement, but one that makes it hard for them not to make their own *selves* their main project, instead of other projects. Persons struggling with NPDs are self-absorbed because they lack a sufficient self; without this stable foundation they get preoccupied with themselves, and require the affirming attention of others.

Those who have *aggressive* versions of this moral disorder need to ensure that others focus on (are oriented towards) them at all times. Unless they are drawing the world's attention, they get an unnerving sense that they do not exist at all – and so they turn aggressive. Moreover, this fundamental self-absorption makes such persons struggle with other-directed moral emotions, such as affection, empathy, sympathy, and compassion. Such emotions presuppose that one is fundamentally also other-oriented. The person who lets her self-absorption develop unrestrainedly – by being unwilling to figure out why she keeps ending up in troubles in her relationships with others or by not wanting to figure out how to get it all under control – will not see her own lack of other-directedness as a problem. Instead, she will tell a story according to which it is the world, and not her, that is the problem. The person who gives up in these ways is no longer only morally challenged, but morally ill. Such lack of emotional orientation towards others is not something one can simply think oneself in or out of; it is not changeable by such reflective means. Our capacity for reflection makes it possible for someone to take up the fight against the personality disorder – to get or keep it under control – since it makes it possible for us to

recognize it and relate to it rationally. Much of the repairing or healing work itself is unreflective in nature, however, and it is enabled by therapists, psychologists, and psychiatrists.¹⁶

If we reconsider ABB at this point, we may note four things. First, during the trial it became clear that ABB is aware that he doesn't have moral emotions like empathy in the way others do. Second, during the trial he also remarked that if he did open up to these emotions again, he would be destroyed by what he had done and that this is why he's chosen not to be open to them. Third, ABB claimed that he is different from other people with regard to such emotions because he trained himself not to experience them; he argued that his inability to experience these emotions reflects his psychological strength. Relatedly, he didn't (and doesn't) understand that such moral emotions are not something about which one can simply choose; that one cannot simply choose to keep them at a distance or have them. What he understood as his psychological training of «dehumanizing» others was in reality giving in to or furthering his condition. His inability to experience these emotions is therefore not a reflection of how strong he is, but of how morally ill he has become. Fourth, viewing ABB as morally sick makes intelligible otherwise inexplicable aspects of his killing spree on the island. ABB was elated and expressed joy when he threatened, terrified, and killed the people on the island because having such power over them – having their sole attention – fed the void his lack of self creates. It supplied a sense of being alive, of intensely existing.

Being morally challenged in this way – being subjectively, constitutionally encumbered in one's ability to act and interact as a

person – makes personal, including intimate human love, a complex moral emotion, difficult. Although persons suffering from an NPD can love in the sense of being passionately oriented toward the world and beings in it, their self-absorption gives them trouble loving persons *as* persons and being loved themselves *as* persons, that is, as beings who pursue ends of their own. Someone who is not self-absorbed wants to be loved by people who also flourish through their own, independent projects in the world. Being drawn to a different person *as a person*, therefore, requires that one has a sufficiently stable, confident self. The person suffering from an NPD faces the constant risk of losing confidence in herself, and she is threatened both by the lack of explicit attention from the other and by the very process of affirming the other. Focusing on the other person makes her feel as if she loses herself. Loving such a self-absorbed person therefore becomes a draining emotional experience.

Moreover, when self-absorption turns aggressive, the failure to affirm the other's difference becomes a drive to destroy the other's difference and independent sense of self. The person suffering from aggressive NPD will assert his sense of self and make others stay focused on him through any available means, including threats, coercion, and violence. Although we are morally committed to treating morally ill persons respectfully (what the Kantian account would call practical or moral love) those who are aggressive towards others are unlovable in this sense: being affectionately or emotionally open to them is self-destructive. One can and should love them morally (respect them), but not affectionately (be emotionally open to them). A similar distinction holds when we move from the inti-

mate, personal self to the social aspect of the self, such as one's love for one's country. The love a morally healthy person has for her country presupposes that the country is a country for persons, where everyone sets and pursues ends of their own, in the ways that makes life meaningful for them. Insofar as her country is not yet this, she will also be angry at and ashamed of her country – making it in part exactly her job to improve it; it's *her* country. The morally challenged or sick person, in contrast, may passionately love her country, but not in a way that presupposes the country as essentially being, again, a country *by* and *for* persons; instead her love of country is what Kant calls pathological love, in that she views the country as something whose purpose is simply to affirm her sense of self.

It is revealing, then, that ABB has never had an intimate, loving relationship of any kind as an adult, and even his long-term friendships from childhood were not particularly developed, mature, or deep. In addition, during the trial, he appeared to have emotive reactions revealing affective love only twice, namely, when his propaganda film was shown and when his mother was mentioned for the first time.¹⁷ At all other times, he reacted with anger or withdrawal to anything said about him or his private life and childhood. Moreover, his love for the Norway he fantasized and his mother cannot be understood as expressions of a mature, healthy love of country and of persons. Rather, it is a pathological love fundamentally at odds with our human nature and morality (practical reason). First, take his love for his (now late) mother. This loving relation was, as far as we can tell, fundamentally asymmetrical. His mother never challenged how he lived in her home, he did

not provide any care for her even though she was frail and sick (she passed away in the year after the trial), and he yelled at her when she didn't «respect his space.»

Second, consider his love of country. «His country» is not an ideal of our current country – a state constitutionally committed to respecting all citizens as free and equal – but a fantasy, fascist, totalitarian version of it, where a similarly asymmetrical love is realized. In his «ideal» Norway, ABB himself would be adored by all Norwegian citizens. In this imaginary society his (and every «real» man's) manhood would be affirmed by all women, including in the intimate personal spheres. Women would live up to what he considers the true, traditional gender ideal: lacking an independent sense of self, women would instead obtain their sense of self through affirming their men and their projects. Any woman who would not love him and other men in this way should and would be punished, according to ABB's logic. Moreover, not only would his manhood be affirmed in these ways, but he himself would be affirmed as the leader of this great nation: he is the as-of-yet unrecognized but true patriarch of Norway, its real «landsfader» («Father Norway»). Rather than confront the instabilities in his psychological constitution, ABB let them develop into a full-fledged, aggressive self-absorption, which is of course incompatible with genuinely loving anyone, including himself, as a person. His conceptions of manhood and ethnicity are therefore based on the partial or full denial, or even destruction, of certain other persons *as* persons. Presumably any human beings who can interact with others as persons would be in danger in ABB's Norway since they would necessarily yield resistance to him and his vision.

No one quite knows why some persons suffer from NPDs, let alone the aggressive kind. Most, however, believe that they are frequently intertwined with psychologically abusive, disturbed, or challenged childhoods. This certainly seems true in the case of ABB, though it is not a complete explanation. People with much worse childhoods than his do not end up struggling with NPDs or become morally ill. The backstory of ABB's life is sad, but not tragic. He grew up in one of the richest parts of Oslo, yet came from a home of limited means. He had one sibling and a somewhat psychologically unstable mother on welfare: his father abandoned the family early on.¹⁸ His teenage years and young adult life involved a series of failures: dropping out of high school; failing in politics after attempting to rise in the ranks in the populist Norwegian rightwing, libertarian political party («Fremskrittspartiet»); and proving inadequate as a contributor to public debate when newspapers wouldn't publish his political writings. These particular failings parallel central theses in his «manifesto,» which recasts these failures as consequences of the world's perverted values. The manifesto envisions a changed social world, a world he has changed through his choices. In this new world – which he posits as the original, real world – gender roles and «true Norwegianness» are changed so that his greatness is realizable and recognized. This world affirms him instead of rejects him. The manifesto expresses limitless self-absorption and fantasizes an aggressive, morally disturbed world in which ABB is lovingly adored as a great man (by whatever woman he would share an intimate life with and generally, by all women) *and* as a great leader (by all Norwegians): a fantasy of being truly seen and therefore really existing

for the first time. For his fantasy to come true, ABB first had to eliminate everyone tied to the current social and political reality of Norway. This project would, if necessary, involve imprisoning or killing all morally healthy Norwegians, as they would not affirm him. The bombings, shootings, and planned beheading were a logical beginning of his revolution: by killing the current and future leadership of the Labor Party as well as «mother» Norway (Brundtland), he would take the first symbolic step toward ridding Norway of its multicultural, Marxist, feminist corruption and replacing it with the «true» Norwegian values and Norway's true patriarch: himself.

As we have seen, persons suffering from NPDs struggle to experience the other-directed emotions constitutive of being a person, and they are more likely to fail in their efforts to develop full, healthy ethical characters. Those who have lost this struggle, which NPD makes harder, and become self-and other-destructive (aggressive) in their actions are what I have called morally ill. The morally challenged and the morally sick are nonetheless ethically and legally responsible for their actions. They either already know or can obtain knowledge about why their moral emotions and ways of acting are importantly different than those of other people – why they keep getting into related trouble or underperform by normal standards – and they have the subjective, including emotional resources available to correct their mistaken beliefs. Hence they have a duty to obtain insight into their own condition so that they can resist, control, or overcome it. They remain ethically and legally responsible for their beliefs (including the mistaken ones) and for the actions they base on these mistaken beliefs. The ABB case illustrates this responsibility, at

least it does right now. During the trial, ABB explained that he knows that his emotional life is not quite like that of others, and especially with regard to feelings like empathy. Yet he didn't deny that he has known these feelings to some extent in his life, and his spontaneous expressions of sadness when his mother was mentioned for the first time and when his affection for his country was stimulated also affirm the assumption that although impaired, the capacity for such emotional orientation is not completely absent.¹⁹ The trial also showed, many times, that ABB can correct mistaken beliefs – as the defense attorney pointed out.²⁰

During the trial his defense attorney (who knew him very well by the time of the trial) affirmed that ABB sometimes lies (and so knows the difference between truth and lies). In fact, assuming that ABB lies explains each of the four factual points where ABB refused to yield during cross-examinations: 1) the existence of Knights Templar; 2) the beginning of the planning of the attacks and the writing of the manifesto; 3) the truth of the first psychiatric team's report of their conversations with ABB after the attacks; and 4) the question of whether ABB would have proceeded to Utøya if he'd succeeded in killing more people at Høyblokka. Given ABB's aim, namely to continue a «propaganda stage» from within the prison, lying about all four makes strategic sense: 1.) Lying about the existence of Knights Templar presents ABB to other disturbed minds as a great leader of a movement of historical proportions; 2.) Lying about when he began writing of the manifesto (claiming an earlier origin) upholds his self-image as a strong leader with tremendous self-control and planning skills; 3.) Lying about the first report conceals both the

extent of his narcissism and the possibility that he is legally insane; 4.) Lying about having already decided to complete both steps of the plan forestalls the moral outrage at the Utøya killings expressed even by very extremist rightwing milieus; after all, killing children with automatic guns is neither courageous nor easily construed as the first stage of a great moral revolution. In fact, during the trial when ABB was pushed on this point, his main response was not to say that it was OK to kill children; instead he kept trying to resist the descriptions of the «children» by saying they «looked older» and by upholding the mantra that they were «gruesome, but necessary» actions. ABB was willing to correct all the other «grandiose» and «bizarre» statements that were included in the first psychiatric report and things about which he was factually mistaken were also correctible by him.

At least by the time of the trial, therefore, ABB knew that his emotional life is not quite like that of others (and somewhat changed from earlier stages of his life) and had the ability to correct mistaken beliefs. He seems also to have had this ability to at least some extent right after the killings (when he corrected beliefs about torture in prison, for example). He was and is terribly mistaken in some of his views, but he has the ability to correct them. If he could also self-correct at the time of the crimes and preparations for them, he is responsible for his choice not to investigate the truth of these beliefs, since he had the abilities needed to enable him to do so. If second report is correct and hence ABB's described accurately how he reasoned at the time of the killings, ABB is responsible for each time he decided to kill yet another person on the island. He told us, chillingly, that as he left the

ferry he thought that it was «now or never,» that now he had to either go through with it or not – and he chose to go through with it. Again, assuming there were no delusions here and his account is accurate, he made a choice each time he decided to pull that trigger – and he is responsible for having done so; he could have done otherwise, as indeed he showed himself capable of doing four times (when he decided he wouldn't kill three individuals and chose to surrender when the police arrived).²¹

Let me end this section by explaining why the defense was mistaken to argue that because ABB is likely to use the pen rather than violent aggression to express his political views in the future, ABB should be given a normal prison sentence instead of «forvaring.» This part of the defense's argument contradicts the second psychiatric report, which maintains that ABB is still aggressive and dangerous and which I believe is correct. Let me focus first on the dangerous dimension of ABB's current psychology. If my analysis of ABB's psychological status is correct, then there is no reason to think that he will not act in the same way again. Furthermore, ABB revealed further the aggressive element at play in his being through his expressions of thrill and joy. Finding joy in the execution of terrible crimes only makes sense on two possible assumptions: either ABB was in a psychotic state (the first report, which ABB and the defense deny) or ABB obtains an immensely elated sense of self (thrill) by experiencing total destructive power over other persons (the second report). Other manifestations of aggressive self-absorption demonstrate similarly aggressive forms of NPD over which the perpetrators have lost control: men who feel empowered, important, profoundly justi-

fied, or thrilled by abusing their families (their girlfriends, wives, children, etc.), or people who obtain pleasure and excitement by torturing or killing people of different sexual identities or orientations. Such people are not «merely» suffering from NPD, and they are no longer merely morally challenged or unstable. Rather, they are dangerous and aggressive; they are morally ill. For this reason, the appropriate legal sentence also for them is «forvaring»; they cannot simply be released into society again once their sentence is served.

It follows from the above that only trained professionals can establish that it is safe to release people suffering from NPDs, professionals who not only can help people learn how to deal with their NPDs and how to get them under control, but who can also evaluate the success of the treatment. Given the disagreement among trained professionals in Norway concerning this issue and the utter confusion surrounding the Commission's handling of the case, it seems that we do not currently have available the kind of psychiatric expertise that the legal-political system of punishment requires to function properly. Proper functioning would include, presumably, requiring prisoners voluntarily (as no one can be forced to do the kind of psychological work required) to undergo therapy appropriate to their conditions before they are considered for release – and having available the kind of treatment needed for such a system to function. Currently, there therefore seems to be both a lack of professional understanding of these kinds of cases (reflected in the two psychiatric reports and the Commission's handling of the cases) and the corresponding psychiatric and psychological treatment system such criminals need.

3. Upholding Our Humanity through Legal Procedures

Most Norwegians are grateful for the respectful way public officials and witnesses participated in the trial, and yet it remains puzzling to many exactly why treating ABB respectfully was so important. After all, not only did he commit some of the worst crimes possible, but his behavior in the courtroom itself was morally disturbing (his fascist morning salutes) and profoundly offensive (his condescending laughter at the officials or the victims). It is also puzzling why most who disagreed with the final decision concerning ABB's legal sanity still considered the verdict legitimate. I address these two puzzles in this section by, once again, drawing upon Kant's moral philosophy, though here with a special emphasis on his philosophy of right. In particular, I draw upon Kant's conceptions of respect for humanity, the role of public officials, the purpose of punishment, and «wrongdoing in the highest degree.»

The starting point for Kant's liberal theory of justice is that commitment to justice requires us to subject our interactions to universal laws of freedom. Moreover, as equals, we do not have a right to put ourselves up as judges over each other's lives and actions. In addition, we neither do nor can know which punishments people objectively deserve when they act wrongfully (since we cannot access their first personal perspectives). Consequently, any individual who decides to punish another for her wrongful actions thereby wrongfully subjects that person to her individual choice rather than to universal laws of freedom. For Kant, therefore, rightful punishment requires a public authority, or an artificial, institutional person

that represents our general, united will and thereby enables rightful punishment within the legal-political framework of a liberal state. As public officials, the judges (and jury, if there is one) constitute the court acting on behalf of all of us, including the wrongdoer, in order to determine guilt and decide on punishment. As a result, the punishment does not result from the choice of any private individual, but from a legal, public institution that is set up so as to enable a representation of an «us» – all of us, including the wrongdoer. Not only is this the best we can do, but it is what we have a duty to do insofar as we are committed to the normative ideals of our liberal states, or our states as constitutionally bound to regard each citizen as having a right to be subject only to universal laws of freedom and not each other's arbitrary choices. Thus, the public authority is entrusted to act on our behalf by applying the relevant laws to determine a particular case. The court's reasonable and respectful adherence to the law at all times and reflected in the behavior of all of its officers, enabled us all to relate to the case and to ABB in a way consistent with our deepest moral commitments of justice, in spite of ABB's own flagrant disrespect for these ideals (with regard to himself, his terrible treatment of himself, and everyone else).

Situations like this one have, in other words, no morally uncomplicated way out. On any plausible liberal theory of right, no person has a right to kill the innocent, and everyone acts within her rights when she stops a person from doing so, even when that requires employing lethal force. If any of the young people on Utøya who tried to stop ABB had succeeded, they would not have wronged ABB in so doing, even though, in a just state, no one but the police

has a right to use coercion. In this case, since the police were de facto unavailable (as the one police officer on the island was among the first to be killed), the young people could have considered themselves «deputized» (to temporarily act as police officers) to use force to stop the killer.²² Most liberal theories make sense of such self-defensive uses of violence. Kant suggests, however, is that it remains fundamentally the case that no private individual has a right to use coercion unilaterally against another. Moreover, performing any action that is generally wrong, such as killing someone always comes at a moral cost, even when we do not wrong anyone in particular. That is to say, if the young people had succeeded in killing ABB (as deputized agents of a just state), they would not have wronged him, but their action would have come at a significant moral cost, even though it resulted from a situation forced upon them.

On Kant's account, we experience the undertaking of such violent actions in non-ideal conditions as fundamentally inconsistent with what our commitment to justice ideally requires of us. We experience ourselves, Kant says, as «do[ing] wrong in the highest degree» (MM, 6: 307f)²³ when we use violence against one another, including, of course when we subject another, aggressing person to lethal violence.²⁴ In this case, anyone committed to justice would want to stop ABB before he managed to kill anyone and to bring him, as we say, «to justice» – which, as explained above, ideally means bringing him to trial, where the court will decide what should be done (whether he should be punished or forced to receive mental health treatment). Following that, the police and other public officers (prison guards or high-security mental health work-

ers) enforce this decision on behalf of all of us. This is the process we ideally want when we seek to bring perpetrators to justice. In the counterfactual case in which people had managed to stop ABB by killing him, they would experience having killed him as coming at a moral cost because such lethal violence conflicts with our own commitment to humanity or to regarding persons as having inviolable worth. Killing ABB on Utøya, although legally justified, would have involved one person deciding to end another person's life, which is something we do not view ourselves as having the moral authority to do with regard to one another.²⁵

These are the reasons why, then, on Kant's account, it was so important to subject ABB to justice in the public court system, where everyone involved – except the accused – affirmed the rules and norms of respect constitutive of the courtroom. That behavior made it possible for us all to uphold our commitment to humanity and to interacting rightfully at all times. In other words, by so interacting with ABB, we upheld the humanity in him that he himself proved so utterly incapable of upholding. We also treated him in accordance with the laws that govern all our interactions through the authority of public representatives of the people, namely, court officials whose actions themselves are delineated by the law. The public officials lived up to the authority entrusted to them by ensuring that the law was followed at all times; they were not there as private persons but as public representatives of all of us who were authorized to evaluate the wrongdoer's actions on everyone's, including ABB's, behalf. The witnesses, in turn, helped the public authority perform their task by truthfully and respectfully telling them the facts. As each sur-

living witness and each bereaved family member took the stand, their ability to uphold the ideals of humanity and enable the courtroom to function – despite the way ABB so brutally violated those ideals for them personally – filled us with the deepest respect and gratitude. Those of us who have not had a similar experience have no certainty that we would be able to behave as they did; we only know that they showed us both how to do it and the importance of doing it. The witnesses and the public officials at trial enabled us all to uphold our own commitment to our humanity and to the public, legal institutions that ABB had so violently attacked.

The way the trial was conducted was important, then, because, we experienced a public authority that functioned as a representative of us all, composed of public persons who reasoned and acted in ways determined by the public laws, whose aim was to protect each citizen's rights without subjecting them to private opinions of right and wrong. The legal system enabled us to determine rightful use of force, either punishment or forced mental health treatment, in response to ABB's violent transgressions of the laws. Moreover, this case illustrates how important the role of the public authority is when we face situations where crucial facts are uncertain, which in this case, was whether ABB was legally sane during the attacks. We lacked the facts to settle this question, and the Court-appointed experts disagreed. These non-ideal circumstances also make the ideal solution – the public rule of law – the most pragmatic solution. Given the difficult or non-ideal circumstances concerning our knowledge of ABB's legal sanity, all we could do was to ensure that the best (psychiatric and legal) expert judgments

were employed to investigate the issue, and then entrust the court, as our final public representatives, to determine the correct application of the law in this particular case. This Kantian account of why we need to bring people to justice by subjecting them to the public rule of law and the way this case proceeded explains why even those who disagreed with the court's ruling on ABB's legal sanity considered the verdict legitimate.

4. The Difference between Retributive Punishment and Forvaring

In this section, I take the controversial stand that the current Penal Code in Norway is unable to deal with particularly heinous crimes, which undermines the legal system's ability to restore justice after certain serious crimes have been committed – something revealed also in this case. I argue that the legal system must be able to guarantee its citizens that if they are subjected to terrible crimes and they remain committed to the legal system in their responses to these crimes, then once the trial is over, their exposure to the violator must be over too. Currently, the Norwegian legal system is unable to do this, and so it is unable to guarantee victims the necessary space to grieve and heal. Despite all its merits, the legal proceedings could not bring the full, right kind of closure to the case.

Many Norwegian citizens, including victims of these crimes, continue to find it morally offensive that the punishment for ABB's crimes is only 21 years (even though the clause of «forvaring» makes it practically unlikely that he will ever be free again). In my view, Norwegians are rightfully offended about this. A maximum limit of 21 years in prison for any imaginable crime makes

little sense. The current Norwegian Penal Code likely grew out of theories popular in the 60s and 70s, theories according to which crime is the result of lamentable socio-economic conditions and the aim is always to restore the criminals fully to society. Of course, poor socio-economic conditions contribute to crime and typically our aim should be to see punishment as leading to restoring people as members of the community. Assuming that ABB is legally sane, it is quite possible that his lack of a healthy sense of self (his NPD) is due at least partially to his less than ideal childhood. Conceivably, Norwegian child protective services should have intervened early in ABB's life in order to protect his rights, in which case we all failed him at that point.²⁶ The relationship between problematic childhoods – which we all, through the public authority, have a responsibility to do something about – and personality disorders may provide us with yet another reason to eschew the death penalty²⁷ and offer ABB therapy. After all, perhaps only by such interventions do we take into account the complex stories behind crimes that involve the failures of the state and society to protect vulnerable children. Nevertheless, it remains the case that to have an NPD is not to be incapable of legal responsibility.²⁸ Such crimes involve many choices. Even this extreme situation, if we go by ABB's own report of his stream of consciousness as he undertook the killings, involved many decisions – and ABB was and is responsible for these choices.

Kant is famous for defending a retributive theory of punishment, according to which the automatic, corresponding punishment for choosing to kill another innocent person should be death (or, in my considered Kantian view, life in prison).²⁹ To me, the inabil-

ity of the current legal system to bring full closure to this case should cause us to revisit this currently unpopular line of reasoning with regard to punishment. The retributive argument is simple: If you kill another innocent person, the life you took is not equivalent to 21 years of your own life. You are equals, and both of your lives are invaluable. There is no price tag on another's life; if you murder an innocent person, then your life as a free person should be over too.

Perhaps there are reasons to equate one life sentence to 21 years, but we have to justify the equation, not simply assume it. It is simply incorrect that 21 years of imprisonment is a *life*-sentence (one that lasts the rest of one's life, or what traditionally was called «livstid» or «lifetime» sentence in Norwegian). Regardless of whether a lifetime in prison is best understood as equivalent to 21 years, I believe that the way in which the current Norwegian Penal Code limits punishment for *any* crime to 21 years in prison is unjustifiable. However heinous a crime one commits and however many people it affects, one cannot be sentenced in a single trial to more than 21 years. Assuming good behavior and no «forvaring» condition on the sentence, one has the right to be considered for release after completing 2/3 of one's sentence, or 14-15 years. This is, in my view, deeply problematic and morally offensive as it cannot be reconciled with each person's equal right to freedom.

One way to illustrate the problem goes like this: ABB killed 77 people, and each killing becomes equivalent to 1/77th of 21 years, or 0.273 years or a little over three months, according to the current Norwegian Penal Code. If we include the number of other people who were physically harmed by ABB, the punishment for each killing be-

comes even less, and so even more absurd. If we consider the fact that ABB also undertook terror attacks against the state (so against all of us, or public crimes), then the punishment he received for each crime becomes even less, and even more absurd still. Again, this sentence fails to treat each citizen as having inviolable worth equal to that of any and all other human beings. Instead, the current Penal Code in Norway weighs each of ABB's victims' value as $1/n^{\text{th}}$, where «n» is the number of victims involved in the trial. The resulting punishment cannot, in principle, match the wrongdoing, which, I believe, is one reason why so many are rightly upset with the legal system's inability to bring proper closure to this case – to bring ABB to justice for his crimes. Hence, even if a life sentence may, for some reason, be deemed 21 years, then for each life one takes, one should get one life sentence. It should not be legally neutral whether one kills one, two, or many – each life should count as one when we measure punishment.³⁰Of course, one might agree with this principle, but maintain that ABB is punished for each crime by paying for all of them concurrently (at the same time) rather than consecutively (one life sentence after another). I find this analysis unconvincing. Concurrent sentences may be plausible in some cases, as in lesser crimes or in non-bodily crimes, such as thefts. When we are dealing with intentional killing of other people and especially where each particular person is killed intentionally and particularly heinously (as in this case), there seems to be no good reason to appeal to the logic of concurrent sentencing.

Yet perhaps consecutive or concurrent sentencing is simply inappropriate for some crimes, like the one we are dealing with

here. Some crimes are such that the idea of the criminal once again becoming one of us (our community) as an equal again is morally perverted or absurd. For some crimes – like those committed by ABB – the idea of a terminate sentence of any kind is in itself a moral perversion or absurdity; we cannot even envision what such an appropriate punishment could possibly be. All we do know is that the moral idea of becoming equal members of society again is impossible; it simply makes no sense, and this is why most Norwegians remain profoundly upset about this aspect of the trial. Some crimes are so heinous and vast in their impact that once the trial is over, unchosen exposure to the criminal in question must also end, and end for good. These kinds of crimes threaten to undo or unground people by robbing them either of their loved ones or of their trust in the world exactly because they are healthy human beings. The victims (first and foremost those who were directly attacked and their loved ones, and then all of us, as Norwegians) have a right to the silence and peace required to heal and return to life. The legal system doesn't function well if it cannot guarantee the kind of peace victims of such heinous crimes need, to find their way forward again. The current system upholds principles according to which victims have a duty of justice to face or interact with the perpetrator once again, as a free person; perhaps on the street or in the grocery store as a free citizen – possibly in 15 years time. But any determinate number of years to be served in prison is wrong, since there cannot be an «after the sentence is served» in these cases. The state cannot presume that its citizens have such a duty of justice to prepare for interaction as equals in society again. Sometimes interaction must

be over for good, and this is one of those times. Those who were subjected to ABB's violence should have been able to know that after the trial they would never have to be exposed to or interact with him ever again. Whether or not they will interact should be a question over which they have control (such as choosing to visit him in prison, say, as part of the healing process).³¹ We all should remain committed to ABB being treated respectfully in prison, but it should not be the case that his victims are required to start mentally preparing for having to face him again, even relatively soon, as a free man in society. That the legal system cannot guarantee this, I believe, is a profound failure.³²

It may be objected at this point that realistically ABB will never again be a free citizen, since the Penal Code has the category of «forvaring» exactly to ensure justice by preventing morally ill people like ABB from being released. I believe this argument is mistaken. The category of «forvaring» is the correct one to use to secure society against persons whose unwillingness to deal with their aggressive personality disorders makes it impossible to release them safely back into society. In legal systems that are committed to the principle that *mentally* ill people should not be punished for illegal violent actions, it seems correct to have a legal category that ensures that *morally* ill persons who have committed violent crimes have access to mental health services to control the aggressive aspects of their personality disorders. In fact, my impression is that the «forvaring» clause is increasingly applied exactly in cases where the crimes are impossible to explain except on the basis of some basic moral illness, such as in cases of domestic abuse of spouses and children. The account

above is correct, it can explain why these people are legally responsible and yet should have access to the mental health services they need to deal with their problems. Still, the legal clause of *forvaring* deals with the moral illness, not with the question of retribution for the crime committed and for which they are legally responsible. Although the category of *forvaring* should be used in cases involving aggressive NPDs, it should not be a *replacement* for punishment, the means by which we restore rightful relations. The category of «safekeeping» addresses the moral illness involved, but cannot remedy an insufficiently retributive sentence that fails to express proper respect for the victims and their rights. The «*forvaring*» clause and the prison sentence are two categories that do independent work.³³

Conclusion

One of the most terrifying aspects of Adolf Eichmann was the banality of his thinking regarding his wrongdoing, as Hannah Arendt argues in her *Eichmann in Jerusalem*.³⁴ Any plausible account of him, she maintained, had to account for the fact that he was, by any reasonable standard, a most mediocre man who seemed unable to think properly and so to know the difference between right and wrong. In his mind, he was simply following orders and obeying the law as he built a career for himself. Even though Eichmann was «perfectly incapable of telling right from wrong» (Arendt 26, cf. 287) and found himself «under circumstances that make it well-nigh impossible for him to know or to feel that he was doing wrong» (Arendt 1992: 276), it was right that he was punished, Arendt maintained, because he «carried out, and therefore actively support-

ed, a policy of mass murder.» (Arendt 1992: 279) Eichmann had to hang because, despite his lack of wrongful intent, «no one, that is, no member of the human race, can be expected to want to share the earth» with him (ibid.). Although it's obvious that someone who has acted as horrifically as Eichmann does not «have a right to live» in a profound sense, something about Arendt's account, as many have argued before me, doesn't add up. If you don't know what you're doing, you can't distinguish right from wrong, and you live in circumstances where the «culture» around you can't help you, then why is justice still done when you are subjected to the death penalty? Something doesn't seem quite right in the argument, including the interpretation of Eichmann's character.

The account above can be seen as one attempt at giving a more nuanced account of these kinds of criminals, one that can explain why people like Eichmann and ABB, whose crimes are not motivated by self-interest and whose actual intent is, in their minds, not wrong, still remain responsible for their crimes. More specifically, I have suggested that part of what is so terrifying about ABB is also that, like Eichmann, he is a most mediocre person. Any interpretation of what we saw that ascribes to him impressive powers of any kind is irreconcilable with the facts. ABB's simple reasoning from mistaken beliefs is also banal through and through. I only differ from Arendt in offering a somewhat more complex account of this banality. To start, one difference is my emphasis on the way that ABB's and Eichmann's banal reasonings are matched by equally simple emotional lives. A second main difference is my suggestion that a lack of self (their moral illness) explains their lack of proper engagement with their beliefs

and the shockingly simple nature of their emotional lives. ABB is driven by the sense of being seen, of being alive that he gets from having a leading active role in his presumed political project. The information Arendt gives us about Eichmann suggests something similar. The main difference seems to be that Eichmann didn't share ABB's elation at committing the direct, physical destruction of other human beings, or this aggressive element of ABB's NPD.

Otherwise, Eichmann and ABB both appear to lack a healthy sense of self and hence are utterly self-absorbed. This self-absorption explains why Eichmann, in Arendt's account, finds it so very difficult to «*think* from the standpoint of someone else» (Arendt 1992: 49), feels so easily «elated» when he tells the story about himself in terms of «stock phrases,» wants to get caught (so that he got to tell his story in court), and keeps writing his biography (during his years in Argentina and in prison in Israel). Both Eichmann and ABB lack adequate interpersonal emotions; feel elated when they describe their projects by stock phrases (the core one being variations of «obeying the law» for Eichmann and a core role in «protecting Norwegian culture from destruction» by «gruesome, but necessary» actions for ABB); wanted to get caught so that they could tell their stories in court; and they found it tremendously important to write the history (biographies) about their «great» lives. And, of course, both took themselves to be key elements of great moral-political projects of German and Norwegian self-realization. Eichmann took himself to be *the* «expert» on the Jewish question and ABB took himself to be the leader of both the European contrajihadist movement and Norway.

Given these analogies, I have argued, in contrast to Arendt, that both Eichmann and ABB had the ability to correct the mistaken beliefs upon which their actions rested, and this is why they both have been legally responsible for their actions. Neither has a history of no interpersonal emotions ever present (revealing no capacity for such emotions) and both had many facts within reach that simply didn't fit the stories they were telling themselves. For example, when asked at trial if he would kill his own father if told to do so by his leaders, Eichmann replied that he certainly would if the case had been proven against his father. He was then asked if the case against the Jews he sent to the concentration camps had been proven, and he had (of course) no answer. Similarly, when asked what was possibly heroic about shooting defenseless children, ABB also didn't have an answer, but only awkwardly said that they didn't really look that young. Moreover, both courts proved that Eichmann and ABB were able to correct mistaken beliefs. One might argue that self-correction was harder in Eichmann's case, since so many around him supported what he did, whereas ABB had much resistance in the culture surrounding him. However, not only did Eichmann's own physical reactions resist what he was doing (the violence in the concentration camps made him physically ill), but he was surrounded continuously by desperate people. He chose to act on what made him feel important and set aside everything in his reality that resisted that choice. For that decision he is responsible just as ABB was responsible for identifying the «true» culture as being the extremist culture he could find via the web.

The trials gave both men opportunities to start relating to what they have done in a

truthful way, one that tracks reality as it actually is, not as it might be described to make one feel smarter than everyone else and a part of a big project and not in a way that block challenges to what one is doing. Eichmann failed to seize this opportunity and so went to the gallows repeating his stock phrases, and ABB also failed to start this process in court. Their failures, however, do not lessen our duty to hold them and

ourselves to this standard of truthfulness and respect for each person, the standard of humanity. If the analysis in this paper is correct, then if ABB ever starts this process, the standard of humanity involves the principle of forvaring and we must give him access to the mental health care he will need to do the seemingly impossible: find a way to live with what he has done.

Noter

- 1 Thanks to Ingrid Albrecht, Lucy Allais, Marcia Baron, Jennifer K. Oleman, Sarah Broadie, Hugh Chandler, Antony Duff, Barbara Herman, Paul Hurlley, Ernst Horgen, Arnt Myrstad, Martha C. Nussbaum, Leonard Randall, Barbara Sattler, Martin Sticker, David Sussman, Julie Tannenbaum, Nicolaus Tideman, Jens Timmermann, Ekow N. Yankah, Shelley Weinberg, Kirstin Wilcox, the Department of Philosophy at Pomona College, the Kant reading group at the University of St. Andrews; and Kjersti Fjørtoft and Jonas Jakobsen at Norsk Filosofisk Tidsskrift for having helped me in various ways in writing this paper. Which is not to say that they agree with my analysis or to deny in any way that the mistakes remain only mine. Thanks also to the Department of Philosophy and the Center for Advanced Studies at the University of Illinois at Urbana-Champaign; the University of St. Andrew's Centre for Ethics, Philosophy and Public Affairs; and the Brady Scholars Program in Ethics and Civic Life at Northwestern University for having funded this research project.
- 2 See <http://www.nrk.no/contentfile/file/1.8025126!tiltalen227.pdf> for a redacted version of the charges against ABB.
- 3 ABB might have thought this because after World War II, there was a death penalty for treason and it was applied to some of the leading «Nasjonal Samling» (NS) leaders after the war. (NS was the fascist, nationalist political party led by Vidkun Quisling in Norway before and during the war.)
- 4 I have included these more descriptive parts in the paper so as to enable non-Norwegians to follow the analysis and engage the arguments.
- 5 The Commission originally asked for a clarification from the psychiatrists, but even after it was provided, the Commission's view was unclear. During the trial, when the Court questioned members of the Commission, it became apparent that in asking for the additional clarification from the second team of psychiatrists, the Commission had *not* «approved» the second report and that the Commission regarded the second report as weaker than the first.
- 6 First, there was disagreement over the existence of and his meetings with the leaders of the Knights Templar organization; when confronted with what appeared to be overwhelming evidence that the organization has never existed, ABB simply disagreed. Second, the prosecution argued that ABB lied when he claimed to have begun preparing for his attacks in 2002, since there is no evidence for (and much evidence against) this. On the basis of the first psychiatric report, reports from family and friends, and police interviews with ABB, the prosecution concluded that the writing of the manifesto began around 2007 and that the planning of the actual attacks started in 2009. Third, the prosecution maintained that ABB himself lied when he accused first team of psychiatrists of telling «200 lies» in their report of his statements during August 2011, because they had no reason (and very many reasons not) to lie. Fourth, the prosecution maintained that the evidence does not support ABB's claim that if he had succeeded in killing

- more people at Høyblokka he would not have proceeded to Utøya. The defense agreed with the prosecution on the second and third points, and with ABB on the first and fourth.
- 7 The prosecutors emphasized that though in doubt they were more convinced by the first psychiatric report because it had evaluated ABB closer to the actual event, the Commission regarded it as the stronger report, and overall, it fit better with how friends and family had described ABB's withdrawal starting in 2006.
- 8 The Penal Code's §147 has never before applied in a Norwegian trial. Penal Code §147a outlaws acts of terror intended to undermine a central function in society, by, for example, incapacitating government activity or public works, or creating serious fear among the population. The prosecution argued that ABB's acts of terror also employed methods outlawed in Penal Code §148 (which forbids setting explosions that could lead to the loss of human life or the extensive destruction of others' property) and Penal Code §223 (which concerns intentional killing under «sharpened conditions,» conditions that make the killing especially heinous).
- 9 For the prosecution's procedure, see: <http://nrk.no/227/dag-for-dag/rettssaken---aktoratets-prosedyre-1.8213456>
- 10 For the defender's procedure, see: <http://nrk.no/227/dag-for-dag/forsvarets-sluttprosedyre-1.8216158>
- 11 These were the captain of the ferry, a 10-year old boy, and a young man whom he identified (presumably due to his «preppy» appearance) as «belonging to them,» meaning ABB's ultranationalist «kind.»
- 12 I am grateful to David Sussman for having suggested this phrase to me and for patiently discussing many of the issues in this section with me.
- 13 One question that keeps puzzling me (a non-expert on psychology/psychiatry) is whether someone suffering from a psychosis actually can have such clear memories of the crimes as ABB does and also not struggle (emotionally or cognitively) when facts disputing their sense of reality are presented.
- 14 My account is inspired by recent work in Kantian moral psychology, especially that of Ingrid Albrecht, Lucy Allais, Barbara Herman, and David Sussman.
- 15 We all, of course, have some of these tendencies, and some of us have more than others because of having been subjected to abusive behavior. Hence, at times, we all need to pay extra attention to ourselves to heal wounds or care a little especially for bits that have been badly trampled on. These normal features of a fragile human life differ from the experience of someone who is struggling with an NPD. Such a person does not only experience herself as sometimes more vulnerable or defensive, but as generally struggling to experience appropriate moral emotions. The all-encompassing nature of the struggle is why its existential challenges are so significant and difficult to face.
- 16 In my view, these ideas reflect the relationship Kant envisions between morality and human nature, as in the *Religion within the Boundaries of mere Reason* (6: 26-9). According to Kant, the predisposition to good in human nature has three elements to it: The first (to «animality») concerns our basic, unreflective social nature; the second (to «humanity») concerns our susceptibility to how others conceive of us (which requires simple comparative uses of reason); and the third (to «personality») concerns our susceptibility to morality and its demands (which requires reflective, practical uses of reason). In the analysis in the paper, the first idea informs the way in which I describe a healthy self as being personally and socially identified («animality»), the second informs the idea of how a healthy self assumes being seen by others («humanity»), and the third informs the idea of how reflection enables us to both correct beliefs and behavior («personality»). Going into these exegetical aspects of Kant is obviously impossible, but notice that my analysis can be supported by any theory that has such a three-fold combination of unreflective and reflective elements of our basic emotional life.
- 17 We never saw how he would interact with his friends since they needed him to leave the room when they testified; his mother naturally never testified.
- 18 When he was a little boy (4 years old) the Norwegian child services were alerted and undertook psychiatric evaluations of him; the relevant court sessions were conducted behind closed doors for confidentiality reasons.
- 19 Hence, this account is compatible with maintaining that some types of psychopaths completely lack the capacity for other-directed emotions of any kind (see, for example, Jeffrie G. Murphy's article «Moral Death: A Kantian Essay on Psychopathy,» *Ethics*, Vol 82:4, 1972: 284-98 for such an analysis of psychopathy; see especially

- pp. 294ff.); my claim here is simply that ABB is not one of these.
- 20 I'm especially grateful to Duff, Herman, and Yankah for making me clarify this point.
- 21 It may be impossible for anyone today to actually settle the issue of ABB's legal sanity at the time of the actions since obtaining this knowledge would require access to ABB's mind both at the time of the crimes and during the interviews, which is impossible. In addition, the original interviews were not recorded electronically.
- 22 For such a deputy interpretation, see Sussman's «On the Supposed Duty of Truthfulness: Kant on Lying in Self-Defense,» in *The Philosophy of Deception*, ed. Clancy Martin (Oxford University Press: Oxford, 2009, 225-43).
- 23 Kant, Immanuel *The Metaphysics of Morals*, transl. and ed. by M. Gregor (Cambridge University Press: Cambridge, 1996).
- 24 On this reading of Kant, to kill someone is to do a generally wrong action – it involves, in «Kantianese,» acting on a rule (maxim) that cannot hold as a universal law. Hence, choosing that action (killing) makes the option of interacting under universal laws impossible. This is why the action of killing the killer is experienced as coming at a moral cost even though it does not wrong the killer. I defend this approach in «Kant and Lying to the Murderer at the Door... One more Time: Kant's Legal Philosophy and Lies to Murderers and Nazis,» *The Journal of Social Philosophy*, Vol. 41, No. 4, Winter 2010: 403-421. A main alternative reading of Kant on this point could argue that since one is forced into the situation where killing the other is the only option, killing the other is not to do wrong in the highest degree and does not come at a moral cost.
- 25 In fact, this may be a reason to think that Kant is wrong in thinking we can have the death penalty. Perhaps the death penalty, though morally appropriate in the sense of fitting the crimes, requires people to do something that no morally healthy human being can do or can feel authorized to do (namely, execute another, now defenseless person). Hence the death penalty may be both morally necessary and morally impossible. I am grateful to David Sussman for helping me clarify my thoughts on this issue.
- 26 The extent to which this is indeed the case depends upon psychiatric evaluations of ABB conducted at the time, but the public does not – as it should not – have access to such confidential documents.
- 27 At this point in time, it seems over-determined that imposing the death penalty in a well-functioning legal system is simply unjustifiable, but going into this issue here would take me too far afield.
- 28 If my analysis is correct, then it is not the case that serious violent crimes of this kind will go away even in very affluent societies (like Norway). And, indeed, current research does not indicate that Norway – now the richest welfare state in the world – has fewer people struggling with personality disorders than other countries. Its high levels of domestic abuse equal those of other countries.
- 29 See note 25 for explication of why I believe that the death penalty should be taken off the Kantian table.
- 30 The prosecutors' closing argument is that the actual punishment will be the same regardless of whether or not ABB is charged only with Penal Code paragraph 147a (public crime, or a crime against the state) or also with Penal Codes 148 (a public crime) and 223 (77 counts of private crimes, or crimes against private citizens). It seems to me, however, that he should be charged with all of these charges as well as with x number of counts of each one (one or two counts of 147, one or two counts of 148, and finally 77 counts of murder under «sharpened conditions»). Each of these counts should carry a life sentence and he should be charged for each count of physical injury.
- 31 As pointed out to me by Broadie and Yankah, a full account of this probably engages the historical category of being banished from societies, but for reasons of space I set aside this question here.
- 32 I'm most grateful to Duff, Herman, and Sussman for helping me clarify my thoughts on punishment here.
- 33 One may object that Norway has never had to deal with mass murderers post-WWII and we should not change the system in response to only one case. My claim, however, is that we should change the law not because of this one case, but because the law is incorrect. This case has only made obvious problems that have existed for a long time.
- 34 See both Hannah Arendt's *Eichmann in Jerusalem: A Report on the Banality of Evil* (Penguin books, 1992) and Margarethe von Trotta's 2012 film *Hannah Arendt* about the writing and publication of this book. My revised analysis of Eichmann is also consistent with relevant sections of Bettina Stangneth's *Eichmann before Jerusalem: The Unexamined Life of a Mass Murderer* (Knopf: New York, 2014).